

## EN BANC

[ G.R. No. 142996, July 11, 2002 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO JAVIER, ACCUSED-APPELLANT.

#### DECISION

##### KAPUNAN, J.:

On automatic review is the decision dated March 2, 2000 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4231, finding herein accused-appellant Orlando Javier guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of death.

In an Information filed on September 4, 1997, accused-appellant was charged with murder committed as follows:

That on or about 2nd day of September, 1997 at around 6:30 o'clock in the evening, in Barangay San Roque II, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a .45 Caliber, with intent to kill, did then and there willfully, unlawfully and feloniously, with treachery, attack, assault and shot with the said weapon one Roberto Sunga y Revero, thereby inflicting upon the latter serious gunshot wound in the chest, through and through, which caused his untimely death..

[1]

On arraignment, accused-appellant entered a plea of "*Not Guilty.*" Trial ensued thereafter.

The prosecution presented eight witnesses namely: Benedict Sta. Maria, Bobby Matira, Louie Lingas, SPO2 Federico Reguyal, SPO4 Rolando Ungria, Dr. Nuela Manzanida, Rodrigo Quirante, and Josephine Sunga.

Benedict Sta. Maria testified that around 6:30 in the evening of September 2, 1997, he was on his way home from the Seventh Day Adventist Church together with Bobby Matira, Louie Lingas, and Roberto Dulay on board a Kawasaki-100 motorcycle.[2] When they were in front of the San Roque II Elementary School, Sta. Maria saw accused-appellant shoot the victim, Roberto Sunga, while both were on board a tricycle. Accused-appellant was on the passenger side while the victim was the one driving.[3] After the first shot, the victim fell down from the tricycle. While sprawled on the ground, the victim raised his hand as if pleading for his life. Accused-appellant then approached the victim and pointed a short black gun at him. He pulled the trigger but the gun did not discharge. At the time, Sta. Maria and his companions were about six arms length away from the scene.[4] Thereafter, accused-appellant went inside his house, came out and walked towards Sta. Maria and his companions. When they saw accused-appellant approaching them with the gun still in his hand, Sta. Maria and his companions left.[5] When accused-appellant was no longer around, Sta. Maria and his

companions approached the victim who had a wound at the left side of his chest. They looked for the victim's relatives to inform them about the incident. The victim was later on brought to the Funeral Parlor.<sup>[6]</sup>

Bobby Matira corroborated Sta. Maria's testimony. He narrated that around 6:00 to 6:30 in the evening of September 2, 1997, he was in the premises of the Seventh Day Adventist Church in San Roque II together with his friends Benedict Sta. Maria, Roberto Dulay and Louie Lingas.<sup>[7]</sup> They were on their way home on board a motorcycle when they heard a gunshot in front of the San Roque II Elementary School. When he looked at the direction where the shot came from, he saw somebody sprawled on the ground and another man holding a short black gun whom he later identified in court as accused-appellant.<sup>[8]</sup> When witness and his companions saw accused-appellant approaching them, they immediately left for fear that he might harm them. After a while, they returned to the scene and found Robert Sunga lying on the ground already dead.<sup>[9]</sup>

Louie Lingas also gave a similar testimony. He stated that on September 2, 1997, around 6:30 in the evening, he was having a snack at a store near the Seventh Day Adventist Church together with Sta. Maria, Matira and Dulay. After eating, the four of them proceeded to go home on board a Kawasaki-100 motorcycle.<sup>[10]</sup> On the way, Lingas and his companions saw accused-appellant shoot the victim, Roberto Sunga, in front of the San Roque II Elementary School. The victim fell to the ground. While the victim was sprawled on the ground begging for mercy, accused-appellant again pointed the gun at him and pulled the trigger, but the gun did not discharge. When it appeared to witnesses and his companions that accused-appellant was about to approach them, they fled from the scene. After a while, they went back. The victim was still there but there was blood on his chest and he was no longer moving. The victim was later on brought to the hospital.<sup>[11]</sup> Witness admitted that he did not know the accused-appellant's name but he was able to identify him because he was only about five meters away from him when the incident happened.<sup>[12]</sup>

SPO2 Federico Reguyal, who was assigned to the alert team of the San Jose Police on the night of the incident, testified that in the evening of September 2, 1997, he received a telephone report about a shooting incident in San Roque II.<sup>[13]</sup> Together with his team, they boarded a PNP service vehicle and proceeded to San Roque II Elementary School. When the team arrived at the scene, they saw a parked tricycle and a dead man sprawled on the ground. They found the dead man's driver's license identifying him to be Roberto Sunga.<sup>[14]</sup> The body was brought to the hospital. On the same night, SPO2 Reguyal returned to the crime scene where he recovered an empty .45 caliber shell, about three meters away from where the victim was found and two meters away from the house of accused-appellant. He marked this empty shell and turned it over to the desk sergeant of the San Jose Police.<sup>[15]</sup>

Dr. Nuela Manzanida, the doctor who conducted the physical examination of the body of the victim, testified that her post-mortem findings disclosed the following:

Wound of entrance - 6 cm. in size, oval with abrasion collar, (regular) and injury at the right anterior chest.

Exact location - 3.5 inches from end of mamubrium going to the right end 1 inch from perpendicular line drawn from right nipple upward, going to the left.

Wound of exit - 7 cm in size, irregular located at spinal vertebre (thorasic) at the level of inferior angle of right scapular area.

Cause of death - Cardio respiratory arrest, secondary to hypovolemic shock, secondary to gunshot wound.<sup>[16]</sup>

Dr. Manzanida opined that the gunshot wound was more or less caused by a .45 caliber gun and that based on its location, the assailant was at the right side of the victim when the gun was fired.<sup>[17]</sup>

Rodrigo Quirante, also testifying for the prosecution, recounted that around two o'clock in the afternoon of September 2, 1997, he saw accused-appellant in a drinking spree in front of his (witness) house. Accused-appellant asked him to join them.<sup>[18]</sup> While they were drinking, he noticed that accused-appellant kept on drawing a .45 caliber gun tucked on his waist.<sup>[19]</sup> Around five p.m., Quirante excused himself and went home. The following day, he found an empty .45 caliber shell in front of his house. He was told by his wife and children that before accused-appellant left the premises the day before, he fired his gun several times. He gave the empty shell to Fiscal Levitico Salcedo.<sup>[20]</sup>

SPO4 Rolando Ungria, Firearms and Explosives Officer, Philippine National Police, San Jose, Occidental Mindoro, testified that based on the records of the PNP Provincial Headquarters in Mindoro, accused-appellant's name was not included in their list of holders of licensed firearms.<sup>[21]</sup>

Finally, the wife of the victim, Josephine Sunga, stated on oath that her husband was employed as a security guard at the National Food Authority and was earning P2,200.00 a month.<sup>[22]</sup> When he was not on duty, he worked as a tricycle driver earning around P100.00 a day. She and the victim had two children, aged 12 and 14.<sup>[23]</sup> Witness also testified that they incurred P20,000.00 in connection with the death and burial of her husband and these expenses were duly supported by receipts.<sup>[24]</sup>

On the other hand, the defense presented two witnesses: Rommel Acosta and accused-appellant himself.

Rommel Acosta, neighbor of accused-appellant, testified that around 6:30 in the evening of September 2, 1997, he was resting in front of his house when a tricycle arrived bearing accused-appellant.<sup>[25]</sup> The driver, whom he later learned to be the victim Roberto Sunga, called out to him asking him if he knew the passenger. He answered that it was "Kuya Orlie." The victim told him that they came from Caminawit. When he saw that accused-appellant was drunk, Acosta helped him alight from the tricycle.<sup>[26]</sup> Upon reaching the door of accused-appellant's house, the victim told him that accused-appellant had not yet paid the ten-peso fare. When Acosta asked accused-appellant for the fare, the latter gave him his wallet which contained only three pesos. Accused-appellant then asked the victim if he could pay the fare the next day.<sup>[27]</sup> At this point, the victim got angry and remarked "*Iyon ang sinasabi ko sa mga lasing eh, sasakay-sakay, wala namang pamasaha, hindi nagtatago ng pamasaha...Maaari ba namang utangin sa driver ang pamasaha? Putang ina niya, sasakay-sakay wala namang pera,*" at the same time kicking his tricycle.<sup>[28]</sup> While the victim was uttering these words, Acosta turned his back and left. After about five steps, he heard a gunshot. When he turned around, he saw the victim already sprawled on the ground.<sup>[29]</sup>

On his part, accused-appellant Orlando Javier declared on the witness stand that he was a retired NAPOLCOM employee and an LLB graduate. After his retirement in 1997, he stayed at San Roque II, Occidental Mindoro with his two sons, aged 13 and 15, while his wife lived with their married children in Manila to follow up his retirement benefits.<sup>[30]</sup>

Around nine o'clock in the morning of September 2, 1997, he went to Caminawit on a bicycle to look for food (*magdelihensiya ng ulam*) because he did not have any money.<sup>[31]</sup> When he arrived at the place, he saw some friends in a drinking spree and joined them. The drinking session lasted up to twelve noon.<sup>[32]</sup> When he was already drunk, accused-appellant fired his .45 caliber gun upwards, emptying the cartridge. Accused-appellant claimed that this gun was licensed in his name and he had a permit to carry the same. However, he surrendered his license and permit to a policeman in Nueva Ecija.<sup>[33]</sup> Because he was so drunk, he dozed off and woke up around six o'clock in the afternoon. Assisted by a certain Reneng Reyes, he hailed a tricycle and placed his bicycle at the back. He instructed the driver to go to San Roque II where he lived.<sup>[34]</sup> Upon arriving at said destination, the driver (who was later identified as the victim Roberto Sunga) tried to collect the fare. Because he did not have money with him, accused-appellant asked the victim if he could pay the following day. The victim got mad and approached Ramil Acosta, his neighbor, and asked the latter if he knew accused-appellant.<sup>[35]</sup> Acosta tried to talk the victim into collecting the fare the following day but the latter did not accede. Instead, the victim got angry. He shouted and kicked (*kinalampag*) his tricycle while accused-appellant was still on board. Accused-appellant was still seated on the passengers' side of the tricycle when all of a sudden, the victim struck him with a stone from behind.<sup>[36]</sup> Although he was feeling dizzy, he jumped out of the tricycle and ran towards the Guerrero Rice Mill. After a while, accused-appellant returned and saw the victim standing as if waiting for him.<sup>[37]</sup> As accused-appellant was taking out his gun, the victim suddenly fell down and looked as if he was suffering from epilepsy. Accused-appellant then approached the victim, cocked the gun and pulled the trigger several times but the gun did not fire.<sup>[38]</sup> Accused-appellant then got his bike and went inside his house. While cooking the fish he brought with him from Caminawit, his son noticed blood oozing from his head. He instructed his son to get some cotton and treat his injury.<sup>[39]</sup> After a while, he went back to the scene of the incident to look around (*nakipa-usyoso*). He ate dinner, played chess with his son for a while and then went to sleep.<sup>[40]</sup>

The following morning, September 3, 1997, accused-appellant was buying cigarettes from the neighborhood store when the owner, Mr. Artienda, told him that he had a check for P200.00 from his daughter in Manila. He encashed the check, gave P100.00 to his son, and left for Manila to follow up his retirement papers.<sup>[41]</sup> On September 4, 1997, he had his head injury examined and treated at the Ospital ng Sampaloc at G. Tuazon Street, Manila upon the advice of his co-employees at NAPOLCOM as he might be implicated in the shooting of Robert Sunga.<sup>[42]</sup> He stayed in Manila while waiting for his retirement papers until his arrest on February 9, 1998.<sup>[43]</sup>

On cross-examination, accused-appellant admitted that prior to his arrest and upon information that a case for murder was filed against him, he gave the victim's wife P35,000.00 as financial assistance.<sup>[44]</sup>

On March 2, 2000, the trial court rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him as follows:

WHEREFORE, and in the light of all the foregoing considerations, the Court finds that the accused ORLANDO JAVIER is GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act 7659, otherwise referred to as the Death Penalty law, and is HEREBY SENTENCED TO DEATH.

The accused is ordered to indemnify the heirs of the victim Roberto Sunga in the amount of FIFTY THOUSAND PESOS (P50,000.00) and to furthermore pay said heirs the amount of ONE HUNDRED THOUSAND PESOS, (P100,000.00) as moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prison, Muntinlupa City, Metro Manila.

SO ORDERED.<sup>[45]</sup>

Before us, accused-appellant now raises the following errors in his Brief:

THE TRIAL COURT ERRED IN NOT EXPLICITLY STATING WHAT AGGRAVATING CIRCUMSTANCES WERE PRESENT TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY.

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, HE IS ONLY GUILTY OF THE CRIME OF HOMICIDE.

Article 248 of the Revised Penal Code defines the crime of murder as follows:

Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

These circumstances must be specifically alleged in the information in order to qualify the crime to murder; otherwise the killing may be considered merely as homicide.<sup>[46]</sup>