

## FIRST DIVISION

[ G.R. No. 122838, May 24, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO HILLADO, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 46, of San Jose Occidental Mindoro, finding accused-appellant Romeo Hillado guilty beyond reasonable doubt for the murder of Amor Baltazar, and for the frustrated murder of Margarito Balestramon on the early morning of 5 November 1992.

On 15 February 1993, accused-appellant was charged under the following Informations:

1) Criminal Case No. R-3360 for murder:

That on or about the 5<sup>th</sup> day of November, 1992, at around 1:00 o'clock in the morning, in Barangay Nicolas, Municipality of Magsaysay, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a gun with intent to kill and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Amor Baltazar, thereby inflicting upon the latter serious wounds which caused his untimely death.

That as a result of the unlawful acts of the accused, the heirs of the said Amor Baltazar suffered actual, moral and compensatory damages for which they should be indemnified in such amount that the Honorable Court may deem just and proper under the premises

CONTRARY TO LAW<sup>[2]</sup>

2) Criminal Case No. R-3361 for frustrated murder

That on or about the 5<sup>th</sup> day of November, 1992, at around 1:00 o'clock in the morning, in Barangay Nicolas, Municipality of Magsaysay, province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the accused being then armed with a gun, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said weapon one Margarito Balestramon, thereby inflicting upon the latter serious wound, thus performing all the acts of execution which ordinarily would have produced the crime of murder as a consequence, but

nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is the timely and able medical attendance rendered to the said Margarito Balestramon which prevented his death.

That as a result of the unlawful acts of the accused, the said Margarito Balestramon suffered actual, moral and compensatory damages for which he should be indemnified in an amount that the Honorable Court may deem just and proper under the premises.

CONTRARY TO LAW.<sup>[3]</sup>

When arraigned on 10 March 1993, accused-appellant pleaded "Not Guilty" to both crimes. He manifested through his counsel that he was waiving pre-trial. Thereafter, a joint trial was conducted since the crimes charged were allegedly committed in the same place, date and time.

The prosecution<sup>[4]</sup> presented evidence establishing the following:

On 5 November 1992, at around 1:00 o'clock in the morning, Margarito Balestramon and his nephew, Amor Baltazar, were in the plaza of Barangay Nicolas, Magsaysay, Occidental Mindoro, where a benefit dance was being held. Accused-appellant Romeo Hillado, a member of the CAFGU, was also there. In the plaza, boxes of fried chicken were being sold. Balestramon and Baltazar went to a nearby store and bought a box of fried chicken and a bottle of gin. Thereafter, they went to the house of a certain Imoc Dizon where they ate the chicken and drank the gin. They stayed in the house of Dizon until 2:30 in the morning. On their way home, they passed by the house of Balestramon's niece, Leticia Ginero, and drank coffee. Afterwards, they left for the house of Balestramon where Baltazar was also temporarily lodging, the latter being new in the place and had nowhere to stay.

While Balestramon and Baltazar were walking towards the house of the former, accused-appellant appeared from the street corner where they were passing, carrying a Garand rifle.<sup>[5]</sup> In a loud voice, accused-appellant called out to them and said, "Sino `yan? Balestramon, who personally knew accused-appellant and who was much older than the latter, answered the query in a respectable tone and said, "Kami po." Balestramon noticed that accused-appellant was irked by his response for the latter became silent. Sensing anger on the part of accused-appellant, Balestramon and Baltazar walked away and headed to the direction of Balestramon's house. After they have travelled a distance of about one hundred (100) meters, a gunshot was fired from behind.<sup>[6]</sup> Baltazar fell down on the ground for he was hit by the bullet.<sup>[7]</sup> This shocked balestramon who was only about an arm's length away from Baltazar. He was unable to move for several seconds. After recovering from shock, Balestramon lifted the body of Baltazar. While he was doing this, another shot was fired. This time both he and his nephew were hit by the second bullet.<sup>[8]</sup> Balestramon turned his back to the direction from where the shot came. He saw accused-appellant, who was only about five (5) arms length away, carrying a garand rifle which was aimed at him.<sup>[9]</sup> At this juncture Balestramon shouted for help. A certain Winston Jacinto respondent and brought him to the clinic in Magsaysay, Occidental Mindoro. In the meantime, accused-appellant left the scene.

Margarito Balestramon was given first-aid treatment by Dr. Gerardo Agupitan at the

Magsaysay clinic. Afterwards, he was transferred to the San Jose District Hospital at Murtha, San Jose, Occidental Mindoro, for further treatment. In the hospital, Balestramon's attending physician, Dr. Edwin P. Sulit, advised him to seek further treatment in Metro Manila for the wound he sustained. Accompanied by a nurse, he proceeded to the National Orthopedic Hospital where he was confined for about a week.

On the other hand, Amor Baltazar was left behind in the scene of the crime when Balestramon was brought to the clinic. Baltazar died on the spot from the two (2) gunshot wounds he received. Dr. Gerardo V. Agupitan performed the autopsy of the body in Barangay Nicolas, Magsaysay, Occidental Mindoro.

At the witness stand, Dr. Gerardo V. Agupitan testified that he is the Municipal Health Officer of Magsaysay, Occidental Mindoro. He stated that he conducted the autopsy of Amor Baltazar on 5 November 1993. He declared that the injuries sustained by Baltazar were caused by two (2) gunshot wounds. According to his findings, the cause of death was "hypovolemic shock or massive blood loss caused by gunshot wound."<sup>[10]</sup> The post mortem findings indicated the following:

Gunshot Wound "a"

1. point of entry: 1 cm. right lateral from the 2<sup>nd</sup> cervical vertebrae
2. point of exit: thyroid cartilage

Gunshot Wound "b"

1. point of entry 2 cms. Right lateral from the 2<sup>nd</sup> cervical vertebrae
2. point of exit 2 cms. Right lateral from the thyroid cartilage.<sup>[11]</sup>

Dr. Edwin Sulit, Medical Officer III of San Jose Emergency Hospital at Murtha, San Jose, Occidental Mindoro testified on the examination he conducted with respect to the wound sustained by Balestramon on his left shoulder. He stated that the wound was caused by a gunshot since the wound was circular in shape and there was a fracture in the area.<sup>[12]</sup> The Medico-Legal certificate prepared by him contained the following findings:

Diagnosis: Gun Shot Wound left shoulder

Duration: More than Six (6) months

Disposition: Admitted.<sup>[13]</sup>

Andres Baltazar, on the other hand, testified that he was the one who took the body of Amor Baltazar after the autopsy. He declared that he was not a relative of the deceased although they have similar surnames. He alleged that he was the one who paid for all the expenses incurred during the wake and interment of the deceased.

The defense<sup>[14]</sup> presented a different version of the incident. Their testimonies may be summarized as follows:

Accused-appellant Romeo Hillado interposed denial and alibi as his defenses. He categorically denied any participation in the commission of the crimes charged against him. According to his testimony, he did not shoot and could not have shot the complainant Margarito Balestramon, much less killed Balestramon's nephew Amor Baltazar, because he was sleeping at the CAGU detachment in Barangay Nicolas when the incident occurred.<sup>[15]</sup> He declared that at around 8:30 p.m. of 4 November 1992, he and his companions, namely, Salvador Mindoro, Ingay Mindoro, Cesar Silverio and Mariano Andres, were at the CAGU detachment. He was the guard-on-duty at their unit that evening from 8:30 p.m. up to 12:00 midnight. When midnight came, he was relieved of his duty and Mariano Andres and Ingay Mindoro took his post. Afterwards, he slept. At around 2:00 o'clock in the morning, accused-appellant was awakened by Andres and Mindoro who told him that somebody was shot in Barangay Nicolas. Accused-appellant claims that he was implicated in the killing of Baltazar and the wounding of Balestramon because he had an altercation with the latter prior to the incident in question.<sup>[16]</sup> He stated that he confiscated around 700 board feet of lumber belonging to Balestramon as ordered by the Barangay Captain of Nicolas. This incident probably made Balestramon angry at accused-appellant. Two (2) weeks after the occurrence, he was apprehended by the police while playing basketball in Barangay Nicolas and was placed in the municipal jail of Magsaysay.

The testimony of accused-appellant was corroborated by two witnesses for the defense, namely, Ingay Mindoro and Mariano Andres, who related substantially the same story in favour of the former. According to both, accused-appellant was sleeping at the detachment at the time of the incident in question. They testified that they took over the post of accused-appellant at 12:00 midnight. While they were patrolling around the detachment, they heard a single gunshot with a scattered sound ("sabog or wasak"). They were alerted by this sound. Later, a certain Jerry Lualhati who was carrying a lamp, arrived and informed them about the shooting incident. Together, the three of them proceeded to the area where the shooting took place. There they saw the body of the victim. They did not do anything at first. They just returned to the same place the next day and cut grasses surrounding the area in search of a slug. They testified that the CAGU detachment where they were patrolling was only about a kilometer away from the scene where the body was found. They stated that during the shooting, accused-appellant was sleeping at their detachment.

Epifanio Nicolas, the barangay captain of Barangay Nicolas, testified that he knows both Balestramon and Hillado, being his constituents. He declared that he was able to converse with Balestramon two weeks after the incident. According to him, Balestramon did not make mention of accused-appellant as his assailant. He further stated that Balestramon did not say anything because he went to the ricefield. During the cross-examination, he acknowledged before the court that he does not know of any disagreement or misunderstanding between the litigants.

The prosecution presented Jerry Lualhati as its rebuttal witness. This witness testified that when he went to the CAGU detachment on the early morning of 5 November 1992, he did not see accused-appellant there.

After trial, the Regional Trial Court rendered the assailed decision convicting accused-appellant of both charges. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

1. In Criminal Case No. R-3360, the court finds the accused, ROMEO HILLADO guilty beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prision Mayor as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum, with accessories provided by law; and to indemnify the heirs of the deceased, Amor Baltazar, in the sum of FIFTY THOUSAND PESOS (P50,000.00) without subsidiary imprisonment in case of insolvency.
2. In Criminal Case No. R-3361, the Court finds the accused, ROMEO HILLADO, guilty beyond reasonable doubt of the crime of Frustrated Murder and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prision Mayor as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS OF Reclusion Temporal as maximum, with accessories provided by law; and to indemnify the private offended party, Margarito Balestramon in the sum of NINETEEN THOUSAND FIVE HUNDRED PESOS (P19,500.00) without subsidiary imprisonment in case of insolvency.

The accused shall, however, be entitled to the full term of his preventive imprisonment, provided, that he shall have agreed in writing to abide with the disciplinary rules and regulations imposed on convicted prisoners; otherwise, he shall be credited only (4/5) of his preventive imprisonment.

With costs against the accused in both instances.

SO ORDERED.<sup>[17]</sup>

Accused-appellant appealed the above decision to the Court of Appeals. In a Resolution<sup>[18]</sup> dated 9 October 1995, Court of Appeals elevated the case to this Court for review since the penalty to be imposed for the crime of murder is *reclusion perpetua*, there being no discernible modifying circumstances, which is under the exclusive appellate jurisdiction of this Court.<sup>[19]</sup>

Upon certification of the case to this Court, we required the parties to submit supplemental briefs.<sup>[20]</sup> In a Manifestation<sup>[21]</sup> dated 31 August 1998, accused-appellant through counsel, stated that it is no longer necessary to file a supplemental brief to avoid repetition of arguments, and that the case should already be submitted for decision *sans* the supplemental brief.

In his Brief, accused-appellant ascribes the following errors to the trial court:

# I

THE TRIAL COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE PUT UP BY THE APPELLANT.