

FIRST DIVISION

[G.R. No. 125397, August 10, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NESTOR MOLINA Y GATUS, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the Decision of the RTC of Malabon, Metro Manila, Branch 170 convicting accused-appellant Nestor Molina of the crime of murder qualified by treachery.^[1]

The Information^[2] against Molina states:

"That on or about the 11th day of October 1994, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring, confederating and mutually helping with (sic) one another, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said gun one HERMINIO JORGE Y PERALTA, hitting the victim on his body, thereby inflicting upon the victim gunshot wounds, which caused his immediate death.

"Contrary to law."^[3]

Molina pled not guilty and underwent trial. The prosecution relied heavily on the eyewitness account of Ernesto Mandia, a pedicab driver who plies the route of Bayan Malabon and Sipac, Navotas. He testified that on October 11, 1994 at about 4:40 A.M., he parked his pedicab at the corner of Baradero and M. Naval Street, Navotas. He was resting while waiting for passengers. He then noticed Molina, alias "Etoy," with two companions. Molina was talking with one while the other stood across the street.

At 5:20 A.M., a passenger jeepney driven by Herminio Jorge came from the direction of Manila. It was flagged down by one of Molina's companion and it stopped at the corner of Baradero Street. Molina, with a gun in his hand, and one of his companions approached Jorge. Molina went to the right side of the driver's seat while the other positioned himself on the left side. From a distance of an arm's length, Molina fired four (4) times at Jorge who was sitting at the driver's seat. Thereafter, they walked away casually from the scene of the crime.^[4]

Jorge died immediately. The autopsy conducted by Dr. Florante F. Baltazar revealed that Jorge sustained eight (8) external injuries - four (4) gunshot wounds, two (2) abrasions and two (2) lacerations. He also suffered from some fractures.^[5] The shooting was investigated by SPO4 Jose Andrade.

The amount of fifteen thousand pesos (P15,000.00) was spent for the funeral of Jorge. The family likewise spent for the food during the wake and for a band.^[6]

The accused-appellant proffered the defense of alibi. He said that as of August 17, 1994, his family has already transferred residence from Dulong Tangos, Navotas to Sta. Lucia, San Miguel, Bulacan. They lived in the house of Ricardo Sioson, his father-in-law. He admitted that he knew Jorge as they were previous neighbors. He was unaware of any reason why the family of Jorge charged him with the crime at bar.^[7]

Accused-appellant's wife Luzviminda and his father-in-law corroborated his alibi. Both testified that he was in their house in San Miguel, Bulacan on the day and time of the shooting of Jorge.

As aforesaid, the trial court convicted the accused-appellant. He was sentenced to suffer the penalty of *reclusion perpetua* together with all its accessory penalties. He was also ordered to indemnify the heirs of Jorge the amounts of fifteen thousand (P15,000.00) as actual damages, fifty thousand pesos (P50,000.00) as civil indemnity and the cost of suit.

In this appeal, accused-appellant contends:

I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND UNCORROBORATED TESTIMONY OF PROSECUTION WITNESS ERNESTO MANDIA.

II

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."

We find no merit in the appeal.

First. Accused-appellant was positively identified by Mandia. There is no reason to disbelieve the testimony of Mandia. He witnessed the incident from a distance of two arm's length. He has known the accused-appellant some seven to eight months before the incident. Like Mandia, accused-appellant also drove a tricycle.^[8]

The attempt of accused-appellant to impute ill-motive against Mandia is futile. He urges us to deduce this ill-motive from the fact that Mandia denied that accused-appellant's picture was shown to him for identification. This little detail hardly matters. As discussed above, Mandia could not have erred in identifying accused-appellant as they knew each other. The records also belie accused-appellant's claim. Contrary to his allegation, Mandia admitted that the brother of Jorge showed appellant's picture to him.^[9] Neither can ill-motive be deduced from the failure of Mandia to report the crime immediately to the authorities. Mandia satisfactorily explained the 26-day delay. He said that he was "stunned" by the incident and was still fearful when he reported to the police authorities.^[10] There is another reason