

## SECOND DIVISION

[ G.R. No. 130415, October 11, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN YRAT Y BUGAHOD AND RAUL JIMENA Y POLLESCAS ALIAS "BOBONG", ACCUSED-APPELLANT.**

### DECISION

**BUENA, J.:**

For the death of Benjamin Aca-ac, appellants Alvin Yrat and Raul Jimena were charged with the crime of murder based on an Information which reads:

"That on or about the 27<sup>th</sup> day of December, 1995, at about 6:45 o'clock in the evening, in barangay Biasong, municipality of Lopez Jaena, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, with treachery and with abuse of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit, box and shot one BENJAMIN ACA-AC, thereby inflicting upon the latter fatal gunshot wounds which caused his immediate death.

"CONTRARY TO LAW, with the presence of the qualifying circumstance of treachery and generic aggravating circumstance of abuse of superior strength."<sup>[1]</sup>

Arraigned on May 21, 1996, accused Jimena, assisted by counsel, entered a plea of not guilty. As accused Alvin Yrat was then still at large, the case with respect to accused Jimena proceeded to trial with the prosecution presenting Dr. Rachel T. Micarandayo, eyewitnesses Virginia and Violeta Singcay, Allan Garganera, Roger Rebosura, victim's wife, Julia Aca-ac and rebuttal witness Avelino Barbajo.

For his part, accused Jimena presented Nercua, Henry Yabo and Emma Jimena.

On September 3, 1996, appellant Yrat was arrested. Upon arraignment, with the assistance of counsel, on September 6, 1996, he also pleaded not guilty. For his defense, appellant adopted all the evidence, both testimonial and documentary, presented by accused Jimena. He was likewise utilized by accused Jimena as witness.

The prosecution's case established that on December 27, 1995, on the eve of the town fiesta of Biasong, Lopez Jaena, Misamis Occidental, Benjamin Aca-ac, together with his wife, Julia and one Father Naron, were in the house of Avelino "Boy"

Barbajo. At about 1 o'clock that afternoon, appellant, accused Jimena and his wife Emma arrived. (As Father Naron had another appointment,) the three bade their host goodbye and proceeded to the video house operated by Violeta and Virginia Singcay. At around 2 o'clock, Benjamin returned to Barbajo's house and joined appellant and accused Jimena. In the course of their conversation, Benjamin and accused Jimena had an altercation regarding the local game *masiao*, or *jai-alai*, and nearly engaged in a fistfight were it not for the timely intervention of Barbajo. Appellant was heard saying to Benjamin, "you cannot even reach this New Year." To avoid trouble in his house, Barbajo requested the group to leave,<sup>[2]</sup> who proceeded to the videoke bar. They saw Julia Aca-ac talking to Violeta Singcay, approached her and told her that Benjamin is ill-mannered. Appellant likewise said that "you tell your husband that he will not reach the morning."<sup>[3]</sup> Thereafter, the two left the place. Alarmed by the threats of appellant, Julia left the videoke bar to warn her husband. Not having seen him, she proceeded home.<sup>[4]</sup>

Between five and six o'clock in the evening, appellant returned to the videoke bar and ordered a bottle of beer. Later, accused Jimena and his wife Emma arrived. While accused Raul Jimena was looking for a place to park his motorcycle, Emma approached appellant and told the latter that Benjamin was following them.<sup>[5]</sup> When Benjamin arrived, accused Raul stopped the former and talked to him. Benjamin did not alight from the motorcycle.<sup>[6]</sup> Upon seeing Benjamin, appellant proceeded towards the two men at the same time pulling out a pistol. Walking behind Benjamin, appellant hit him at the right side of the neck with the butt of his gun. Simultaneously, accused Jimena hit Benjamin on the cheek causing the latter to tilt a little backward. At that instance, appellant Yrat pointed his pistol and fired, but the gun did not explode. He then went in front of Benjamin and fired two more shots hitting him on the middle portion of his breast and on the face. Benjamin fell down, and was pinned by his motorcycle.<sup>[7]</sup> After the incident, spouses Jimena left the place while appellant threw the gun towards the bushes and camote plantation. He went back to the videoke bar and ordered beer and cigarettes. He warned Virginia not to report to the authorities.<sup>[8]</sup>

The body of Benjamin Aca-ac was examined by Dr. Rachel Micarandayo and was found to have sustained the following wounds:

"1. Gunshot wound, entrance, 1 ¼ inch in diameter lacerated in character, left cheek.

"2. Gunshot wound, entrance, ½ inch, oval, along the left sternal line, at the level of the 5<sup>th</sup> intercostal space.

"3. Gunshot wound, exit, ¾ inch diameter, everted, at the level of the 7<sup>th</sup> intercostals space, back, left."<sup>[9]</sup>

Appellant Yrat admitted shooting Benjamin but claims that he only acted in self-defense. He narrated that on December 27, 1995, he was invited to the house of Boy Barbajo. Benjamin Aca-ac, who was with them, allegedly drunk, left the place together with a certain Father Naron and returned shortly thereafter on a motorcycle

with a policeman. Without any provocation on his part, Benjamin slapped him. He did not retaliate, instead, he left the house and headed for his house in Barangay Canubay, Oroquieta City. He took his firearm and returned to Lopez Jaena. He proceeded to the videoke bar operated by Violeta Singcay, knowing that Benjamin will pass by that place. After waiting for about two hours, he saw Benjamin.<sup>[10]</sup> He approached the latter and asked why he slapped him. Benjamin allegedly pulled out a gun so he stepped back, drew his firearm and shot Benjamin twice.

Accused Raul Jimena, on the other hand, claimed that on December 27, 1995 at about 3 o'clock in the afternoon, he, together with his wife, went to Boy Barbajo's house in Biasong, Lopez Jaena. From the house of Boy Barbajo, they proceeded to the residence of Boy Bulawin. As the latter was not yet ready to serve them food, they went home, returned later in the afternoon to Bulawin's house. At about 5 o'clock, they left the house and passed by the videoke bar owned by Virginia Singcay. Emma went inside while accused Jimena looked for a place to park his motorcycle. He saw Santos, an ex-barangay captain of Barangay Dampalan. While talking, they heard a gun explosion. Accused Jimena looked for his wife and then left the place. While the remains of the deceased was brought to his house, Julia Aca-ac shouted to accused Jimena who resides nearby, "Bong, where is the man whom you wanted to be killed."<sup>[11]</sup>

After weighing the evidence presented by the parties, the trial court rendered a decision the decretal portion of which reads:

"WHEREFORE, finding accused Alvin Yrat, as principal, and Raul Jimena, as an accomplice, guilty beyond reasonable doubt of the crime of Murder, committed without an aggravating or mitigating circumstance present and applying the provisions of the Indeterminate Sentence Law as regards Raul Jimena, the Court thereby sentences accused Alvin Yrat to suffer the penalty of RECLUSION PERPETUA, and accused Raul Jimena to suffer an indeterminate penalty of imprisonment from SIX (6) YEARS and ONE (1) DAY of prison mayor as its minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, both to indemnify jointly and severally the heirs of Benjamin Aca-ac P50,000.00 as death indemnity, P20,000.00 for funeral expenses, P50,000.00 for the loss of earning capacity of the deceased and P60,000.00 for moral damages and to pay the costs.

"SO ORDERED."<sup>[12]</sup>

Both accused appealed the decision to this Court.

On June 10, 1998, accused Raul Jimena filed a motion to withdraw the appeal which was granted by this Court per Resolution dated September 20, 1999.<sup>[13]</sup>

In his appeal, appellant made a lone assignment of error-

"THAT THE TRIAL COURT ERRED IN NOT FINDING ACCUSED-APPELLANT GUILTY ONLY OF HOMICIDE."