

## FIRST DIVISION

[ G.R. Nos. 132696-97, February 12, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON NAVARRO, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

Ramon Navarro (accused-appellant) appeals his conviction for the crime of Murder with the Use of an Unlicensed Firearm for which he was sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim the amount of P100,000.00 as damages by the Regional Trial Court, Branch 54, Alaminos, Pangasinan.

Two (2) separate Informations were filed against accused-appellant for Murder (Criminal Case No. 3082-A) and Aggravated Illegal Possession of Firearm and Ammunitions (Criminal Case No. 3083-A). The Information for murder reads:

That on or about August 28, 1987, in the evening, along the highway in Palamis, municipality of Alaminos, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, taking advantage of nighttime and superior strength, did then and there wilfully, unlawfully and feloniously shoot Romeo Calizar with a handgun which cause [sic] his untimely death as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code.<sup>[1]</sup>

The Information for aggravated illegal possession of firearm and ammunitions reads:

That on or about August 28, 1987, in the evening along the highway in Palamis, municipality of Alaminos, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did there and then wilfully, unlawfully and feloniously have in his possession, control and custody a handgun without first securing the necessary license or permit to possesses [sic] the same and the said handgun was used in shooting to death Romeo Calizar.

CONTRARY to Sec. 1 of Presidential Decree No. 1866.<sup>[2]</sup>

Accused-appellant was not allowed to post bail. At his arraignment, accused-appellant pleaded not guilty to both charges. Thereafter, a joint trial of the two cases ensued.

The case for the prosecution was based mainly on the testimony of Bob Regaspi. He

testified that on 28 August 1987, at 9:00 in the evening, he was driving a tricycle on his way home. He noticed that he was following an owner-type jeep. The tricycle was about several meters behind the jeep. Both vehicles were going towards the south. Before they reached Bugtong Bridge, the jeep suddenly stopped. Regaspi had to stop the tricycle behind the jeep because there were several vehicles on the other lane coming from the opposite direction. Regaspi then saw accused-appellant got off from the right side of the jeep. Accused-appellant was carrying a .45 caliber gun. Regaspi also saw accused-appellant pull out a person from the jeep. Accused-appellant kicked said person and then shot him three (3) times. The victim was Romeo Calizar.<sup>[3]</sup>

According to Regaspi, he was able to identify accused-appellant as the assailant even if the killing happened at night because there was sufficient illumination from the light of the jeep as well as the lights of the other vehicles passing at the time. After he witnessed the incident, Regaspi proceeded to his home. He did not report the crime to the police as he was afraid of accused-appellant. He said that there were rumors that accused-appellant was a killer.<sup>[4]</sup>

Fearing for his life, Regaspi relocated to Manila and lived there for three (3) years. Before he left, however, he already told the victim's wife, Demetria, that it was accused-appellant who killed her husband. He returned to Pangasinan only in 1990 and resided at his mother's residence in Bolaney, Alaminos, Pangasinan. He also briefly stayed at his grandfather's house in Barangay Balingasay, Bolinao.<sup>[5]</sup>

The prosecution also presented as its witnesses Demetria Calizar, Dr. Maria Victoria Orfinada, PO3 Delfin Estabilla Flores and SPO3 Romeo De Guzman.

Demetria Calizar, wife of the victim, testified that she was in Bolinao, Pangasinan, when she learned that her husband was killed. It was her sister, Carmen Conde, who broke the news to her. Demetria just gave birth at the time. Upon hearing about her husband's death, she immediately went to the funeral parlor and attended to the burial preparations. She spent about ten thousand pesos for the wake and burial of her husband. At the time of his death, the victim was earning three hundred pesos a day as an itinerant empty bottle buyer. He was forty two (42) years old. The victim left behind five (5) children with Demetria. Finally, Demetria confirmed that Bob Regaspi told her that it was accused-appellant who shot her husband.<sup>[6]</sup>

Dr. Maria Victoria Orfinada, Municipal Health Officer of Alaminos, Pangasinan, identified the Certificate of Death<sup>[7]</sup> issued in connection with the death of Romeo Calizar. The certificate showed that the cause of death was "severe hemorrhage due to multiple gunshot wounds on the different parts of the body."<sup>[8]</sup> The certificate was issued by Dr. Manuel Navarro,<sup>[9]</sup> the Municipal Health Officer at the time. Unfortunately, Dr. Navarro could no longer testify because he already died.

PO3 Delfin Estabillo Flores testified that he was on duty at the Philippine National Police (PNP) Alaminos Police Station on 29 August 1987. Around 6:00 in the morning of said date, Flores received a call to respond to an alleged shooting incident that occurred at Barangay Palamis, Alaminos, Pangasinan. Together with the other policemen on duty, Flores immediately proceeded to the said place to investigate. When they arrived at the crime scene, they saw a man lying face down

on the right side of the road going to Mabini. The said person, later identified to be Romeo Calizar, was already dead. They recovered two (2) empty shells and two (2) slugs of a .45 caliber gun near the body.<sup>[10]</sup>

SPO3 Romeo De Guzman testified that he works in the Firearms and Explosives Office of the PNP Camp Crame and that based on their records, accused-appellant is not licensed or authorized to possess or carry a firearm.<sup>[11]</sup>

For its part, the defense presented the following witnesses: Mayor Leon Rivera, Rodolfo R. Aquino, PO3 Marciano Bacani, Rogelio Banogon, Leonora Arboleda and Danilo Malapit. Accused-appellant opted not to testify on his behalf.

Leon Rivera testified that during his incumbency as Mayor of Alaminos, he was not aware of any criminal case having been filed against accused-appellant. He admitted on cross-examination, however, that the people of Alaminos once held a big rally against the alleged illegal activities, e.g., killings, robberies and *jueteng*, of the notorious Aguila Gang. Accused-appellant was widely believed to be the leader of said gang.<sup>[12]</sup>

Rodolfo Aquino is a retired provincial prosecutor of Alaminos. He testified that during his stint as assistant provincial prosecutor and subsequently provincial prosecutor from 1983 up to 1990, he never came across any criminal charge against accused-appellant apart from the present case.<sup>[13]</sup>

PO3 Marciano Bacani, member of the PNP of Alaminos, was presented to show that there was no mention of accused-appellant in the police blotter for 30 August 1987. Entry No. 4978 on said date stated that the body of Romeo Calizar was found lying face down at the edge of the road in Barangay Palamis. He sustained multiple gunshot wounds. Two (2) empty shells and two (2) slugs of .45 caliber gun were found near his body.<sup>[14]</sup>

In his direct testimony, Rogelio Banogon claimed that on 28 August 1987 at about 9:00 in the evening, he was riding a tricycle going to the town from Bolaney. He was on his way to buy medicine for his son who was then having a stomachache. When the tricycle was near the Bugtong Bridge, he heard a gunshot. The driver immediately stopped his tricycle. Banogon alighted from the tricycle and switched on his flashlight. He saw Bob Regaspi, the witness for the prosecution, holding a .45 caliber gun. Banogon said he also saw a man lying down but that he did not see his face. Banogon asked Regaspi what happened and the latter allegedly said he shot the victim because he had sexual intercourse with all his (Regaspi's) aunties. Banogon did not report the matter to the police but proceeded to the town to buy the medicine for his son.<sup>[15]</sup>

Leonor Arboleda testified that some time on 9 May 1987, the victim, Romeo Calizar, was having a drinking spree with her (Arboleda's) husband and two other companions at their (Leonor and Teddy Arboleda's) house. Demetria, wife of the victim, suddenly arrived and started to quarrel with her husband over money matters. After their argument, Demetria allegedly uttered "*ipapatay kita*" to the victim.<sup>[16]</sup>

Danilo Malapit stated that the victim worked in the junk shop owned by his (Danilo's) father. Calizar bought empty bottles and delivered them to the junk shop. On 28 August 1987, Danilo saw the victim leave the junk shop at around 8:00 in the evening. The victim left in a tricycle driven by his companion. The following morning, Danilo heard about the news of the victim's death.<sup>[17]</sup>

After consideration of the evidence adduced by the prosecution and defense, the trial court rendered judgment convicting accused-appellant for the crime of murder with the use of unlicensed firearm and sentencing him to suffer the penalty of *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, in consideration of the foregoing premises, the accused is declared GUILTY beyond reasonable doubt of the crime of Murder with the use of unlicensed firearm and Criminal Case No. 3083-A is considered a mere aggravating circumstance of the crime of Murder, together with the aggravating circumstance of treachery and nighttime. Accused is sentenced by reason hereof to suffer the single indivisible penalty of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P100,000.00.

Considering the recent events at the Provincial Jail in Lingayen, Pangasinan, where a week ago from this date of judgment, there five detention prisoners who escaped detention and considering the state of security and even the conditions at the Provincial Jail in Lingayen, Pangasinan, this Court orders immediately the National Bureau of Investigation represented by Head Agent, Atty. Teofilo Galang, and/or his agents to bring the living body of the accused immediately today, upon receipt of this Decision, to the National Penitentiary at Muntinlupa to serve his sentence, subject to the automatic and requisite review of this Decision by the highest court of the land.

IT IS SO ORDERED.<sup>[18]</sup>

Accused-appellant accordingly filed his notice of appeal.<sup>[19]</sup> Thereafter, he filed his appellant's brief alleging the following:

#### ASSIGNMENT OF ERRORS

##### First Assignment of Error

The Trial Court committed a reversible error in convicting the accused-appellant upon an uncorroborated and incredible testimony proceeding from the mouth of an equally incredible witness;

##### Second Assignment of Error

The Trial Court committed grave and reversible error when in order to bolster its unjustified judgment of conviction of the accused-appellant in the above-entitled case, cavalierly and without legal bases took judicial notice of unproved, extraneous and doubtful facts and circumstances, in violation of jurisprudence x x x;

### Third Assignment of Error

The Trial Court committed reversible error in not taking into consideration the substantial albeit circumstantial evidence testified to by the witnesses for the defense that point to a conspiracy among the alleged lone eye witness Bob Regaspi with his blood aunt, the widow Demetria Calizar as the authors and perpetrators of the murder of Romeo Calizar.<sup>[20]</sup>

The appeal must fail.

Accused-appellant impugns the credibility of the prosecution eyewitness, Bob Regaspi, alleging that his testimony was marred by inconsistencies. Accused-appellant points to, among others, the following alleged inconsistencies:

1. On direct-examination, Regaspi stated that he is a resident of Brgy. Bolaney, Alaminos, Pangasinan. However, on cross-examination, he mentioned that he is a resident of Brgy. Balingasay, Alaminos, Pangasinan;
2. Regaspi denied that he is a relative of Demetria Calizar, the wife of the victim. In her testimony, however, Demetria admitted that Regaspi is her nephew as he is the son of her older sister, Monica Clave;
3. Regaspi claimed that he was driving a tricycle on the night of 28 August 1987 when he witnessed the slaying of Romeo Calizar. He admitted, however, that he did not possess any license to drive said vehicle. Further, while he (Regaspi) claimed that he merely borrowed the tricycle he was then driving, he could not give the name of the owner thereof;
4. Regaspi testified that he saw accused-appellant shoot Romeo Calizar three (3) times. However, there were only two (2) slugs and two (2) empty shells found near the body of Romeo Calizar.<sup>[21]</sup>

The Court finds nothing unusual about the fact that Regaspi stated two different addresses as his residence. As explained by him, after he came back from Manila, he resided in Brgy. Bolaney. However, there was also a time when he briefly resided with his grandfather in Brgy. Balingasay. Also, the fact that he is a relative of the victim's widow does not detract from Regaspi's credibility as a witness. The weight of testimony of a witness is not impaired or in any way affected by his relationship to the victim when there is no showing of improper motive on the part of the witness.<sup>[22]</sup>

Likewise, Regaspi's admission that he did not have a driver's license does not negate the fact that he was driving a tricycle at the time when he witnessed accused-appellant gun down Calizar. Indeed, a person can still drive a vehicle even without possessing the necessary license albeit violating the traffic rules. Finally, whether there were two or three gunshots is immaterial. The certificate of death stated that Romeo Calizar died of multiple gunshot wounds.

In any case, to the mind of the Court, these inconsistencies enumerated by