

SECOND DIVISION

[G.R. No. 124212, September 17, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO FELOTEO, ACCUSED-APPELLANT.**

A M E N D E D D E C I S I O N

PUNO, J.:

Accused **WILFREDO FELOTEO** was charged with and convicted of the crimes of **Murder**, as defined and penalized under Article 248 of the Revised Penal Code, and **Illegal Possession of Firearm**, a violation of Section 1 of Presidential Decree No. 1866.

The Informations against accused read:

In Criminal Case No. 11109

"That on or about the 6th day of May, 1993, in the evening, at Sitio Nagbaril, Barangay Bintuan, Municipality of Coron, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, **with evident premeditation and treachery**, while armed with a firearm and with intent to kill, did then and there willfully, unlawfully and **feloniously shoot with his firearm, to wit: an armalite rifle, one SONNY SOTTO**, hitting him on the vital part of his body and inflicting upon him a gunshot wound on the left side of his chest, thru and thru, which injury was the direct and immediate cause of his instantaneous death. (emphasis ours)

"CONTRARY TO LAW and committed with aggravating circumstance of treachery."

In Criminal Case No. 11644

"That on or about the 6th day of May, 1993, and prior thereto, at Sitio Nagbaril, Barangay Bintuan, Municipality of Coron, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and **feloniously have in his possession, custody and control, one armalite rifle with Serial No. 9035914 and ammunitions, without any license or permit to possess** the same and that this firearm was **used in shooting to death one SONNY SOTTO** in a case of Murder filed with the RTC of Palawan and Puerto Princesa City, docketed as Criminal Case No. 11109 and that this crime have no relation or (is not) in furtherance of the crime of rebellion or subversion. (emphasis ours)

"CONTRARY TO LAW."

When arraigned, accused pled not guilty. Trial ensued.

The records show that in the evening of May 6, 1993, the victim, SONNY SOTTO, and his friends, ARNEL ABELEDA and JOHNNY ABREA, were walking along the highway in Barangay Bintuan, Coron, Province of Palawan. They had a few drinks earlier that day and were on their way home to Sitio Nagbaril. Abrea walked ahead of the group, about thirteen (13) meters away from Sotto, followed by Abeleda. They were in a lively mood as Abeleda playfully walked backwards, facing Sotto.^[1]

The accused, WILFREDO FELOTEO, appeared on the opposite side of the road and walked past Abrea and Abeleda. He was armed with an armalite rifle. Abeleda and Abrea recognized the accused, their barriomate, as the moon was shining brightly. They did not pay much attention to the accused as Abeleda was playing "*habulan*" with Sotto. Without uttering a word, the accused aimed the armalite at Sotto and pressed its trigger. Sotto was hit above the left chest and fell on the ground, face down. Abeleda and Abrea scampered away to find help, while the accused fled from the crime scene.^[2] Ten (10) minutes later, Abeleda and Abrea, accompanied by *Barangay Tanod* Tito Abrina and a certain Inyong Adion, returned to the *locus criminis*. They found Sotto dead.

Sotto was brought to the hospital for autopsy. The Autopsy Report showed that he sustained a gunshot wound, with the bullet entering the left side of his collarbone and exiting at the spinal cord. The bullet came from an M-16 armalite rifle. He also had abrasions on the knees and face. Dr. Hew G. Curameng of the Palawan Provincial Hospital opined that Sotto fell on his knees before he slumped on the ground, face down. There were no powder burns on his body, indicating that the victim was shot from a distance. The cause of death was massive blood loss secondary to gunshot wound.^[3]

The firearm used in the shooting incident belongs to SPO2 Roman Adion. On May 6, 1993, SPO2 Adion went to the house of Teofisto Alaquin in Sitio Nagbaril. He brought with him his official service firearm, an M-16 armalite rifle,^[4] as he has been ordered to go to Jandanao the next day to investigate a land dispute. He slept early. At around 6:30 p.m., Alaquin woke him up and informed him that the accused stole his armalite. SPO2 Adion, together with Nazario Adion and Frank Adion, immediately looked for the accused. They heard a gunshot coming from a distance of about four hundred (400) meters and rushed to the place where it emanated. They saw Sotto lying prostrate on the road, shot on the chest. SPO2 Adion suspected that his armalite was used in the shooting incident and he continued his hunt for the accused. The next day, May 7, 1993, at 5:00 a.m., he nabbed the accused in Sitio Cabugao, five (5) kilometers away from the crime scene. The accused surrendered the armalite to him. Upon inspection, SPO2 Adion found nineteen (19) bullets left in the armalite. There were twenty (20) bullets inside the armalite chamber and magazine before it was stolen.^[5]

SPO4 Jose Ansay, Chief of the Firearm and Explosive Unit of the Philippine National Police (PNP) in Tiniguiban, Puerto Princesa City, Palawan, affirmed that the accused was not duly licensed to carry a firearm.^[6]

The accused denied that he stole SPO2 Adion's armalite and alleged that the shooting of Sotto was an accident. He averred that on May 6, 1993, he was in his

sister's house in Barangay Bintuan, Coron, when SPO2 Adion passed by and invited him over to the place of Teofisto Alaquin in Nagbaril. They boarded SPO2 Adion's tricycle and arrived at Nagbaril at about 3:00 p.m. Frank Adion dropped by the house of Alaquin and borrowed the tricycle of SPO2 Adion. Frank Adion later returned on foot and told SPO2 Adion that the tricycle's engine broke down so he left it along the road. SPO2 Adion checked on his tricycle and left behind his armalite rifle. Before leaving, he instructed the accused to wait for him at Alaquin's house.^[7]

After thirty minutes, the accused decided to follow SPO2 Adion. He took the armalite and walked the road leading to Bintuan. At about 7:00 p.m., he met Sonny Sotto's group. They zigzagged as they walked. In jest, the accused said to Sotto, "Boots, don't get near me, I'll shoot you." He pointed the armalite to Sotto and pressed its trigger, allegedly unaware that it was loaded. It fired and hit Sotto. The accused fled but was apprehended by SPO2 Adion the following day. He told SPO2 Adion that he accidentally shot Sotto.^[8]

After trial, the accused was found guilty as charged.^[9] He was sentenced to suffer the penalties of *reclusion perpetua*, for murder, and imprisonment of twenty (20) years, for illegal possession of firearm. He was further ordered to pay the heirs of Sotto the amount of fifty thousand pesos (P50,000.00), as civil indemnity.

In this appeal, appellant contends:

"THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AS ATTENDING THE COMMISSION OF THE CRIME ALLEGED AND IN HOLDING ACCUSED-APPELLANT GUILTY OF MURDER IN THE KILLING OF SONNY SOTTO."

We affirm the judgment of conviction with modification.

We reject the argument of the appellant that he should not have been convicted for murder as treachery was not duly established by the prosecution. Allegedly, Sotto knew of the impending attack for it was frontal. Moreover, Sotto was warned, albeit jokingly, that he was going to be shot.

Under par. 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to insure its execution without risk to himself arising from any defensive or retaliatory act which the victim might make.^[10] The settled rule is that *treachery can exist even if the attack is frontal* if it is *sudden and unexpected*, giving the victim no opportunity to repel it or defend himself. What is decisive is that the execution of the attack, without the slightest provocation from a victim who is unarmed, made it impossible for the victim to defend himself or to retaliate.^[11]

In the case at bar, treachery is present for there was a sudden attack against the unarmed Sotto. When Sotto and his friends encountered appellant on the road, they were in a "jovial mood" as they just came from a drinking spree. Although they saw appellant carrying an armalite, they did not suspect anything untoward to happen. However, without any provocation, appellant shot Sotto. The fact that the attack was frontal cannot negate treachery. The shooting was unexpected. There is no showing that the alleged warning given by appellant to Sotto afforded the latter sufficient

time to defend himself. Indeed, Sotto could not defend himself as he was unarmed and a bit drunk-- as observed by the appellant himself, the victim was walking in a zigzag manner. There was no way for Sotto to avoid the armalite bullet.

We now come to the penalty imposed on appellant for the illegal possession of firearm in view of the recent amendments to P.D. No. 1866 by R.A. No. 8294.

Appellant was convicted under Article 248 of the Revised Penal Code, for murder, and under Section 1 of P.D. No. 1866, for illegal possession of firearm, the governing laws at the time the crimes were committed. Section 1 of P.D. 1866 provides:

"SEC. 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.*- The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any firearm, part of firearm, ammunition of machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed." (emphasis ours)

Republic Act No. 8294, amended P.D. No. 1866, by reducing the penalties for simple and aggravated forms of illegal possession of firearms.^[12] The law now provides:

"Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.*- The penalty of **prision correccional in its maximum period** and a fine of not less than Fifteen thousand pesos (P15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm such as rimfire handgun, .380 or .32 and other firearm of similar firepower, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

"The penalty of **prision mayor in its minimum period** and a fine of Thirty thousand pesos (P30,000.00) shall be imposed if the firearm is classified as **high powered firearm** which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .45 and also lesser caliber firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

"If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. (emphasis ours)

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