

EN BANC

[G.R. No. 131633-34, January 25, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRESENCIANO "SONNY" ENOLVA, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

At around seven o'clock in the evening of July 25, 1995, Rogelio Abunda and his three-year old daughter Julie were shot while they were sleeping on the floor of their house at Barangay Bagombong, Municipality of Minalabac, Camarines Sur. Brought to the hospital, Rogelio Abunda was dead on arrival from hemorrhagic shock, secondary to two gunshot wounds. Julie died the following day at the Bicol Regional Hospital due to the gunshot wound that she sustained which caused a ruptured spleen and lacerated lung parenchyma.

Cresenciano "Sonny" Enolva y Alegre was charged in Criminal Case No. 95-6021 and Criminal Case No 95-6047, filed respectively on November 15, 1995 and December 12, 1995, under the following informations:

Civil Case No. 98-6021

"That on or about the 25th day of July 1995 at about 7:00 o'clock in the evening at Barangay Bagombong, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously assault, attack, aim and shoot with his gun one ROGELIO ABUNDA hitting the same on the upper left side of his body and as a result thereof sustained gunshot wound which caused his instantaneous death.

That as a consequence of the death of the death of Rogelio Abunda, his heirs suffered damages in the amount of ₱100,000.00, Philippine Currency.

ACTS CONTRARY TO LAW."

Crim. Case No. '95-6047

"That on or about the 25th of July 1995, at Bgy. Bagombong, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, with intent to kill, while armed with a hand-gun, with treachery and without premeditation, did then and there wilfully, unlawfully and feloniously shot Julie Abunda y Borega, hitting her in the body which caused her death, to

the damage and prejudice of her heirs which will be proven during the trial.

ACTS CONTRARY TO LAW."^[1]

Accused pleaded "not guilty" to both charges.

The two cases were ordered consolidated before Branch 24, Regional Trial Court, Naga City. The accused waived his right to a pre-trial in both cases, which were thus set for continuous trial.

The prosecution presented the following witnesses: Pedro B. Abunda and Lorkita Abunda, the son and daughter of the deceased Rogelio Abunda, Dr. Antonio B. Estanislao, Municipal Health Officer who issued the post mortem certificate for the autopsy conducted on Rogelio Abunda, Dr. Ruelo Lebi Realuyo, physician at the Bicol Regional Hospital, who conducted the autopsy on Julie Abunda, Major Lorlie Arroyo, a PNP member assigned as Forensic Chemist of the Crime Laboratory at Region V. Claudio Torsero Casilao and Rodrigo Dueña, both residents of Bagumbong, Minalabac.

The testimonies of the prosecution witness were summarized by the trial court as follows:

"Pedro Abunda is the 17-year old son of the deceased Rogelio Abunda and the half-brother of the victim Julie Abunda. He testified that on July 25, 1995 at about 7:00 o'clock in the evening, he was inside their house listening to the radio program "Reyna Bandida" with his cousin, Eddie Abunda. A younger brother, Vener Abunda, was also on his side lying down. A little bit farther from him were his father, Rogelio Abunda, Rowena Abunda, his stepmother, and Julie Abunda, Rogelio and Julie were already asleep. Lorkita Abunda, another sister was outside the house fetching water. Then he heard a gunshot, Eddie Abunda jumped out of the window while Pedro Abunda rolled down the side of the house through the wall which was made only of woven coconut leaves. When he rolled down, he allegedly saw the accused Cresenciano Enolva at the other end of the house, in a half squatting, half kneeling position with his hands extended and two fingers pointing inside the wall. While he was in this position, he heard a second gunshot but this time, he was already beside a "duhat" tree. Pedro Abunda drew a sketch of their house and the relative positions of the people inside the house as well as his location and that of the accused when he saw him (Exh. "C"). Cresenciano Enolva allegedly ran away and so did Pedro Abunda. He ran towards his "tatay" (Rogelio Abunda) who sought help in the house of Menardo Casilao. There, he was told to look for a motor boat that would take Rogelio Abunda to Minalabac because they were to bring him to a doctor. When they reached the wharf at Minalabac, Camarines Sur, his father was brought to the municipal building because he died already on the way. His half-sister, Julie, was brought to the Bicol Regional Hospital for treatment. Both Rogelio and Julie were hit by bullets. The doctor treated Julie only and did not operate on her because he said she could not endure the operation. The following day, Julie died also at the hospital. Pedro Abunda said "according to information Cresenciano Enolva said

that if they will not leave the place, he will kill them." A sworn statement found on pages 15-16 of the records was admitted to have been executed by the witness and marked as Exhs. "D", "D"-1" to "D-2".

Lorlita Abunda is the 15-year old daughter of the deceased Rogelio Abunda. She was interrogated by the presiding judge to find out if she understands the meaning of her oath and the consequences of her testimony in Court. She was found to be qualified to testify. Her testimony shows that on July 25, 1995 at around 7:00 o'clock in the evening, she was sent by her brother to fetch water from Claudio Casilao's house at Bagongbong, (sic) Minalabac, Camarines Sur. After fetching water, she walked home. She saw "Sonny" Enolva beside their house smoking and afterwards, peep into their house. He walked towards their backyard and she followed him. She saw him draw a gun, pointed it to their house and fired two times. She said she was about 1 and ½ arms-length from the accused when he fired the gun. She allegedly recognized Sonny Enolva because of the light coming from the houses of Bienvenido Ces, Claudio Casilao, the Barangay Kagawad and from their house. Sonny Enolva came from the house of Beinwendio Ces. After firing the shots, "Sonny" Enolva ran away. She also ran towards the house of Claudio Casilao. She said she saw her father running and shouting for help because he was hit. Her father went to the house of Barangay Kagawad Menardo Casilao. Her father was not brought anymore to the hospital because he died on the way after he was boarded in the motorboat. Julie Abunda was able to reach the regional hospital but she died in the morning of the next day."

Dr. Antonio Borja Estanislao was the Municipal Health Officer who issued the post mortem certificate (Exhs. "A", "A-1" and "A-2") for the autopsy conducted by him on the cadaver of Rogelio Abunda on July 26, 1995. He testified that the cadaver at the time of the examination, was already in the state of rigor mortis. There were two gunshot wounds found on the body. The first, was found on the armpit, 2 cm. In diameter, with its edges inverted, (edges were directed inwards) with contusion collar (there was a contusion right around the wound) and with gunpowder tattooing (blackened area around the wound). This was allegedly the entry wound.

The second wound, also 2 cm. In diameter, its edges everted anterolateral aspect, was found on the front left shoulder. This is allegedly the exit wound because the edges are directed outwards. When asked on the possible position of the victim at the time he was shot, Dr. Estanislao said that either the victim's position was higher than the assailant or the victim was lying down with the assailant in equal level as the victim so that the direction of the slug was horizontal. The cause of death was hemorrhagic shock due to assault by firearms and explosives. The cause of death as appearing in the certificate of death (Exh. "B") was marked as Exh. "B-4".

Claudio Tersero Casilao is a resident also of Bagongbong, Minalabac, Camarines Sur. He testified that on the date and time of the incident complained of while he was in his house he heard a commotion in the

neighboring house in the house of one Casilao. He transferred to that house and found out that Rogelio Abunda was injured. He did not know whether the child was injured or not but when she was brought to the other house, she suddenly fell down. Later, he stated that it was Rogelio Abunda and Julie Abunda who were injured. He said he knew that Rogelio Abunda was allowed to build his house in that place where they were residing by Sonny Enolva and that the witness was one of those invited to help transfer the house of Rogelio Abunda. He also knew Julie Abunda because she used to play in their house with his children. He was one of those who decided to hire a motorboat to bring Julie to the hospital but he did not go with them anymore.

Rodrigo Dueña y de Monteverde is another resident of Bagongbong, Minalabac, Camarines Sur, who learned of the shooting incident of July 25, 1995. He knew Rogelio Abunda because he was once an operator of his irrigation while Julie Abunda was staying in a place near their house. He also knows Julie Abunda to be the daughter of Rogelio Abunda. He stated that on July 24, 1995 at around 10:00 o'clock in the evening, Rogelio Abunda warned him not to get out of his house because he will be shot. Again at 2:00 o'clock in the morning of July 25, 1995, Rogelio Abunda went to his house and repeated the warning to him because Cresenciano Enolva was allegedly in the dark place near the house of Ama.

Major Lorlie Arroyo is a PNP member assigned as Forensic Chemist of the Crime Laboratory at Region V, Camp Simeon Ola, Legaspi City. She was the one who prepared Chemistry Report No. C-27-95 on the suspect Cresenciano Enolva (Exhs. "H", "H-1" and "H-2"). She testified that she received the paraffin cast of Cresenciano Enolva on July 28, 1995 upon request of the Chief of Police of Minalabac, Camarines Sur. The specimen submitted to her was a pair of paraffin cast taken from both hands of Cresenciano Enolva (Exh. "H-3"). The purpose of the laboratory examination was to determine the presence of gunpowder residue (nitrates) in the specimen submitted (Exh. "H-4") her laboratory examination consisted of adding diphenylamine reagent to the dorsal portion of the paraffin cast and thereafter, dark blue specks appeared on the cast which is an indication of the presence of nitrates or gunpowder residue. These findings were stated in her report in this manner: "Qualitative examination conducted on the specimen mentioned above gave POSITIVE result to the tests for the presence of gunpowder residue (nitrates)" (Exh. "H-5"). She further testified that the presence of gunpowder residue would still be very clear on the hands of the suspect because the crime laboratory personnel at the Provincial Command of Camarines Sur had taken the paraffin cast a day after the incident. Then it was turned over to Camp Ola for examination on the 28th of July, 1995.

On cross-examination, she testified that plain washing of the hands with water before the paraffin cast is done will not remove the nitrates or gunpowder from the hand. As a matter of fact, the technician, prior to the examination even washes the hands of the suspect with plain water to eliminate contaminants adhering to the hands of the suspect. She

further explained that if someone handled fertilizer, like complete fertilizer which contains nitrates, it is possible to have a blue speck of nitrates but its appearance would be different from the nitrates residue coming from gunpowder. Even if firecrackers have been exploded by the suspect, again there would be a difference from the nitrates of gunpowder residue which is a distinct blue speck.

Upon examination by the Court, Major Lorie Arroyo said that a paraffin test is conducted on the dorsal side of the hand because it is the portion which is directly exposed to the firearm. In exploding firecrackers, the most contaminated is the palm side of the hand not the dorsal side.

On redirect examination by the prosecutor, Major Lorie Arroyo also explained that contaminants from fertilizers or firecrackers can just be taken off by washing the hands because they are soluble in water. Nitrates from gunpowder, however, are embedded in the pores of the skin, so ordinary washing would not remove them. If they are examined, nitrates from that embedded portion of the skin would appear very neatly as dark blue specks. She was very positive that the nitrates she found in her examination of the paraffin cast were gunpowder residue.

Dr. Ruel Lebi Realuyo was the physician at the Bicol Regional Hospital who conducted the autopsy on the cadaver of Julie Abunda, the three year old victim in Criminal Case No. 95-6047 on July 26, 1995 at 1:30 P.M.

The autopsy report as explained by the witness found two gunshot wounds, identified as point of entry: 0.5 cm. Located at the posterior axillary line at the level of 2nd ICS right and as point of exit: 3 cm. 10th ICS posterior axillary line, left. He testified that upon opening of the body of the victim, he noted the lung parenchyma to be lacerated on the right side. He said the laceration of the lung parenchyma was caused by the traversing bullet of the right side going to the left side."

The defense presented as witnesses the accused himself, Rowena Borrega Abunda, the common-law wife of the victim Rogelio Abunda, Santiago Casilao, who helped bring the victims to the hospital, and Elena Nuello, a neighbor of the accused.

The accused Cresenciano denied that he shot Rogelio Abunda and Julie Abunda. He claimed that he was sleeping in his house and was drunk at the time of the incident.

Rowena Abunda testified that Pedro and Lirlita Abunda were in their neighbor's house watching TV at the time of the shooting and that when she made her first statement on September 1, 1995, at the Camarines Sur Provincial Command, wherein she charged the accused as the culprit who shot her husband and child, she was only coached by Rosito Abunda and Rodrigo Dueña, and the latter had a grudge against the accused. She admitted having executed an affidavit of desistance stating that she is convinced that the accused is innocent and that there were no witnesses to the shooting incident.^[2]

Santiago Casilao testified that he was helping in the kitchen of Claudio Casilao in the evening in question and saw Pedro Abunda and Lirlita Abunda among those