

## SECOND DIVISION

**[ G.R. No. 146664, February 28, 2002 ]**

**JOHN ANGCACO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### **D E C I S I O N**

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision,<sup>[1]</sup> dated November 29, 2000, of the Court of Appeals, which affirmed with modification the decision,<sup>[2]</sup> dated January 31, 1996, of the Regional Trial Court, Branch 1, Puerto Princesa City, finding petitioner John Angcaco guilty of murder and sentencing him accordingly.

Petitioner John Angcaco and his co-accused in the trial court, namely, Ramon Decosto, Protacio Edep, Lydio Lota, and Mario Felizarte, were members of the Integrated National Police of Taytay, Palawan. At the time of the incident, they were serving a warrant of arrest issued by the Municipal Trial Court of Taytay on Restituto Bergante, who was wanted in connection with a robbery case. Edep was acting station commander, while Restituto Bergante was the barangay captain of Bato, Taytay, Palawan. The information against petitioner and his co-accused alleged —

That on or about the 25<sup>th</sup> day of September, 1980, more or less 4:00 o'clock in the morning in barangay Bato, municipality of Taytay, province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with guns, and with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, fire at and shoot FREDDIE GANANCIAL, hitting the latter with gunshots on vital parts of his body and inflicting upon him multiple gunshot wounds which were the direct and immediate cause of his instant death.<sup>[3]</sup>

When arraigned on June 3, 1981, all of the accused, with the exception of Ramon Decosto, entered a plea of not guilty to the crime charged.<sup>[4]</sup> Decosto, who failed to attend the hearing on that date, was later arraigned on June 23, 1981, during which he entered a plea of not guilty. Thereafter trial ensued.

The prosecution presented seven witnesses: Noe Bergante,<sup>[5]</sup> Noel Bergante, Dr. Alberto Lim, Honorato Flores, Henry Pulga, Antonio Arosio, and Adolfo Jagmis. The gist of their testimonies is as follows:

At around 4 o'clock in the morning of September 25, 1980, Noe Bergante and his brother Noel Bergante and his cousin Freddie Ganancial were awakened by the sound of gunfire while they were asleep in their house in Bato, Taytay, Palawan. Their mother, who was frightened, fainted and had to be helped by Noe. Noel went

to the kitchen and, from there, saw Protacio Edep fire his carbine, as he shouted, "Kapitan, you come down, this is [a] peace officer." He was apparently referring to Restituto Bergante. Noel answered that his father was not in the house, having gone to Puerto Princesa. Edep then ordered the men in the house to come out. Noel accordingly went to the gate and later called Noe to also come out of the house. Noe and his cousin, Freddie Ganancial, did as bidden.

Once they were outside the house, Noe and Freddie were flanked by petitioner Angcaco on the right side and accused Ramon Decosto on the left side. Decosto pointed an armalite at the two and warned them not to run. Noe and Freddie joined Noel Bergante. Protacio Edep approached Freddie saying, "You are tough," and pushed him. Then, shots rang out from the armalite and short firearm of Decosto and Edep, as a result of which Freddie Ganancial turned around and dropped to the ground face down. Decosto was around three meters away from Freddie.

In fright, Noe and Noel ran inside the house. After a few seconds, Noe saw, through the window, Lota and Angcaco turning over the body of Freddie Ganancial. After briefly leaving the body, both came back 15 minutes later. Noe said Lota brought with him an object wrapped in a newspaper, which Noe surmised was a knife. Lota placed the object in the right hand of Freddie Ganancial. Noel, on the other hand, said that he returned to the crime scene and recovered two empty shells which he gave to a certain Major Silos. Noe reported the matter to Barangay Tanods Sabino Mahinay and a certain Ramon.<sup>[6]</sup>

Antonio Arosio, a neighbor of the Bergantes, corroborated the testimonies of Noe and Noel Bergante. According to Arosio, at around 4:30 a.m. of September 25, 1980, while he was asleep in his house in Bato, Taytay, Palawan, he was awakened by the sound of gunfire. He said he heard a commotion outside, followed by another volley of shots. He claimed he recognized by their voices some of the persons involved, namely, Protacio Edep, Noel Bergante, and Freddie Ganancial.

Arosio claimed that accused Decosto and Felizarte fetched him from his house a short time later and took him to Edep, who was then in the house of the barangay captain. Arosio was asked about the whereabouts of the barangay captain. He told Edep that Restituto Bergante, the barangay captain, had gone to Puerto Princesa two days earlier.

Arosio testified that on his way home he saw a person lying on the ground in a prone position. He later learned it was Freddie Ganancial. Arosio identified in court the policemen whom he saw that morning, that is, Edep, Decosto, Felizarte, Lota, and Angcaco.

On cross-examination, Arosio claimed that he was investigated by a police officer, whose name he could not remember, three years after the incident. The investigation was held in the house of Barangay Captain Restituto Bergante, who told him that he would testify in this case. Although he was reluctant to testify because of fear, Arosio said he finally agreed to do so in 1984. Prior to the incident, he had not heard Edep's voice but only assumed that the voice he heard that morning was that of Edep as the latter was the highest-ranking policeman he later saw.<sup>[7]</sup>

Although Dr. Romeo D. Valino conducted the postmortem examination on the body of Freddie Ganancial, it fell to Dr. Alberto H. Lim, Assistant Provincial Health Officer in Palawan, to identify the medico-legal report of Dr. Valino and to explain its contents in view of Dr. Valino's death pending the trial of the case.

Dr. Valino's report stated in pertinent parts:

Physical Examination:

1. Gunshot wound lateral aspect D/3<sup>rd</sup> arm right (entrance) with contusion collar thru and thru passing thru the medial aspect arm right, entering to the lateral aspect mid axillary line at the level of the 9<sup>th</sup> rib hitting ascending colon and small intestine.
2. Gunshot wound at the level of the 7<sup>th</sup> rib at anterior axillary line right with contusion collar (entrance) to the epigastric region (exit) 10 cm[s]. x 3 cm[s]. hitting the liver (mascerated).
3. Gunshot wound subcostal region right at the level of mid clavicular line (entrance) right side to the subcostal region left side (exit at the level of mid mammary line).
4. Stomach with alcoholic smell.
5. Clotted blood at abdominal cavity, about 500 cc.

Cause of Death:

- Shock secondary to internal and external hemorrhage due to gunshot wounds - body and abdomen.<sup>[8]</sup>

Dr. Lim identified the medical report signed by Dr. Valino because he was familiar with the handwriting of the latter. As regards the contents of the medical certificate, Dr. Lim stated that Freddie Ganancial, alias Edgar Gallego, 25 years of age, died as a result of shock secondary to internal and external hemorrhage due to gunshot wounds on the body and abdomen, which means that the victim died because of loss of blood resulting in shock due to a gunshot wound in the abdomen. He testified that the victim sustained three gunshot wounds. The first gunshot entered the body at the lateral aspect distal third arm with contusion collar, the bullet entering the lateral aspect midaxillary line at the level of the ninth rib and hitting the colon and small intestine. The second gunshot wound was located at the right side of the body at the seventh rib at right anterior axillary line with contusion collar (entrance), the bullet passing through the epigastric region and hitting the liver, which was mascerated. The third gunshot wound was in the right subcostal region at the level of the midclavicular line (entrance) right side to the left side of the subcostal region, the bullet exiting below the nipple.

On cross-examination, Dr. Lim said that based on the findings of the medical report, the victim had been taking liquor prior to his death. He also admitted that he had not undertaken studies on the identification of handwriting. Dr. Lim claimed that he identified the signature of Dr. Valino in the medical report on the basis of the other

reports the latter had submitted to their office.<sup>[9]</sup>

Honorato Flores, senior ballistics officer of the National Bureau of Investigation (NBI) in Manila, identified the ballistics report he had prepared and the shell fragments presented to him for examination. He said that the fragments could have possibly been caused by the impact of the bullet on a human being.

When cross-examined, Flores said that no armalite rifle was given to him but only shell fragments were presented to him for examination. He said that the gun and the lead would have to be examined by using the bullet comparison microscope to determine whether the lead was fired from the same gun. A bone or a cement flooring could have caused the shell fragments to break, according to Flores. Upon inquiry by the trial court, he said it was possible that a piece of copper and the lead formed part of one bullet, but it was also possible that they did not.<sup>[10]</sup>

Sgt. Henry Pulga, acting station commander of Taytay, Palawan, testified that on October 6, 1980, he investigated the complaint filed by Barangay Captain Bergante regarding the killing of the latter's nephew, Freddie Ganancial. He identified the affidavits of Mario Felizarte (Exh. H) and Ramon Decosto (Exh. I), which he himself prepared. According to Pulga, he informed Felizarte and Decosto of their rights to counsel and to remain silent and explained to them the import of these rights. He said that Felizarte and Decosto voluntarily gave their statements before him, although Pulga also admitted that the two did not have counsel to assist them during the investigation.<sup>[11]</sup>

The last witness for the prosecution was Adolfo D. Jagmis, the chief investigator of the Palawan Constabulary based in Tiniguiban. He testified that on October 6, 1980 he investigated Edep, Lota, and Angcaco. He said that after Angcaco was apprised of his constitutional rights, the latter executed a statement (Exh. J),<sup>[12]</sup> which Jagmis identified in court. But Jagmis admitted that the statement was made without the assistance of counsel.<sup>[13]</sup>

On cross-examination by counsel for accused Decosto, Jagmis was confronted with the affidavit of Angcaco, in which the latter identified an armalite which he allegedly used at the time of the incident. Jagmis said the armalite and the lead recovered from the scene were both given to the Provincial Fiscal's Office.

The defense presented as its witnesses Protacio Edep, Ramon Decosto, John Angcaco, and Lydio Lota, whose testimonies are as follows:

In the early morning of September 25, 1980, petitioner and his co-accused, led by Edep, went to the house of Restituto Bergante in Bato, Taytay, Palawan to serve a warrant for the latter's arrest. When they reached the house, Edep and his men took positions as they had been warned that Restituto Bergante might resist arrest. Decosto and Angcaco were each armed with armalites, Lota had a carbine, Felizarte a revolver, and Edep a carbine and a revolver. Decosto was on the left side of Edep, around seven to 10 meters from the latter. Angcaco, on the other hand, was on right side of Edep, around four to seven meters from the latter. Edep called Restituto Bergante to come out of the house as he (Edep) had a warrant for his arrest. Restituto's wife replied that her husband was not in the house, having gone to Puerto Princesa. A commotion then took place inside the house and, shortly after,

petitioner saw a man coming down the house. They fired warning shots to stop the man, but petitioner saw another person with a bolo near Edep. He shouted, "Sarge, this is the man who tried to hack you!" and shot the unidentified man, who fell to the ground face up. At the time of the incident, Decosto was on the left side of Edep, while petitioner, Felizarte, and Lota were on the right side of Edep. They later learned that the person killed was Freddie Ganancial.

Edep conducted an investigation and recovered from the scene of the crime empty shells from armalite bullets, which he turned over to the provincial fiscal. Edep and his men were then taken to Taytay and investigated by P/Sgt. Adolfo Jagmis. Thereafter, Edep and his men learned that they were charged with murder. An administrative complaint for grave misconduct was likewise filed against them in the National Police Commission, but the case was dismissed.<sup>[14]</sup>

On January 31, 1996, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, after a careful evaluation of the evidence on record, this court is of the considered opinion, and so holds, that accused John Angcaco, is GUILTY beyond reasonable doubt of the crime of Murder defined and penalized in Article 248 of the Revised Penal Code. With the presence of the mitigating circumstance of lack of intention to commit so grave a wrong and with the application of the Indeterminate Sentence Law, this Court hereby imposes upon him the penalty of imprisonment ranging from seventeen (17) years and four (4) months of reclusion temporal as minimum, to twenty (20) years of reclusion temporal, as maximum, and to pay the heirs of Freddie Ganancial the amount of fifty thousand pesos (P50,000.00) as death indemnity.

Co-accused Protacio Edep, Ramon Decosto, Lydio Lota and Mario Felizarte are ordered ACQUITTED for insufficiency of evidence.<sup>[15]</sup>

Petitioner Angcaco filed an appeal with the Court of Appeals, which affirmed with modification the trial court's decision. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, with the modification only that the mitigating circumstance of incomplete fulfillment of a lawful duty should be appreciated in determining the imposable penalty, not lack of intention to commit so grave a wrong, the trial court had correctly imposed the penalty of imprisonment ranging from seventeen (17) years and four (4) months of reclusion temporal as minimum, to twenty (20) years of reclusion temporal as maximum the questioned decision is affirmed in all other respects.

Costs against the accused.

SO ORDERED.<sup>[16]</sup>

Hence this appeal. Petitioner raises the following issues —

- I. WHETHER OR NOT THE COURT OF APPEALS OVERLOOKED AND/OR MISCONSTRUED THE EVIDENCE FOR THE DEFENSE THAT ALL THE