

SECOND DIVISION

[G.R. No. 113018, June 05, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GABRIEL CIPRIANO, ACCUSED-APPELLANT.**

D E C I S I O N

REGALADO, J.:

Accused-appellant Gabriel Cipriano has come to this Court praying for the reversal of the decision^[1] of the Regional Trial Court, Branch 6-A, of Palo, Leyte, finding him guilty beyond reasonable doubt of murder for the violent death of Cresencia Mirasol.

In an information^[2] filed on August 15, 1990 and docketed as Criminal Case No. 90-08-339, appellant was charged with murder allegedly committed as follows:

That on or about the 3rd day of February, 1990, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill and with treachery and evident premeditation, armed with a gun, did then and there willfully, unlawfully and feloniously attack and shoot CRESENCIA MIRASOL with said gun hitting and wounding her on the body, thereby inflicting upon said Cresencia Mirasol gunshot wound which caused her death.

At his arraignment with the assistance of counsel, appellant pleaded not guilty to the crime charged^[3] and, thereafter, the trial of the case proceeded. Presented as witnesses by the prosecution were Emma Balo, Geronimo Mirasol, Arnulfo Reyes, Dr. Angel Cordero, Pat. Federico Tan, Pat. Alberto Modesto, Ruben Espeleta, SPO1 Jose Talagtag, T/S Teodoro Fornillo, and Vicente de Vera. Their testimonies, with the documentary evidence adduced in the course of the proceedings, presented the case for the People.

Emma Balo, a subordinate of victim Cresencia Mirasol in the Department of Environment and Natural Resources (DENR), testified that at around 10:00 o'clock in the evening of February 3, 1990, she was at the residence of the victim. While seated across each other at a table in the carport and working on the final deployment of personnel of the DENR, they were startled by a loud explosion which sounded like a firecracker.

She heard victim Mirasol ask, "*Ano adto, Em?*" (What was that, Em?). She could not immediately answer the victim as she was stunned by that strong burst of sound. She then heard Mirasol utter, "*Agi, agi,*"^[*] and saw her hold her chest while slowly reclining her head forward on the table. Seeing blood flowing out of the back of the victim, she placed her hand on the wound in an attempt to stanch the bleeding. At the same time, she called Geronimo Mirasol, the victim's brother who lived next

door and, together, they thereafter brought the victim to the hospital where she was pronounced dead on arrival.^[4]

Geronimo Mirasol testified that he was awakened by his wife who heard a gunshot and noticed a commotion in the house of Cresencia. When he arrived there, he saw his sister lying on the floor near the carport, bathed in her own blood. He asked Emma Balo as to who shot his sister and she replied that she saw a man wearing a black jacket in the immediate vicinity. The following morning, he went behind the house of his deceased sister and noted several footprints and tire marks near the wall.^[5]

He further revealed that prior to February 3, 1990, there were altercations between him and herein appellant. Their quarrels started sometime in June 1988 when the son of appellant broke the jalousies of his house with a slingshot. When appellant learned that his son was being blamed for the broken jalousies, he went out of his house bringing with him his .38 caliber revolver and challenged Geronimo Mirasol to a fight, which provocation the latter prudently ignored.

The same incident again happened in October 1989, this time with appellant firing his armalite rifle in the air. Cresencia Mirasol who heard the gunshots, went out of her house, confronted the appellant and tried to pacify him, but he arrogantly replied, "*Malabad kamo*" (You are both troublesome.) In December 1989, the jalousies of the house of victim Mirasol were hit and broken by a slingshot. She did not complain but she suspected that it was committed by the same person responsible for the previous incidents.^[6]

Prosecution witness Arnulfo Reyes testified that at around 10:30 in the evening of February 3, 1990, while coming from Hollywood Street on his way to his aunt's house, he heard a gunshot emanating from Texas Street. While looking for a safe place to hide in the corner of Texas and San Francisco Streets, he saw appellant coming out from the gutter near the house of victim Mirasol. Appellant, who was holding a gun in his right hand, then got hold of the steering bar of a bicycle, tucked the gun in his waist, and rode away on the bicycle. This witness easily recognized herein appellant because he was just five meters away from him, the place was well lighted, and the witness knew him well since they were distant relatives.^[7]

Arnulfo Reyes also testified that at around 8:00 o'clock in the evening of February 11, 1990, during the fiesta celebration at V&G Subdivision, he was on his way on board a pedicab to the grounds of the fair being held there when he heard somebody calling him, "*Ongkong.*" When he looked back, he saw appellant pointing a gun at him. He immediately jumped out of the pedicab and ran but he was hit in the back by a bullet. Appellant tried to shoot him again but, luckily, this time he was not hit. He hurriedly proceeded to his house and was later brought to the hospital for medical treatment.^[8]

He further declared that the reason why appellant tried to kill him was because he had knowledge of the killing of Cresencia Mirasol, and that he had executed a sworn statement implicating herein appellant as the assailant.^[9]

Dr. Angel Cordero,^[10] who conducted a necropsy examination on the body of deceased Cresencia Mirasol on February 4, 1990, affirmed in court that the cause of her death was shock due to massive hemorrhage caused by a gunshot wound in the

chest, lacerating the heart.^[11] He opined that the assailant could have been standing on an elevated level behind the victim, as the point of entry of the slug was at her back.^[12]

Patrolman Federico Tan, a member of the Pastrana Police Station since May 1988, was assigned as police officer of the day on February 3 and 4, 1990. He testified that herein appellant was assigned as a market guard from 6 o'clock in the evening of February 8, 1990 to 8 o'clock in the morning of the following day, but appellant did not report for duty on that day and during the scheduled hours of his assignment.^[13]

Patrolman Alberto Modesto, also a member of the Pastrana Police Station since 1978, testified that sometime in February 1990, appellant talked to him about his desire to pledge his .45 caliber pistol, the proceeds of which he planned to use in the forthcoming fiesta celebration. The witness referred appellant to his nephew-in-law, Ruben Espelita, who was residing in Barangay Astorga. Appellant met him again after the fiesta and told him that he needed additional money as he was involved in a shooting incident in their subdivision. Witness Modesto also confirmed that prior to February 1990, he often saw appellant in possession of that same pistol in the Pastrana Police Station.^[14]

In open court, while testifying as a prosecution witness therein, he was able to identify that firearm which he saw in the possession of appellant, and was later pledged to Ruben Espelita, as an Ithaca .45 caliber pistol bearing Serial No. 1233458.^[15]

Prosecution witness Ruben Espelita, Barangay Captain of Barangay Astorga, Alang-alang, Leyte, corroborated the testimony of Patrolman Modesto about the .45 caliber pistol that was pledged to him by appellant. He testified that said appellant went to see him thrice: first, on February 9, 1990, when the appellant pledged the pistol to him for P3,500.00; second, on February 28, 1990, when appellant asked for additional money but was not able to get any; and, third, in the third week of March 1990 when he was able to get an additional amount of P2,000.00 from this witness.^[16]

On April 5, 1990, by virtue of a search warrant, a Criminal Intelligence Service (CIS) team went to Espelita's house to search for that pistol, and his wife voluntarily surrendered the gun in question. He was investigated in the CIS headquarters in Tacloban City and was informed that said firearm had been used as a murder weapon.^[17]

Witness Espelita further averred that, in connection with the pledge of that gun to him, he requested appellant to sign a receipt but the latter refused by calling attention to the fact that they had after all entered into a gentlemen's agreement. Espelita did not insist anymore on a receipt from appellant because of their supposed agreement and the fact that appellant had been referred to him by his own relative.^[18]

SPO1 Jose P. Talagtag, a member of the Philippine National Police (PNP)-CIS in Ormoc City, took the stand and narrated that he was assigned to investigate the death of Cresencia Mirasol. A certain Patrolman Jun Reyes approached and informed him that his brother, Arnulfo Reyes, had knowledge about the incident. He

interrogated Arnulfo Reyes and a sworn statement^[19] was executed and signed by the latter. He also learned from Dr. Cordero that a slug was taken from the body of the victim and marked with an initial "CM." That slug had been turned over to the Philippine Constabulary (PC) Crime Laboratory for safekeeping.^[20]

He further testified that it was his team which applied for and secured a search warrant from Judge Pedro S. Espina for the recovery of the getaway bicycle, the jacket allegedly worn by the assailant, and the .45 caliber pistol used in the shooting of Cresencia Mirasol. Said bicycle and jacket were found in and recovered from the residence of herein appellant, while the pistol was found in and retrieved from the residence of Ruben Espelita in Alang-alang, Leyte.^[21] He also made the clarification that when that pistol was confiscated, he immediately turned over the gun to T/Sgt. Fornillos of the PC Crime Laboratory for ballistic examination.^[22]

T/Sgt. Teodoro Fornillos, who was assigned as Chief Clerk of the PC/PNP Crime Laboratory Service Station in Palo, Leyte, confirmed that he was the one who received and supervised the ballistic test fire examination on the .45 caliber Ithaca pistol with Serial No. 1233458. He informed the trial court that said pistol, together with the test-fired bullets and the slug taken from the body of Cresencia Mirasol, were brought to Camp Crame for ballistic examination.^[23]

Vicente de Vera, Chief of the Ballistic Branch of the PNP Crime Laboratory at Camp Crame, testified that he personally received and conducted the ballistics examination on the subject gun and slug. Based on his examination he concluded that the slug marked with an initial "CM" was fired from the .45 caliber Ithaca pistol with Serial No. 1233458, the same gun that was allegedly pledged to Ruben Espelita by appellant and subsequently confiscated by police authorities.^[24] He accordingly issued Ballistic Report No. B-1-179-90^[25] setting out those findings.

Appellant, on the other hand, denied killing Cresencia Mirasol and raised an alibi as his defense. He contended that in the evening of February 3, 1990, he was at the Gov. Jaro Coliseum for a scheduled cockfight derby, hence he failed to report for duty as a market guard. He met Reginaldo Rosalio, who had a gamecock entry which participated and won in the derby, while the latter was drinking in one of the canteens of said coliseum. He was invited by Rosalio to join him at their table. They waited for the prize money until 11:00 o'clock in the evening and then proceeded to Rosalio's house in Phase 5, V&G Subdivision for an extended celebration. He did not stay long, but went ahead of the group and proceeded to the so-called shed house to buy some fish.

He met Asterio Colipano in the shed house and requested the latter to bring him home. Colipano agreed to do so after he shall have delivered the twelve "*bañeras*" of fish to the market. Thereafter, they proceeded from the market to Phase 4 of V&G Subdivision. Appellant alighted at the waiting station of the subdivision and then walked all the way home. Arriving at the gate of their house at around 2:00 o'clock in the morning of February 4, he noticed several persons in the house of Cresencia Mirasol. He was informed that Mirasol had been shot and was rushed to the hospital.^[26]

The defense also presented Reginaldo Rosalio and Asterio Colipano to corroborate the alibi of herein appellant. Rosalio further asserted that herein appellant was with