

## THIRD DIVISION

[ G.R. No. 138990, January 30, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMMY ZACARIAS (AT LARGE); RODEL ZACARIAS (AT LARGE); WALLY TICALO; RENE MATUGAS (ACQUITTED), ACCUSED,**

**WALLY TICALO, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

Wally Ticalo was convicted of murder by the Regional Trial Court, Branch 35, of Ormoc City, and was sentenced to serve the penalty of *reclusion perpetua* for the death of Christopher Sacay. He was charged, together with three other persons, in an indictment that read:

"The undersigned City Prosecutor, Ormoc City, accuses SAMMY ZACARIAS, RODEL ZACARIAS, WALLY TICALO and RENE MATUGAS of the crime of MURDER, committed as follows:

"That on or about the 25th day of June 1993, at around 12:30 o'clock in the morning, at Purok 7, Brgy. Linao, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused SAMMY ZACARIAS, RODEL ZACARIAS, WALLY TICALO and RENE MATUGAS, conspiring together, confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab, hack, and wound the person of the victim herein CHRISTOPHER SACAY, without giving the latter sufficient time to defend himself, thereby inflicting upon said CHRISTOPHER SACAY mortal wounds which caused his death. Post Mortem Report is hereto attached.

"In Violation of Article 248, Revised Penal Code."<sup>[1]</sup>

Rene Matugas and Wally Ticalo were arrested and put to trial; the other two accused remained at large. Matugas, a brother-in-law of Wally Ticalo, was the first to be taken into custody but, following his trial, he was acquitted, on 11 April 1994, by the Regional Trial Court of Ormoc City (Branch 12) for insufficiency of evidence. Ticalo was apprehended on 9 April 1997, arraigned thereafter, and then tried under the aforequoted information. On 03 February 1999, he was found guilty. In its decision, the court *a quo* concluded:

"Wherefore, all the foregoing considered, the Court finds the accused Wally Ticalo guilty beyond reasonable doubt of the crime of murder and hereby sentences him to imprisonment of forty (40) years reclusion

perpetua and to pay the aggrieved party the sum of P50,000.00 as indemnity.

"If the accused is a detainee, the period of his detention shall be credited to him in full if he abides in writing by the terms for convicted prisoners, otherwise, for only four-fifths (4/5) thereof."<sup>[2]</sup>

The conviction of Ticalo was anchored principally on the eyewitness account of Sergio Pelicano, Sr. On direct examination, Pelicano testified that on 25 June 1993, about 12:30 A.M., while waiting for his son to come home, he heard a commotion just outside his abode. He opened a window overlooking the road and saw a teen-aged boy being chased by Sammy Zacarias and Rodel Zacarias. The boy, Christopher Sacay, was the son of his long-time friend Alejandro Sacay. Seconds later, his two other neighbors, Wally Ticalo and Rene Matugas, also went after the teen-ager who was by then heading towards the Seventh Day Adventist Church, about 20 meters from Pelicano's house. Pelicano rushed down from his house and followed the group until he was only about 10 meters away from where the four men finally caught up with the boy. He saw Rodel Zacarias hold the young man while the rest took turns in stabbing and hacking the victim.

The autopsy report<sup>[3]</sup> on the body of the victim conducted by Dr. Calipayan indicated that Christopher Sacay sustained ten hack wounds and seven stab wounds on various parts of his body including his lung, head lumbar vertebra, and kidney.

The accused countered with the defense of denial and *alibi*. Ticalo claimed that on the day of the stabbing incident he was at his residence in Burauen, Leyte, working in the farm of Rustico Posion. Posion himself recounted that on 24 June 1993, the feast day of St. John the Baptist, he had a drinking spree in his house with the accused which lasted until about ten o'clock in the evening. The following day, 25 June 1993, Posion again met with the accused at seven o'clock in the morning and together weeded the Burauen farm. When asked by the court about the distance between Brgy. Linao, Ormoc and Burauen, Leyte, Posion answered that the towns are far distant away from each other, and no road directly linked the two towns such that from Burauen one still had to pass through Tacloban to reach Brgy. Linao.

Erlinda Matugas, the mother of acquitted accused Matugas, testified that Ticalo had not been a permanent resident of Brgy. Linao. She said that whenever Ticalo would come to town, he would stay at her son's house which was just a wall division away from her own house. On the night of the fateful day, Erlinda Matugas swore, Ticalo was not with her son.

The defense presented at the witness stand Virginia Nudalo who related that she and Pelicano, together with several others, were in a Red Cross Training Seminar from 21 June 1993 up until 03 July 1993. Since it was a stay-in seminar, the participants took supper and spent their evenings at the training center. At midnight of 25 June 1993, Nudalo, on her way to the comfort room, saw Pelicano sleeping along with other male participants just outside the room assigned for the lady participants.

In the end, the trial court accorded greater credence to the positive declaration of Pelicano than to the *alibi* of Ticalo and the testimony of Nudalo.