

## EN BANC

[ G.R. No. 137514-15, January 16, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILFREDO PANABANG Y BUSNAG, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

It could have indeed been a merry evening for three men unwinding from the rigors of a working day had not for a single bullet that claimed the life of one of them.

On the night of 04 September 1997, Police Chief Inspector Romeo Castro Astrero of Sison, Pangasinan, was shot to death. Wilfredo B. Panabang was charged with murder, coupled with illegal possession of firearm, before the Regional Trial Court, Branch 46, of Urdaneta City. Two separate accusatory Informations, docketed Criminal Case No. U-9528 and Criminal Case No. U-9529, respectively, were filed.

#### "Criminal Case No. U-9528

"That on or about September 4, 1997, in the evening at Poblacion Central, municipality of Sison, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused armed with an Armalite Rifle with intent to kill, treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously shoot Police Chief Inspector Romeo Castro Astrero, inflicting upon him a fatal gunshot wound which caused the instantaneous death of said Police Chief Inspector Romeo Castro Astrero, to the damage and prejudice of his heirs.

"CONTRARY to Art. 248 of the Revised Penal Code, as amended by R.A. 7659."<sup>[1]</sup>

#### "Criminal Case No. U-9529

"That on or about September 4, 1997, in the evening at Poblacion Central, municipality of Sison, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) Armalite Rifle with ammunitions, without first securing the necessary permit/license to possess the same, which firearm was used in shooting to death one Police Chief Inspector Romeo Castro Astrero.

"CONTRARY to P.D. 1866 as amended by R.A. 8294."<sup>[2]</sup>

The accused pled "not guilty" to both charges when arraigned on 24 September 1998. A joint hearing commenced at which the prosecution and the defense recited and submitted their respective cases before the trial court.

Jaime Opilas, a mechanic, owned a motorshop adjoining his house located at the Poblacion Central of Sison, Pangasinan. On 04 September 1997, around 7:25 p.m., Opilas was having a drink in his house with Romeo C. Astrero, the former Chief of Police of Sison, Pangasinan, and a certain Ladio (also referred to as "Eladio" in the transcript of stenographic notes). While the affair was in progress, there was a sudden burst of gunfire. Opilas heard Astrero say, "I was hit." The gunfire came from the southern portion of the house and punctured, with three bullet holes, the northwest portion of the kitchen wall. Turning his head to see where the gunshots had come from, Opilas saw the accused, from a distance of approximately three meters away, move backwards in a stooping position and holding a "baby" armalite rifle with its nozzle still pointed to their direction. Opilas promptly took the .45 caliber pistol from Astrero's clutch bag and began to chase the fleeing accused. In no time, the latter disappeared into the darkness. Astrero was declared dead on arrival when rushed to the Rosario District Hospital in Pangasinan by Opilas and some companions.

Noli Salvatierra, a 23-year old tricycle driver, testified that the accused was his last passenger on the evening of 04 September 1997. Donning a brown jacket, the accused requested to be brought to Arnes Restaurant, and from there the accused proceeded to Opilas Repair Shop located along the highway of Poblacion Central, Sison, Pangasinan.

Dr. Mario L. Duque, a resident physician of the Rosario District Hospital in Pangasinan, conducted the following day an autopsy on the victim's cadaver. In his autopsy report, marked Exhibit "G," he stated that Astrero's cause of death was "severe internal bleeding due to injured major pulmonary vessels and pulmonary teleotasis due to injured lung secondary to gunshot."<sup>[3]</sup> Testifying, he declared that the deceased victim sustained one gunshot wound, and the bullet penetrated his right lung pulmonary artery which caused massive bleeding in the thoracic cavity.

Dr. Arturo Llavore, a medico-legal officer of the National Bureau of Investigation (NBI), made his own autopsy of the victim's remains on 13 September 1997 and executed Autopsy Report No. 97-53-P.<sup>[4]</sup> He concluded that the cause of the victim's death was "hemathorax, right, severe, secondary to gunshot wound, chest, posterior." He recovered a deformed copper-jacketed bullet, approximately 20 cms., above the right elbow and behind the upper third of the fractured humerus. The slug was fired from a 5.56 mm. armalite rifle. It was subsequently referred to the Firearms Investigation Division (FID) of the NBI for ballistic examination.

NBI Ballistician Marcos P. Libunao examined the deformed copper-jacketed slug extracted from the victim's body and corroborated Dr. Llavore's testimony that the bullet had been fired from a 5.56 mm firearm.

SPO2 Jovencio Fajarito, a member of the Philippine National Police ("PNP"), stationed in Sison, Pangasinan, undertook an investigation on the death of Astrero. He interrogated Noli Salvatierra, the tricycle driver, who informed him that he drove the accused to the scene of the incident at Barangay Cauringan on the night of the

killing. He said that, on 27 October 1997, Sgt. Colombres submitted to him pieces of evidence consisting of empty shells of M16,<sup>[5]</sup> an envelope,<sup>[6]</sup> and the sketch of the crime scene.<sup>[7]</sup>

SPO2 Romulo Colombres, a police investigator detailed at Barangay Paldit, Sison Sub-Station, Pangasinan, testified that on 04 September 1997, approximately 7:25 p.m., he received a report on the shooting incident. He at once repaired to the scene of the shooting incident and recovered four empty shells fired from a M16 Armalite rifle. The shells were subsequently turned over to Chief Investigator SPO2 Fajarito.

Police Inspector Leopoldo Rivera, the PNP Chief of Police, in Sison, Pangasinan, testified that, together with SPO2 Colombres, he went to the crime scene. He instructed the latter to take photographs, including the trajectory of slugs, around the area.

Police Inspector Romeo Diagan took the statement of Jaime Opilas. In the course of his investigation, he learned that the accused had boarded the tricycle driven by Noli Salvatierra on the night of the killing.

Jaime Astrero, the 67-year old father of the victim, stated that the latter's wife, Dolores Astrero, had spent a total of P184,748.00 for the wake and burial of his son, adding that the victim, a police officer, was receiving a monthly income of P12,000.00.

SPO4 Rodrigo Escaño, a PNP member detailed at the Firearms and Explosives Unit in Camp Crame, attested that, upon verification from the available records in his office, the accused was not a duly licensed or registered holder of firearm of any kind and caliber.

It was the turn of the defense to present its evidence.

Avelino Taronas, one of the "boarders" of the accused at Camp 7, Montesillo Rd., Baguio City, testified that he saw the accused leave the house at about eight to nine o'clock in the morning of 04 September 1997 and return at around 7:30 p.m. while he was still watching "Esperanza" on television.

Lyn Soriano, whose in-laws used to be the neighbors of the accused, stated that, about seven o'clock in the evening, she bumped into the accused and his wife Marina Saldaen at a jeepney terminal near Camp 7. After an exchange of casual greetings, the couple left but not before she heard them say that they had just finished playing mahjong.

Virginia Morales testified that the accused was a mahjong acquaintance since 1995. She said that on 04 September 1997, about one o'clock in the afternoon, the accused arrived at the Zarate Building, Burnham Park, Baguio City, to play mahjong. The latter left, together with his wife, at seven o'clock that evening.

Pedro Eserio stated that from two o'clock until five o'clock in the afternoon on 04 September 1997, he was playing mahjong with the accused and other players at the Zarate Building. He gave up his seat when Philip Domingo arrived and took his place at the table. He saw the accused playing the game until seven o'clock in the

evening.

Rosita Galang said that Atty. and Mrs. Gacayan, Adel and Pedro Eserio, Virgie Morales, and the accused were already at the Zarate Building when he arrived at past two o'clock in the afternoon of 04 September 1997. She said that the accused and his wife Marina Panaba left the place at seven o'clock in the evening.

Lauro Gacayan, a practicing lawyer, testified that on 04 September 1997, approximately 1:30 p.m., he drove his wife to Zarate building where he saw the accused playing the game of *tong-its*. Gacayan left the building at three o'clock in the afternoon to fetch his daughter from school and came back at past seven o'clock to fetch his wife.

The accused was a policeman until his separation from the service in 1986. He claimed that, on the morning of 04 September 1997, he did some cleaning-up in his house at Camp 7, Montesillo Rd., Baguio City, before proceeding to Camp Allen to visit his sickly parents. He stayed at his parents' house until about noon. Right after taking his lunch in the nearby Kambingan House, he went to Zarate Building where he played mahjong. He left the building at seven o'clock in the evening with his wife. He insisted that he was not personally acquainted with the deceased victim whose name he came to know only after being "zeroed" in as the suspect in the killing.

On 03 February 1999, the trial court handed down a guilty verdict; it adjudged:

"WHEREFORE, the Court finds WILFREDO PANABANG guilty beyond reasonable doubt of the crime of MURDER aggravated by treachery and use of unlicensed firearm. The Court hereby sentences him to suffer the penalty of DEATH to be implemented in the manner provided by law; to pay the heirs of the victim the sum of P184,748.00 as actual damages, plus P500,000.00 for compensatory and moral damages and P20,000.00 as exemplary damages and all accessories of the law.

"Accused Wilfredo Panabang, in CRIM. CASE NO. U-9529, for Illegal Possession of Firearm, is hereby acquitted considering that the use of an unlicensed firearm shall be treated only as an aggravating circumstance.

"The Branch Clerk of Court is hereby ordered to transmit the record of this case to the Honorable Supreme Court for automatic review.

"The Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to transmit the living person of Wilfredo Panabang, with proper escort, to the National Bilibid Prisons, Muntinlupa City, as soon as possible."<sup>[8]</sup>

The accused assails his conviction and, in this automatic review of his case, contends that the lower court has gravely erred in convicting him of murder and sentencing him to death on the basis of what he terms to be the **incredible** testimony of the prosecution witnesses.

The Court has closely reviewed appellant's case; while it affirms the judgment of conviction, given the circumstances, however, it must reduce the sentence of death to *reclusion perpetua*.

The basic challenge posed by appellant is focused on the credibility of the witnesses presented at the trial. Jurisprudence is too well settled that this particular issue lies within the province of trial courts to resolve. Trial courts have the means, more than an appellate tribunal can have, to evaluate conflicting testimony and to assess who is a credible witness and who is not, what is reality and what is falsehood, or what is candid and what is disguised. Just recently, the Court has reiterated:

"x x x Repeatedly, the Court has called attention to the fact that it is the trial court which can be afforded the unique opportunity to observe the witnesses on the stand. The manner witnesses testify - the hesitant pause, the nervous voice, the undertone, the beffuddled look, the honest gaze, the modest blush, or the guilty blanch - is a significant *indicum* in aptly assigning value to testimonial evidence."<sup>[9]</sup>

It is easy to understand then why the Court, quite often, would say that it would only disturb on appeal the findings by a trial court on the credibility of witnesses just upon a clear showing that it has overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which can affect the result of the case.<sup>[10]</sup> No such exceptional showing exists in the case at bar as to warrant a reversal of the rule.

The eyewitness account of Jaime Opilas was plain and consistent on material points. He testified:

"FISCAL MENESES:

On September 4, 1997, at around 7:25 in the evening, do you remember where you were, Mr. Witness?

"A We were inside our kitchen, sir.

"Q In relation to your place of residence, where is your kitchen located, Mr. Witness?

"A At the ground floor of my house, sir.

"Q How about your Auto Repair Shop?

"A Just in front of my house, sir.

"Q You said that 'we were in the kitchen on September 4, 1997 at 7:25 in the evening,' can you tell the Honorable Court your companions at that time?

"A Major Astrero, myself and a certain Ladio, a customer of mine, sir.

"Q On said date and time, what were you doing and your companions?