

SECOND DIVISION

[G.R. No. 135308, August 15, 2002]

**BENEDICT URETA, BERNARDO TARAN AND VICTOR DE JUAN,
PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, SOCRATES
FULGENCIO AND THE HEIRS OF ROCEL[1]**

FULGENCIO, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

Petitioners assail the decision^[2] of the Court of Appeals in CA-G.R. CR. No. 14627, dated March 26, 1997, which affirmed with modification the consolidated judgment dated January 29, 1994 of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 4, in Criminal Cases Nos. 3322-23. The appellate court upgraded the conviction of petitioners Bernardo Taran, Victor de Juan, and Benedict Ureta in Criminal Case No. 3322 from homicide to murder and sustained the conviction of petitioner Benedict Ureta in Criminal Case No. 3323 for frustrated homicide. Before us, petitioners pray for acquittal.

The antecedents of this petition are as follows:

On March 25, 1991, two separate informations for murder and frustrated homicide were filed with the RTC of Kalibo, Aklan against herein petitioners. In Criminal Case No. 3322, Ureta, de Juan, and Taran were charged with murder allegedly committed as follows:

That on or about the 30th day of November, 1990, in the evening, in Barangay Bugasongan, Municipality of Lezo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapons consisting of a rifle and knives, conspiring, confederating and mutually helping one another, with evident premeditation, treachery, abuse of superior strength (sic) and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and shoot one JOSE ROCEL FULGENCIO, thereby inflicting upon the latter physical injuries,...

x x x

as per Post Mortem Examination Report signed by Dr. Reynaldo P. Sucgang, Jr., Medical Specialist 1 of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and made an integral part hereof, which physical injuries caused the death of said JOSE ROCEL FULGENCIO.

CONTRARY TO LAW.^[3]

In Criminal Case No. 3323, the charge sheet for frustrated homicide filed against Ureta reads:

That on or about the 30th day of November, 1990 in the evening, in Barangay Bugasongan, Municipality of Lezo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a rifle, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one SOCRATES FULGENCIO, thereby inflicting upon the latter physical injury, to wit:

"Gunshot wound, lateral aspect, proximal 3rd left thigh."

as per Medico Legal Report on Physical Injuries issued by Dr. Stevens N. Fuentes, M.D., Medical Officer III of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and made an integral part hereof, the accused having thus performed all the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said SOCRATES FULGENCIO, which prevented his death.

CONTRARY TO LAW.^[4]

When arraigned, petitioners pleaded not guilty. Since the two cases arose out of the same incident, they were tried jointly.

The prosecution presented Socrates Fulgencio, Dr. Reynaldo Suggang, and Dr. Stevens Fuentes as its witnesses. Socrates Fulgencio, who survived the homicidal attack, was the sole eyewitness to the crimes. The two doctors, employed at the Dr. Rafael Tumbokon Memorial Hospital in Kalibo, Aklan, had conducted the autopsy on the deceased, Jose Rocel Fulgencio, and had medically examined the surviving brother, Socrates Fulgencio.

SOCRATES FULGENCIO declared that at about 7:00 P.M. of November 30, 1990, he and his brother Jose Rocel Fulgencio, hereafter simply Rocel, were on their way home from the house of their aunt, Erna dela Cruz, in Bugasongan, Lezo, Aklan. When they passed the residence of Councilman Renato Leonardo, six men came out of said house. Of this group, Socrates recognized Isidro de Juan, Ely Leonardo, Nilo Cezar, and Armando Cezar. They surrounded Rocel, while Socrates merely stood aside. Moments later, petitioners Bernardo Taran and Victor de Juan arrived on board a motorcycle and joined the six men. Taran had a gun in his right hand, while de Juan had a knife tucked in his waistband. Moments later, Benedict Ureta and Rudolfo Taran also arrived. Ureta and Rocel had a brief altercation. Bernardo Taran then struck Rocel's face with a gun, while de Juan stabbed Rocel's stomach, and Ureta shot Rocel with a long firearm. A certain Rodel Sorio also struck Rocel with a bolo but Socrates did not see where Rocel was hit. Despite his wounds, Rocel was able to run for about five meters from his assailants before collapsing. Socrates helped Rocel to stand up but Ureta allegedly shot him (Socrates) in the thigh. Socrates fell and rolled away. When he looked back to where his brother was, Socrates saw three unidentified persons striking Rocel with their bolos. Socrates fled home. He asked for help from his sister Judy Grace and brother Cyril to bring Rocel to a hospital. Rocel died from the injuries he sustained.

DR. REYNALDO SUCGANG testified that he conducted the post-mortem examination on Rocel Fulgencio's cadaver. He found multiple stab wounds in the victim's right chest and a gunshot injury. His findings were as follows:

EXTERNAL FINDINGS: = Multiple stabbed (sic) wounds, right chest, Right upper Quadrant, left axillary area

Hacking wound back & left Thigh

GSW right thigh, thru & thru

INTERNAL FINDINGS: = Penetrating wound at mid-liver (depth-4 inch) with cut/severed arteries penetrating the right diaphragm with massive blood loss & blood clots.

CAUSE OF DEATH: = Massive Blood Loss

Stabbed wounds (02 points)^[5]

Dr. Sucgang further testified that the victim in Criminal Case No. 3322, Rocel Fulgencio, also sustained a "contusion hematoma right forearm" and "contusion hematoma right hand" among his injuries.^[6]

DR. STEVENS FUENTES testified in Criminal Case No. 3323 that he examined the injuries of Socrates Fulgencio. He found that Socrates sustained a gunshot wound on the "proximal third lateral aspect of the left thigh."^[7]

The defense version of the incident was summed up by the Court of Appeals as follows:

At around 8:00 o'clock, accused-appellant Benedict Ureta was at the house of Nelson Castaño in Bugasongan, Lezo, Aklan, when he heard a shot. He went outside and saw Rocel Fulgencio holding a gun. He accosted Rocel but the latter pointed the gun at him so he grabbed the gun and they grappled for possession. Accused-appellant Bernardo Taran arrived and held Rocel by the shoulders, pulled him backward and then jumped to the canal alongside the road. Benedict Ureta was able to get the gun from Rocel but the latter pulled out another gun and pointed it to the former. Benedict Ureta fired and retreated about 25 to 30 meters away. Rocel fell down but fired his gun at random five (5) times. At this juncture, Socrates Fulgencio was seen crawling towards Rocel. Socrates got the gun from Rocel, fired it once then ran away. Three unidentified persons then came and boloed (sic) Rocel who was lying on the road and then ran away towards Numancia.

Shortly thereafter, accused-appellant Victor de Juan and Dioclesio Sabino arrived on a motorcycle coming from Numancia. They stopped when they saw a man lying on the road. They went near and recognized the man to be Rocel Fulgencio. There were several people there, among them were Leoncito Legaspi and Ely Leonardo. A tricycle arrived and Rocel was loaded on it. After the tricycle had left, Victor de Juan and Dioclesio Sabino went home.^[8]

The trial court convicted petitioners of homicide in Criminal Case No. 3322 and petitioner Ureta of frustrated homicide in Criminal Case No. 3323 but ruled out conspiracy among the petitioners. The decretal portion of its consolidated judgment reads:

WHEREFORE, finding the accused BERNARDO TARAN in CRIMINAL CASE NO. 3322 GUILTY beyond reasonable doubt as an accomplice to the crime of Homicide without aggravating or mitigating circumstances, he is hereby sentenced to suffer an indeterminate penalty of imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) years and ONE (1) DAY of prision mayor as maximum and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his other co-accused.

Accused VICTOR DE JUAN is found GUILTY in the same case beyond reasonable doubt of the crime of Homicide without mitigating circumstance and he is hereby sentenced to suffer an indeterminate penalty of imprisonment of EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his other co-accused.

Accused BENEDICT URETA is found GUILTY beyond reasonable doubt as an accomplice to the crime of Homicide in CRIMINAL CASE No. 3322 and is hereby sentenced to suffer an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum and to indemnify the heirs of the victim Rocel Fulgencio the sum of FIFTY THOUSAND PESOS (P50,000.00) jointly with his co-accused.

In CRIMINAL CASE NO. 3323, the accused BENEDICT URETA is found GUILTY beyond reasonable doubt of the crime of Frustrated Homicide and is hereby sentenced to suffer an indeterminate penalty of imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum and to indemnity (sic) the victim Socrates Fulgencio the sum of TWENTY THOUSAND PESOS (P20,000.00) as moral and compensatory damages.

SO ORDERED.^[9]

Petitioners appealed their conviction to the Court of Appeals contending that the trial court erred in condemning them solely on the basis of the uncorroborated testimony of the prosecution's eyewitness.

On March 26, 1997, the Court of Appeals promulgated its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed decision with respect to Criminal case No. 3322 is hereby MODIFIED as to the nature of the offense committed and the degree of participation of each of the