

THIRD DIVISION

[G.R. No. 126650, July 28, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMARJONEL FRANCISCO TOMOLIN, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

This is an appeal from the August 30, 1996, Decision^[1] of the Regional Trial Court of Parañaque, Branch 258,^[2] in Criminal Case Nos. 94-0798 and 94-0799 convicting accused-appellant Emarjonel Francisco Tomolin of the crime of murder (two counts) and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Rolando Virtudes in the amount of P50,000.00 as moral damages of P51,660.85 as actual damages, and to the heirs of Alfredo Ayeras, P50,000.00 as moral damages and P32,162.95 as actual damages.

The Information filed before the trial court which charged accused-appellant Emarjonel with the crime of murder (two counts) read as follows:

Criminal Case No. 94-0798

"That on or about the 5th day of October 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without justifiable cause, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with a gun one Rolando Virtudes, thereby inflicting upon the latter serious and mortal wounds which caused his death.

Contrary to law."^[3]

Criminal Case No. 94-0799

"That on or about the 5th day of October 1994, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without justifiable cause, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with a gun one Alfredo Ayeras, thereby inflicting upon the latter serious and mortal gunshot wounds which caused his death.

Contrary to law."^[4]

The charge for two counts of murder against accused-appellant Emarjonel Tomolin was filed before the Regional Trial Court of Parañaque, Branch 258.

During trial, prosecution witness Narciso Bistel, a security guard from Manforce Agency, testified that on October 4-5, 1994, he was assigned at the Alegro Pacific Corporation compound in Paranaque, together with fellow security guards, the victims Rolando Virtudes and Alfredo Ayeras and accused-appellant Emarjonel Tomolin. His guard duty assignment was from six o'clock in the evening of October 4 until six o'clock in the morning of October 5, the same guard duty assignment as that of accused-appellant and the victims. At around 12:45 in the morning of October 5, 1994, Rolando and Alfredo were posted near the front gate of the Alegro Pacific Corporation compound, seated beside each other, while Narciso was about twenty meters away. At that exact moment, accused-appellant emerged from the back area of the compound, where he was assigned, and approached Rolando, who was then seated and writing in the logbook. Accused-appellant then suddenly drew out his service firearm and shot Rolando once in the head, and thereafter immediately fired two shots at Alfredo. After the shooting, accused-appellant fled from the compound, leaving the body of the victims sprawled on the ground.^[5]

Dr. Valentin T. Bernales, a National Bureau of Investigation (NBI) medico legal officer III, conducted the post mortem examination on victims Rolando and Alfredo. He issued Autopsy Reports stating the following findings:

Rolando Virtudes:

"x x x. gunshot wound, entrance 1.1 x 0.8 cm., ovoid to shape, edges contused and inverted; head, parietal area; x x x temporal lobe of the brain; sphenoid bone where the slug was recovered. Hemorrhage, subdural, subarachnoidal, massive generalized."^[6]

Based on his examination, Dr. Bernales testified that the entrance of the gunshot wound of Rolando was on the right side, upper portion of the ear, and that the gun that shot Rolando was probably directed medially, slightly forward and downward.^[7]

Alfredo Ayeras:

"x x x. Contusion, reddish, forehead, left side, 3.0 x 2.0 cm; Lacerated wound, head, parietal area, right frontal portion 3.0 cm.; gunshot wounds, entrance of which are ovaloid, edges contused and inverted."^[8]

Dr. Bernales further testified that Alfredo suffered two gunshot wounds with the wound at the back, extending to the frontal portion of the chest, penetrating the vital organs of the body, causing the victim's spontaneous death.^[9]

The prosecution also presented PO2 Elorde Malicse, a police officer assigned to the mobile support group of the Paranaque Police Station, who responded to the call for assistance regarding the subject shooting incident at the Alegro Pacific Corporation compound. PO2 Malicse testified that when he and other policemen arrived at the scene of the shooting, they learned from Narciso Bistel that accused-appellant shot Rolando Virtudes and Alfredo Ayeras, and then fled towards Multinational Village. With this information, the policemen searched the nearby areas and saw a person riding in a pedicab. The passenger turned out to be the accused-appellant, and a .38 caliber revolver was recovered from him.^[10] The gun was subsequently turned over to the NBI for ballistics examination.

Rogelio Munar, the chief ballistics officer of the NBI, testified on the ballistic examination results on the firearm recovered from the accuse-appellant- a Squire Bingham .38 caliber revolver with serial number 1092205.^[11] He concluded that the bullets taken from the body of Rolando and Alfredo came from accused-appellant's .38 caliber revolver.^[12]

The prosecution also presented Rosemarie Valencia, the niece of Rolando, who testified on the actual expenses incurred by the victim's family for the funeral and burial expenses, which amounted to P51,660.85.^[13] On Alfredo's behalf, the prosecution presented his son, Joselito Ayeras, who testified that the funeral and burial expenses for Alfredo totalled P32,162.95.^[14]

Accused-appellant, during his testimony, admitted shooting Rolando and Alfredo, but claimed self-defense. He testified that on October 4-5, 1994, he had guard duty assignment from six o'clock in the evening until six o'clock in the morning at the Alegro Pacific Corporation compound in Multinational Village, Paranaque. He was with Narciso Bistol and the victims, Rolando Virtudes and Alfredo Ayeras. At around 12: 45 in the morning, accused-appellant approached the front gate of the building to turn over the watchman's clock to Alfredo, who was then the officer-in-charge on the detail. Rolando was then seated beside Alfredo. He alleged that Alfredo and Rolando directed insulting words at him, and Rolando even poked his gun against his chest. Rolando also slapped accused-appellant and tried to grab his service firearm. They both grappled for the gun, and in the ensuing struggle, he shot Rolando. After shooting Rolando, accused-appellant testified that Alfredo tried to grab his hand, and after a brief struggle, he was able to draw his gun, and shot Alfredo on the chest. He then went out of the building to proceed to the nearest police station in order to surrender to the authorities. However, he was met by police officers who arrested him.^[15]

The trial court rejected accused-appellant's claim of self-defense and on August 30, 1996, rendered a decision finding accused-appellant guilty of murder for the deaths of Rolando Virtudes and Alfredo Ayeras. The dispositive portion of the trial court's decision reads as follows:

"Wherefore, viewed in the light of the foregoing, the prosecution having been able to prove beyond any iota of doubt the guilt of the accused EMARJONEL FRANCISCO TOMOLIN of the crime of murder under Article 248 of the Revised Penal Code, as amended by Republic Act 7639, he is hereby sentenced *viz*:

CRIMINAL CASE NO. 94-0798 - to suffer the penalty of RECLUSION PERPETUA for the death of ROLANDO VIRTUDES, to pay his heirs the sum of P51,660.85 as actual damages and the sum of of P50,000.00 as moral damages; and

CRIMINAL CASE NO. 94-0799 - to suffer the penalty of RECLUSION PERPETUA for the death of ALFREDO AYERAS, to indemnify his heirs the amount of P32,162.95 as actual damages and the amount of P50,000,00 as moral damages.