

SECOND DIVISION

[G.R. No. 128362, January 16, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR DE LA CRUZ ALIAS "BOYET," ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 86, Cabanatuan City, finding accused-appellant Dominador De la Cruz, alias "Boyet," guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*, to pay the heirs of the victim Manolito Cauba, alias "Lito," the amounts of P20,000.00 as actual damages and expenses and P80,000.00 as moral damages, and to pay the costs.

The information alleged --

That on or about the 6th day of July 1993, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justification whatsoever, with intent to kill and with the use of a short, automatic firearm, did then and there, wilfully, unlawfully, feloniously and treacherously assault, attack, and use personal violence upon the person of one MANOLITO CAUBA alias "Lito", by shooting the latter several times, thereby inflicting upon him serious physical injuries which directly caused his death.

CONTRARY TO LAW.^[2]

Upon being arraigned, accused-appellant pleaded not guilty, whereupon he was tried.

The prosecution evidence consists of the eyewitness account of Victorino Castillo and the testimony of Dr. Jun B. Concepcion, medico-legal officer of the City Health Office in Cabanatuan City, who conducted the postmortem examination on the body of Manolito Cauba.

Victorino Castillo, a resident of Pamaldan, Cabanatuan City, was a 15-year old high school student at the time of the incident. He testified that at about 5:30 p.m. of July 6, 1993, he was about to get his carabao near the road in Pamaldan, Cabanatuan City, when he saw Nenita Sahod and the victim Manolito Cauba walking towards the main road. Without warning, he said, from a distance of about two and a half meters, he saw accused-appellant Dominador de la Cruz, alias "Boyet," shoot Manolito Cauba. The victim fell to the pavement face down, but according to Castillo, accused-appellant continued firing at the victim, hitting the latter in different parts of the body. Frightened, Victorino ran home. He told his parents

about the incident. His parents went to the scene of the crime and then informed the relatives of the victim that the latter was killed. On the other hand, Victorino Castillo said, he and Tomas Cauba, brother of the victim, proceeded to the barangay hall and reported the matter to the barangay captain.^[3]

The certificate of death (Exh. C)^[4] stated that the cause of death of Manolito Cauba was multiple gunshot wounds on the head, face, chest, and abdomen. The autopsy report dated July 7, 1993 (Exh. A) contained the following findings:

FINDINGS (Pertinent Only)

HEENT: (+)Gunshot wound, back of the ear, left as point of entry, 9.5 in diameter with anterior trajectory towards the left cheek area as point of exit, through and through.

(+)Gunshot wound, occipital area, (L) as point of entry with anterior trajectory towards the nose bridge as point of exit, through-through.

(+)Gunshot wound, submental area (R) as point of entry towards the interior portion of the lip, (R) as point of exit, through-through.

(+)Gunshot wound, lateral side of the neck (L) with trajectory towards the opposite side as point of exit, through-through.

NOTE: (+)Burned gun-powder on the anterior neck.

(+)Gunshot wound, anterior chest, 3 inches para-sternal area (L) as point of entry with trajectory towards the back, infra-scapular area (R) as point of exit; through and through penetrating the superior vena cava.

(+)Gunshot wound left upper arm as point of entry with trajectory towards the midline penetrating the (L) apical area with the lung piercing the vertebral column and spinal cord through-through, level 4th thoracic vertebral.

(+)Gunshot wound (L) buttock area (superior eliac area) as point of entry with trajectory towards the opposite side midially (L) (anterior superior eliac area) as point of exit (through-through) penetrating the small intestine through-through 2 - portion.

(+)Gunshot wound (L) lower area just above the wrist posteriorly as point of entry with trajectory towards the lateral side of same area, through-through.

(+)Gunshot wound, front (R) side, as point of entry with trajectory towards the (R) anterior chest (just below the tip of the zyphoid process as point of exit (through - through) penetrating the liver (R) lobe & diaphragm.

CAUSE OF DEATH

MULTIPLE PENETRATING GUNSHOT WOUND ON THE HEAD, FACE, CHEST AND ABDOMEN.

Dr. Jun B. Concepcion testified that the incised punctured wounds were caused by gunshots. There were ten entry and exit wounds. In addition to gunshot wounds on the head, face, chest, and abdomen of the victim, there were gunshot wounds in the small intestine, liver, brain, as well as the last spinal cord and vertebral column. All of the wounds were fatal.^[5]

Accused-appellant denied he killed the victim and interposed the defense of alibi. He testified that although he was a resident of Pamaldan, Cabanatuan City, he was in Maddela, Quirino, from May 10, 1992 up to January 23, 1996, working in the Corpuz Furniture and Sash Factory. He was arrested by the police in Caalibangbangan, Cabanatuan City on January 23, 1996. Accused-appellant testified that it would take five to six hours to travel from Maddela, Quirino to Cabanatuan City. He added that he had no previous misunderstanding with the victim.^[6]

Lydia Galvez Corpuz, who owned the furniture factory in which accused-appellant was working, corroborated accused-appellant's claim that from May 10, 1992 up to January 23, 1996, the latter was in Maddela, Quirino. Corpuz claimed that she saw accused-appellant in Maddela, Quirino on July 6, 1993. According to Corpuz, although accused-appellant accompanied her to make deliveries of furniture to Cabanatuan City, this was on other dates, to wit: September 20, 1993, April 29, 1994 and December 21, 1994.^[7]

On November 7, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered, convicting the accused Dominador de la Cruz alias "Boyet" guilty beyond reasonable doubt of the crime of MURDER defined in, and penalized under Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Said accused is hereby ordered to indemnify the heirs of the deceased Manolito Cauba in the sum of P80,000.00 as moral damages and the sum of P20,000.00 as actual damages and expenses, without subsidiary imprisonment in case of insolvency, and to pay the costs.

IT IS SO ORDERED.^[8]

Hence, this appeal.

Accused-appellant contends:

I. THAT THE DECISION IS CONTRARY TO LAW AND EVIDENCE.

II. THAT PATENT INCONSISTENCIES ARE IGNORED BY THE COURT.

First. Accused-appellant points out alleged inconsistencies in the testimony of Victorino Castillo, the principal witness of the prosecution, suggesting that Castillo did not really witness the shooting of Manolito Cauba. Accused-appellant quotes the following portion of the transcripts of stenographic notes of the testimony of Castillo:

FISCAL:

Q After Manolito Cauba fell down to the ground, what else happened?

A I do not know anymore, I just ran away, Sir.

Q You just ran away towards where?

A Towards home, Sir.

Q Did you reach home?

A Yes, Sir.

Q What about the carabao, were you able to recover it?

A No, Sir.

. . . .

Q When you saw Manolito Cauba fall down, you ran away?

A Not yet, the accused shot Manolito Cauba three more times, Sir.

Q Do you want to imply to the court that at the first shot, Manolito Cauba did not fall down to the ground?

A He fell down, Sir.

Q When he fell down, did you see the three shots undertaken?

A I heard, Sir.

Q You heard the three shots, did you not see?

A I also saw him shooting, Sir.

Q You ran away after the accused have fired the three more shots?

A Nenita Sahod and I ran away, Sir.

. . . .

ATTY. MAGBITANG:

Q You ran away at the first gunshot or after the several gunshots?

A After the several gunshots, Sir.

Q When this Dominador de la Cruz shot Manolito Cauba for the first time, you said that you saw him shoot Manolito Cauba, will you please tell us what happened to this Manolito Cauba?

A Yes, Sir.

Q What happened?