

## EN BANC

[ G.R. No. 127753, December 11, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DOMINGO VALDEZ Y DULAY, ACCUSED-APPELLANT.**

### D E C I S I O N

**BUENA, J.:**

For automatic review is the decision of the Regional Trial Court (RTC), Branch 45, Anonas, Urdaneta, Pangasinan convicting appellant Domingo Valdez y Dulay guilty of two crimes: (1) murder for which he was sentenced to suffer the death penalty and (2) illegal possession of Firearms and Ammunition under Presidential Decree No. 1866 for which he was sentenced to suffer *reclusion perpetua* based on the following criminal indictments:

#### **"CRIMINAL CASE NO. U-8719**

That on or about 31<sup>st</sup> day of October, 1995 at barangay San Roque, Municipality of San Manuel, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack and shot one Labrador Valdez y Madrid, hitting the latter's chest and the gunshot wounds inflicted being mortal, caused the direct and immediate death of the said victim, to the damage and prejudice of his heirs.

Contrary to Article 248, Revised Penal Code."<sup>[1]</sup>

#### **"CRIMINAL CASE NO. U-8720**

That on or about the 31<sup>st</sup> day of October, 1995 at barangay San Roque, Municipality of San Manuel, Province of Pangasinan, and within the jurisdiction of this honorable Court, the said accused did then and there, wilfully, unlawfully, and feloniously have in his possession, control and custody a firearm of an unknown caliber, make and brand without authority of law, and which he used in shooting to death Labrador Valdez y Madrid.

Contrary to Presidential Decree No. 1866."<sup>[2]</sup>

On October 31, 1995, at around 9:00 o'clock in the evening at Sitio Laclac, Barangay San Roque, San Manuel, Pangasinan, Marcelo Valdez was under his *nipa* house talking with his son Labrador Valdez. At that time, Marcelo's other

housemates - his wife, son Rolando Valdez, daughter-in-law Imelda Umagtang and an eight-year-old boy named Christopher Centeno - were staying upstairs preparing to sleep. In the course of their conversation, Labrador was lying sideways on a carabao sled, placed under the family *nipa* house. He was facing his father at the eastern side of the house, at a distance of about less than two (2) meters from each other.<sup>[3]</sup> TSN, June 13, 1996, pp. 14 and 17. 3 Suddenly, two consecutive gunshots were fired coming from the western side of the house by an assailant.<sup>[4]</sup> The first shot landed on the left forefinger and thumb of Labrador, while the second shot hit him two (2) inches from the left shoulder, below the neck which exited at the right side just below his breast.<sup>[5]</sup> After firing, the assailant immediately ran away towards the west direction.<sup>[6]</sup>

Marcelo Valdez who was talking to his son, immediately called for help while the victim managed to walk upstairs towards the kitchen. The stunning sound of the two gunfire and Marcelo's cry for help alerted Imelda Umagtang and her common-law husband Rolando Valdez, who were both lying on bed, to verge upon the kitchen where they saw the victim bathed in his own blood. When Rolando inquired from the victim who shot him, the latter replied that it was the appellant. At this time, the victim's brother and in-laws arrived. They also asked the victim what happened and the latter once more said that it was appellant who shot him. At such time, the search for the passenger jeep that will transport the victim to the hospital continued. After an hour, they were able to find a passenger jeep but the victim already succumbed to death prior to his transport to the hospital.

The next day, on November 1, 1995, Dr. Asuncion Tavera of San Manuel Rural Health Unit conducted the autopsy on the cadaver of the deceased in the latter's house. The medical examination revealed the following gunshot wounds-

"A. External findings:

Chest - gunshot wound at the left sternal line 2 inches below the left clavicle, 2 cm in diameter penetrating

- gunshot wound at the right exterior axillary line at the level of the lumbar area.

Extremities - lacuated wound on the left thumb and index finger with fracture of the phalanges.

"B. Internal findings:

Chest - fracture of the 3<sup>rd</sup> anterior left rib.  
Abdomen placuated wound of the liver.

"Cause of death:

Cardio respiratory arrest secondary to severe hemorrhage secondary to gunshot wound on the chest and lumbar area." (Exhibit "E"; records, p. 7)

Thereafter, appellant was charged before the trial court with two separate information for murder and illegal possession of firearms to which he pleaded not guilty. After trial, judgment was rendered convicting appellant as earlier mentioned. The dispositive portion of the decision reads:

"WHEREFORE, in view of all the foregoing, the Court finds:

"IN CRIMINAL CASE NO. U-8719:

"The accused DOMINGO VALDEZ Y DULAY GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under republic Act No. 7659 otherwise known as the Heinous Crime Law, the offense having been committed with the attendant aggravating circumstances of evident premeditation, abuse of superior strength and nighttime, hereby sentences him the ultimum supplicium of DEATH to be executed pursuant to Republic Act No. 8177 known as the Lethal Injection Law, to pay the heirs of the victim LABRADOR VALDEZ in the amount of P50,000.00 as indemnity; P23,500.00 as actual damages; P200,000.00 as moral damages; and to pay the costs.

"IN CRIMINAL CASE NO. U-8720:

"The accused DOMINGO VALDEZ Y DULAY, GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunition penalized under Presidential Decree No. 1866 and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

"Finally, it is said: "Dura lex, sed lex," translated as "The law is harsh, but that is the law.

"SO ORDERED."<sup>[7]</sup>

Appellant questions his conviction arguing that the court *a quo* erred -

- I. in convicting the accused of murder notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.
- II. in appreciating the qualifying circumstance of treachery and the aggravating circumstances of evident premeditation, abuse of superior strength and nighttime on the assumption that indeed accused appellant shot the victim.
- III. in not applying the provision of R.A. 8294, amending P.D. 1866
- IV. in convicting the accused for two separate offenses
- V. finding the accused guilty of violating P.D. 1866"<sup>[8]</sup>

After a careful examination of the records, appellant's conviction should be upheld.

The elements of murder concur in this case. Appellant shot the victim twice. The wounds sustained by the deceased at the left thumb, index finger and at the left shoulder below the neck exiting to the right side just below the breast were caused by bullets. As a result of these gunshot wounds, the victim suffered "Cardio respiratory arrest secondary to severe hemorrhage secondary to gunshot wound on the chest and lumbar area" which was described in the medico-legal report as the proximate cause resulting to his death.

Appellant's defense is premised primarily on denial and alibi. He argues that on the day of the incident he was hauling and transporting 27 cavans of *palay* with Reymante and Conrado Centino<sup>[9]</sup> from 6 to 9 o'clock in the evening of October 31, 1995, to the house of Mrs. Juanita Centino. Thereafter, they took supper at Conrado's house and drank wine and went home around 11 o'clock in the evening. His version was corroborated by Reymante and Conrado and the latter's mother, Mrs. Centino, a sexagenarian. Such defenses, however, aside from being inherently weak, cannot prevail against a positive and explicit identification of him not only by Marcelo Valdez but also by the victim himself. To exculpate himself, appellant must not only show that it was impossible for him to be at the place where the crime was committed, but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.<sup>[10]</sup> The distance between the place where the crime happened, to the Centinos' house where appellant claimed he was, is more or less one (1) kilometer, which could be negotiated by walking for thirty (30) minutes, and twenty (20) minutes by riding a vehicle.<sup>[11]</sup> Appellant's whereabouts at the time of the incident was insufficient to foreclose any possibility for him to be present at the scene of the crime, given the proximity of the two places.

Appellant further contends that witness Marcelo Valdez could not have positively identified him because there was only a single kerosene lamp lighting the area and the witness was already seventy years old, who, at such age, would have a nebulous identification of the assailant. Appellant's assertion of impossibility of identification in a period of a "few seconds look" at the time of the second shot, which was fired successively, was negated by the fact that appellant shot the victim at a distance of around two meters from the kerosene lamp. The distance of the appellant from the kerosene lamp does not preclude the possibility of identification since the place was properly illumined capacitating the witness to identify the assailant. In fact, both Marcelo and the deceased were able to identify appellant.

Appellant capitalizes on the alleged failure of Lilia Valdez (wife of the deceased) to mention to the officer who investigated the killing, that she heard her husband say that the appellant was his assailant. He argues that her testimony in court that she heard her husband say that it was appellant who shot him, was merely an afterthought. In support thereof, appellant quotes the following answers of Lilia Valdez during cross-examination -

"ATTY.  
VIRAY-

"Q: Now, in the sworn statement Madam witness which you gave to the police authorities of San Manuel, Pangasinan, you never mentioned that your husband told you that he was allegedly shot by the accused, is this correct?

"A: Yes, sir.

"ATTY.

VIRAY:

The answer is not responsive, we request the question to be read back.

"COURT: She said, she did not tell that to the police.

"ATTY.

VIRAY:

"Q: Why did you not tell to the police authorities that your husband told you that your husband was shot by Domingo Valdez?

"A: I forgot, sir." [TSN, July 3, 1996, pp. 24-25]

We have thoroughly reviewed the records and studied the alleged contradiction between the court testimony and the sworn statement of Lilia Valdez only to find that appellant is misleading the court. In her sworn statement Lilia Valdez stated -

"15.Q: Was you (sic) husband able to identify his assailant?

A: Yes, sir. He identified Domingo Valdez as his assailant when asked by brother-in-law Rolando Valdez before he was brought down to kitchen on the way to the hospital, sir." [Exhibit "D", Folder II, Records, p. 3]

It is also clear from the records that as early as November 1, 1995, the day after the killing, the principal prosecution witness Marcelo Valdez (father of the deceased), along with Lilia Valdez (wife of the deceased), Imelda Umagtang (sister-in-law of the deceased) alluded to appellant as the killer before police officer Avelino Sandi, Jr. who conducted the investigation. Their respective sworn statements were reduced into writing denouncing and identifying appellant as responsible for the death of Labrador Valdez. Imelda Umagtang<sup>[12]</sup> testified to these utterances of the deceased in court.

The victim's septuagenarian father Marcelo Valdez likewise affirmed the identity of the appellant as the assailant. He testified in court that he recognized the assailant with the lighting coming from the kerosene lamp hanging on the wall, which illuminated the whole ground of the *nipa* hut.<sup>[13]</sup> He claimed that he recognized appellant at the second shot<sup>[14]</sup> at a distance of around three meters (3) away from him.<sup>[15]</sup> At the time appellant fired the second shot, appellant was less than a meter away from the victim<sup>[16]</sup> and around two meters from the kerosene lamp.<sup>[17]</sup>

Lilia Valdez, the victim's wife, recounting that fateful day, similarly attested appellant's culpability in court. She testified that when her husband was shot she was in her house with her children, about 25 to 30 meters<sup>[18]</sup> from the victim's location. When she heard the gunfire and the summons of her parents-in-law that her husband was shot, she rushed to her husband and saw him bloodied, lying prostrate in the kitchen. She asked the victim what happened and the latter