

## SECOND DIVISION

[ G.R. No. 119464, January 28, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VIRGILIO VERMUDEZ Y YASAY, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

Accused-appellant seeks the reversal of the Decision<sup>[1]</sup> of the Regional Trial Court of Batac, Ilocos Norte, Branch 17, in Criminal Case No. 2278-17, dated June 18, 1992, declaring him guilty beyond reasonable doubt of the crime of murder.

In an Amended Information<sup>[2]</sup> dated November 11, 1985, appellant was charged with the crime of murder allegedly committed as follows:

"That on or about the 15th day of May, 1985 at about 4:40 o'clock in the afternoon, at Barangay Tartarabang, municipality (sic) of Pinili, province (sic) of Ilocos Norte, 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 willfully, unlawfully and feloniously shoot one AQUILINO ROSARO Y TIRA, with the use of a gun (38 Caliber, Smith and Wesson snub-nose, Serial No. 33559), inflicting on said AQUILINO ROSARO Y TIRA two (2) fatal gunshot wounds on the back that cause his instantaneous death.

CONTRARY TO LAW."

During arraignment, appellant pleaded "Not Guilty." After trial in due course, the court *a quo* rendered its assailed Decision convicting appellant of the crime of murder. The dispositive portion of which reads:

"WHEREFORE, the Court finds accused guilty beyond reasonable doubt of the crime of MURDER and hereby imposes to the accused the penalty of reclusion perpetua. To pay the heirs of the victim P50,000.00 by way of indemnity and costs.

SO ORDERED."<sup>[3]</sup>

In view of the penalty imposed upon him, accused interposed this appeal before this Court.

The prosecution's version of the facts of this case, as narrated by the Solicitor General, is as follows:

"On May 15, 1985, at around 4:30 o'clock in the afternoon, Pedro Tira, Imelda Tajon, Robert Bautista, Artemio Rosario, Aquilino Rosario (sic) and

many others were at the racetrack at Bgy. Tartarabang, Pinili, Ilocos Norte watching a motorcross. Certain peace officers, Pat. Pagdilao, Pat. Baldomin and Pat. Tugaoen were standing beside Aquilino Rosario (sic).

Thereupon, appellant Virgilio Vermudez drew a gun, went near Aquilino Rosario (sic) and shot him twice at the back. After the shot, the victim sprawled on the ground. Artemio, the brother of the victim, together with several people took Aquilino Rosario (sic) to a Sarao jeep and brought him to Dr. Tactacan. However the victim was already dead.

Meanwhile, after appellant fired the shots, Pat. Pagdilao who was about less than a yard away, chased the latter and was able to overcome him within a distance of about seven meters. Accused was then subsequently brought to the police station at Pinili, Ilocos Norte.

Dr. Franklin Rambayon, Municipal Health Officer of Pinili, Ilocos Norte conducted a post-mortem examination on the cadaver of Aquilino Rosario and made the following findings:

'Gunshot wound No. 1. Point of entrance - 1 cm. by 1 cm. In diameter located inferiorly in the highest point of the left scapula at the back about 2.5 in. And 2.8 in. from the spinal column. No point of exit. 2. Point of entrance - 1 cm. By 1 cm. In diameter located laterally and 2 inches from the highest point of the right scapula and about 5 inches from the spinal column. No point of exit.'"<sup>[4]</sup>

The trial court, which heard the case summarized the testimonies of the prosecution witnesses, *viz*:

"Witness, DR. FRANKLIN RAMBAYON, testified that he conducted the post-mortem examination of the deceased. x x x.

Evident from the foregoing, the victim suffered 2 gunshot wounds from the back with no point of exit, and as testified to by the doctor, the cause of death was due to profuse hemorrhage from the heart, left and right lung secondary to gunshot wound from the back.

Witness PEDRO TIRA, uncle of the victim, testified that on May 15, 1985 at around 4:30 P.M., he was at Brgy. Tartarabang, Pinili, Ilocos Norte, to witness a motocross. That while thereat, he saw both accused and victim in front of him and about six meters behind them. That he saw the accused drew a gun from his waist and went near the victim and shot him twice at the back. Immediately after the victim was shot, accused was confronted by a police officer who arrested accused. That he saw the victim fell to the ground lying prostrate, went near him and help brought the victim to a doctor but on the way the victim died. That witness was asked to identify the gun used by the accused and he identified a snubnosed .38 cal. revolver marked as Exh. "B" as the one used by the accused. He also identified his sworn statement taken at the police headquarters which was marked as Exh. "C".

Witness ELPIDIO ROSARO, brother of the victim, testified that Pedro Tira, Imelda Tajon, Robert Bautista, Antonio Rosaro and others were then at Brgy. Tartarabang, Pinili, Ilocos Norte, to witness a motocross on May 15, 1985. That this witness drew a sketch (Exh. "B") indicating the respective position of the accused, the victim and the two police officers, Pat. Baldomir and Pat. Pagdilao and his companions, indicated that he was six meters behind the victim and accused. That while thereat, he heard 3 gun reports but it was only on the 2nd and 3rd gun reports that he saw the accused just behind the victim and fired at him twice at the back and saw his brother fell and sprawled on the ground. That after the shooting incident, they helped the victim and brought him to a doctor on a sarao jeep but he died shortly thereafter. The witness identified a sworn statement (Exh. "C") which he executed at the police headquarters dated five days after the incident.

IMELDA TAJON, sister-in-law of the victim, corroborating the testimony of eye witnesses, testified that at 4:00 P.M. on May 15, 1985, she was with others in Brgy. Tartarabang, to witness a motocross. While there, she saw the accused moving around trying to recognize the people around until he positioned himself 3 meters behind the victim. That not long after, she heard a gun report and saw the accused firing two more shots at the back of the victim. That immediately thereafter, Pat. Baldomir and Pat. Pagdilao who was beside the victim accosted the accused and arrested him. The witness together with others carried the fallen victim and brought him to the hospital but the victim died before reaching the hospital.

Pat. FREDDIE PAGDILAO testified that on May 15, 1985 at around 4:00 P.M., he was with Pat. Baldomir and Pat. Tugaoen at Brgy. Tartarabang, Pinili, Ilocos Norte, where a motocross is scheduled to take place. That he was standing on the right side of the accused with a person between them, while the accused was behind the victim. That the witness heard a gun report and when he looked back where the gun report came from, he saw accused with a gun aimed and pointed at the victim who was then about to fall to the ground. That he chased accused Virgilio Vermudez, apprehended him and brought him to their headquarters for investigation. x x x"<sup>[5]</sup>

In contrast to the prosecution's theory that accused deliberately shot the victim, appellant in his brief claims that the shooting was only accidental as he was defending himself from the victim's aggression. The defense presented four witnesses, including accused himself.

"LEONIDO VERMUDEZ, brother of the accused, testified that on May 15, 1985, he was with friends at Brgy. Tartarabang, Pinili, Ilocos Norte to view a motocross. While there and being only two arms length away from his brother (accused), he saw the victim pulled a gun prompting his accused brother to wrestle the gun from the victim. That while the accused and victim were grappling for possession of the gun, the witness heard a gun report and that was the time he ran for safety. The witness testified that he never saw who fired the gun nor who was then in possession.