

EN BANC

[G.R. Nos. 137494-95, October 25, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SOTERO REYES ALIAS "TURING", ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This case is here on automatic review of the consolidated decision,^[1] dated November 11, 1998, of the Regional Trial Court, Branch 4, Batangas City, finding accused-appellant Sotero Reyes guilty of murder and illegal possession of firearms and ammunitions and sentencing him to suffer the penalty of death for the crime of murder and to imprisonment of six (6) years, eight (8) months, and one (1) day of *prision mayor* and its accessory penalties plus a fine of P30,000.00 and to pay the costs for illegal possession of firearm and ammunition.

The information in Criminal Case No. 8773 for murder alleged:

That on or about the 19th day of August, 1996, at about 5:00 o'clock in the afternoon, at Sitio Gulod, Barangay Laurel, Municipality of Mabini, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm (carbine), with intent to kill, with treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault, and shoot with the said firearm, suddenly and without warning, one Nicasio Atienza y Baticos, thereby inflicting upon the latter multiple gunshot wounds on the different parts of his body, which directly caused his death.

Contrary to law.^[2]

In Criminal Case No. 8774, the information for illegal possession of firearms and ammunitions alleged:

That on or about the 19th day of August, 1996, at about 5:00 o'clock in the afternoon, at Sitio Gulod, Barangay Laurel, Municipality of Mabini, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and unlawfully keep, possess and have under his custody and control one (1) carbine firearm with four (4) live ammunitions without the necessary license and/or permit to possess the same from the proper authorities.

The aforementioned firearm was used by the accused in the commission of the crime of Murder wherein the victim was one Nicasio Atienza y Baticos.

Contrary to law.^[3]

Accused-appellant pleaded not guilty to the charge, whereupon the two cases were tried. The cases were later consolidated for expediency and proper identification of evidence.^[4]

The prosecution presented six witnesses: Roman Dalisay, PO3 Edgardo Malibiran, SPO2 Senen Beloso, Dr. Luisita Ramos, Toribio Atienza, and SPO4 Federico Bondoc, Jr. It also presented as documentary evidence four empty shells for carbine rifle (Exh. A), pictures showing the victim Nicasio Atienza lying bloodied on the ground (Exh. B-B-6), the Sworn Statement of Toribio Atienza, dated August 19, 1996 (Exh. C-C-2), the Sworn Statement of Roman Dalisay, dated August 19, 1996 (Exh. D-D-3), a Written Agreement from the Barangay Captain (Exh. E), the Certificate of Death signed by Dr. Luisita Ramos (Exh. F-F-3), and a Certificate issued by the Firearms and Explosives Office of the Philippine National Police (PNP) in Camp Crame, Quezon City (Exh. G).

First to testify for the prosecution was Roman Dalisay. He said that on August 19, 1996, at around 5 o'clock in the afternoon, on his way home, he passed by the house of Toribio Atienza, a barangay councilman of Barangay Ligaya in Mabini. There, he met a brother of Toribio, Nicasio Atienza, who decided to go with him since their houses were located along the same road. The pathway where they passed was a narrow one so they had to walk single file, with Roman ahead.

On the way, the two met accused-appellant Sotero Reyes coming from the opposite direction. Accused-appellant was carrying a carbine rifle. He stopped Roman Dalisay and the victim and, when he got near them, he ordered Roman, "*Uklot, Manny, uklot!*" (Drop to the ground, Manny, drop to the ground!) But Roman said he could not do what accused-appellant ordered him to do because Nicasio was using him as a shield. As soon as Nicasio released Roman, the latter instantaneously dropped to the ground. Roman then heard a gunshot. Several minutes later, he heard about eight more shots fired in succession.

When accused-appellant left, Roman approached Nicasio, but the latter was already dead. Roman rushed to the house of Nicasio's brother, Esteban Atienza, in Barangay Laurel in Mabini to report the incident. Esteban sought the help of the Barangay Captain, while Roman went back to the scene to take the body of Nicasio, but it was too heavy for him to carry.^[5]

The next witness was PO3 Edgardo Malibiran, Radio Operator and Desk Officer of the Mabini Police Station. He testified that at about 6:25 in the evening of August 19, 1996, he received a radio message from Jose Boonggaling, a Mabini Municipal Clerk Officer, regarding a shooting incident in Barangay Ligaya. Boonggaling had received the message from a certain Felicisimo Reyes. PO3 Malibiran said that in response he, together with SPO2 Senen Beloso and PO3 Mendoza, proceeded to Barangay Ligaya in Mabini.^[6]

SPO2 Senen Beloso corroborated the testimony of PO3 Edgardo Malibiran. He said that they found the body of Nicasio lying on the ground, face down and bloodied. Nearby, the police recovered three to four empty shells of carbine rifle. After taking pictures of the crime scene, the police took the body to the Pilipinas Parlor in Bauan for autopsy. Beloso said that Roman Dalisay gave a sworn statement to the police.
[7]

Witness Dr. Luisita Ramos, Municipal Health Officer of Bauan, conducted the postmortem examination on the victim on August 20, 1996. Her report^[8] showed the following:

II. POST-MORTEM FINDINGS:

A. Head

1. Entrance wound, gunshot, almost circular in shape, .9 cm in diameter with sl.-contuse abraided collar located at the occipital region of the head.
2. Exit wound, gunshot, stellate in shape 1 x 3/4 inch in diameter, edges everted, located at the middle of the forehead.

B. Trunk

1. Three (3) entrance wounds almost circular in shape, .9 cm in diameter, edges everted, located at the (L) scapular region.
2. Two (2) exit wounds 1 cm in diameter, edges everted, located at the (R) upper quadrant of the abdomen.

C. Legs (R)

1. Entrance wound, gunshot almost circular in shape, .8 cm in diameter with sl. contuse-abraided collar located at the (R) lower leg.
2. Exit wound, gunshot, .8 cm in diameter with edges everted located at the (R) lower leg.
3. Broken shin bone (R)
4. Entrance wound, gunshot almost circular in shape, .8 cm in diameter with sl. contuse-abraided collar located at the medial portion of the (R) lower leg.
5. Exit wound, gunshot, with edges everted, .8 cm in diameter, located at the medial portion of the (R) lower leg.

Date examined : August 20, 1996
Place : Funeraria Filipinas, Bauan, Batangas
Time began : 6:00 am

Finished : 6:30 am

III. CAUSE OF DEATH:

Shock, Internal Hemorrhage
Cardiac Arrest due to Multiple Gunshot Wounds

IV. INFORMANT

(Sgd.) Name: Guillermo Magmanlac
Age: 47
Rel: Uncle

Prepared by:

(Sgd.) Luisita C. Ramos, MD
MHO-Mabini, Batangas

Dr. Ramos said she could not determine the order in which the wounds were inflicted nor the precise position of the victim in relation to the assailant at the time of the attack. However, she said it was possible the victim was shot from the behind judging from the location of the entry wounds. She likewise claimed that her postmortem report was limited to only visual examination as she was not allowed by the victim's mother to open up the cadaver.^[9]

SPO4 Federico Bondoc, Jr., Records Verifier of the Firearms and Explosives Division of the Philippine National Police at Camp Crame in Quezon City, testified that accused-appellant had no license to possess a firearm. A certificate (Exh. G) to this effect was issued by Police Chief Inspector Edwin Nemenzo, Chief of the Records Branch.^[10]

Finally, the victim's brother, Toribio Atienza, testified for the prosecution. He claimed that his family and accused-appellant Sotero Reyes had been at odds for several months before the incident. Toribio advanced two possible reasons for the animosity. First, in July 1996, Francisco Atienza filed a complaint against accused-appellant before the Barangay Captain of Barangay Laurel for shouting in front of the house of the Atienzas. Second, accused-appellant resented the fact that the pathway which had been built in their area did not reach as far as accused-appellant's house.^[11] Upon cross-examination, however, Toribio admitted he had no personal knowledge as regards the shouting incident as he was not at home when the alleged incident occurred. Nor did he have personal knowledge of the complaint that he said had been filed by Francisco against accused-appellant before the barangay.^[12]

Accused-appellant was the sole witness in his behalf. He admitted killing Nicasio Atienza, but he claimed he acted in self-defense. He testified that on August 19, 1996, as early as 7 o'clock in the morning, he went to Sulu, another barangay in Mabini, to hunt for monkeys. Failing to find any, he decided to go home on his horse. On his way home, he met Roman Dalisay and Nicasio Atienza. Seeing the two, he alighted from his horse to confront Nicasio regarding an incident involving

Nicasio and accused-appellant's son, Edilberto Reyes. Accused-appellant demanded to know why Nicasio chased his (Sotero's) son in August 1996. Nicasio did not explain. Instead, he dared accused-appellant to do as he pleased. Accused-appellant said he told Nicasio that he did not want trouble and warned him by firing a shot on the ground. Accused-appellant said that at that point Nicasio grabbed Roman by the shoulders, using the latter as cover. However, Nicasio released Roman as he (Nicasio) drew his bolo. Roman then dove to the ground. Sotero and Nicasio were just three to four meters from each other. Seeing Nicasio with his bolo drawn, accused-appellant said he fired again six more times not knowing whether or not Nicasio had been hit.

Accused-appellant claimed that for several months before the incident, there had been bad blood between his family and that of the Atienzas. He recalled that in June 1996, while accused-appellant was on his way home, he was allegedly blocked by Nicasio and Francisco. Because of the timely intervention of Alex, cousin of Nicasio and Francisco, accused-appellant was able to continue on his way. Accused-appellant claimed he never knew why the brothers blocked him up.^[13]

Two days later, accused-appellant said he was summoned by the Barangay Captain of Laurel because of a complaint filed against him by Francisco. Francisco claimed accused-appellant threatened to kill the Atienzas and that, in the evening of July 12, 1996, accused-appellant shouted epithets in front of their house.

Accused-appellant alleged further that on August 18, 1996, Nicasio chased his (accused-appellant's) son Edilberto. For this reason, he said, he asked Toribio to help him settle the matter between their two families, but Toribio showed no interest, saying it was not his problem.^[14]

On November 11, 1998, the trial court rendered the decision subject of this appeal, the dispositive portion of which reads:

Wherefore, in Criminal Case No. 8774, accused Sotero Reyes @ "Turing" is hereby sentenced to imprisonment of six (6) years, eight (8) months and one (1) day prison mayor plus its accessory penalties, to pay a fine of P30,000.00 and the costs.

In Criminal Case No. 8773, accused Sotero Reyes @ "Turing" is sentenced to the supreme penalty of Death to be administered pursuant to law. He is further directed to indemnify the heirs of the deceased-victim Nicasio Atienza with the sum of P100,000.00 representing moral, actual and exemplary damages. Costs against the accused.

SO ORDERED.^[15]

In this appeal, accused-appellant does not question his conviction for illegal possession of firearm and ammunition nor does he pray for his acquittal. Instead, he seeks his conviction for the lesser crime of homicide rather than murder and the consequent reduction of the penalty imposed upon him.

The Solicitor General maintains, however, that treachery was adequately established