

SECOND DIVISION

[G.R. No. 110613, March 26, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR VILLANUEVA, ACCUSED-APPELLANT.

DECISION

ROMERO, J.:

For the killing of a certain Amando Mandane, brothers Wilson Villanueva and Edgar Villanueva, together with three others who are at large, namely John Doe, Peter Doe and Edwin Doe were charged with murder, as follows:

"That on or about the 1st day of March 1985 in the Municipality of Donsol, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, armed with boloes, did then and there wilfully, unlawfully and feloniously attack, assault and hack one Amando Mandane while the latter was not in a position to defend himself, inflicting upon the latter the following injuries, to wit:

- Hack wound 5 1/2 inches long at the lower portion of the neck gaping 2 inches wide, cutting the clavicle throat and esophagus;
- Five hack wound on the nape of the neck 5 inches long and gaping 2 inches wide cutting the cerebellum including the brain tissues and bones of the neck (cervical vertebrates);
- Hack wound cutting the gastrocnemius muscle, 3 inches long and gaping 2 1/2 inches wide of the middle portion of the right lower leg;
- Hack wound cutting back the gastrocnemius of the middle portion of the leg gaping 2 inches wide, 3 inches long

which injuries caused the instant death of said Amando Mandane, to the damage and prejudice of his legal heirs.

Contrary to law."

Upon arraignment on July 18, 1985, accused-appellants through counsel pleaded not guilty to the offense charged. After trial, the Regional Trial Court of Sorsogon, Branch 52 rendered judgment on April 1, 1993 finding accused Wilson Villanueva guilty beyond reasonable doubt as principal of the crime of murder and meted on him the penalty of reclusion perpetua with accessories and accused-appellant Edgar Villanueva guilty beyond reasonable doubt as accomplice and sentenced him to suffer the indeterminate penalty of 4 years, 2 months and 1 day of prison

correcional as minimum to 10 years of prison mayor as maximum. Both were ordered to indemnify and pay jointly and severally the heirs of the victim Amando Mandane in the amount of P50,000.00, actual and compensatory damages of P7,000.00 and moral damages of P30,000.00.

On appeal before this Court, under date of July 9, 1993, accused-appellant Wilson Villanueva filed an urgent petition to use the same bailbond in the amount of P25,000.00. We resolved to deny and cancel the same for lack of merit in our resolution of July 26, 1993. Subsequently in our resolution of September 29, 1993, we resolved to order the bondsman to surrender accused-appellant Wilson Villanueva within ten days from notice to the court of origin and to inform this Court of the fact of surrender within the same period. Judge Eudario B. Valencia of the RTC-Sorsogon, Branch 52 was required to order the transmittal of accused-appellants to the Bureau of Corrections, within five days from the time of surrender and if accused-appellants are not surrendered within the said period of five days, for Judge Valencia to issue an order of arrest against them.

On February 7, 1994, Asst. Director Jesus Villanueva informed this Court in its First Indorsement that Wilson has no record of confinement in the New Bilibid Prisons.

On June 8, 1994, this Court issued a resolution dismissing the appeal of accused-appellant Wilson Villanueva for abandonment. Entry of judgment was made on July 25, 1994. However, the dismissal of the appeal did not include Edgar Villanueva whose degree of culpability in the commission of the crime has still to be determined by this Court.

The facts, as found by the trial court, are as follows:

"x x x at about 6:30 o'clock in the evening of March 1, 1985, Amando Mandane, Ronald Aviso and accused Edgar Villanueva were heading towards the house of accused Wilson Villanueva, Edgar's brother, located uphill of Tres Marias, Donsol, Sorsogon upon Edgar's invitation to drink on the occasion of the latter's birthday. Wilson and Edgar have separate houses. Wilson was not in his house when they arrived thereat — They nevertheless proceeded to drink — Edgar brought out two bottles of gin and two bottles of beer. The three of them partook of the gin even as Ronald and Amando were the only ones who drank the beer. Edgar went out to the kitchen while Ronald and Amando were drinking the beer and returned after the two had consumed the beer. Edgar then invited the two to attend the dance at the plaza of Donsol on the occasion of the canvassing being undertaken preparatory to the celebration of the town fiesta. Ronald and Amando agreed and they (Edgar, Ronald and Amando) went downhill of Wilson's house heading towards the plaza. It was already around 9:00 o'clock in the evening. Upon reaching Tres Marias Drive, a road leading to and about 200 meters from Donsol Emergency Hospital, or 150 meters to the Municipal Building of Donsol and about 60 meters distant to the nearest house — owned by the family of Analyn Abuyan, the three walked side by side at one arms length apart, Edgar Villanueva at the left, Amando Mandane at the middle and Ronald Aviso at the right.

At about the same time, trailing them at a distance of about five arms

length were Pacifico Herrera, Jr. (alias 'Oyo', 'Liot' or 'Eliot') and Romeo Balane alias 'Bontiago' who had just come from Temostocles Alim's farm at Burabod, a sitio of Barangay Topas, Donsol, Sorsogon adjoining Bororan, to ask for coconuts and chicken. Alim is a resident of Topas, while Balano of Barayong — Baras which is about ten kilometers from the poblacion of Donsol. They are each other's friends. Balano requested Herrera or 'Oyo' to accompany him to Alim's farm because Balano did not know the place and he had to see Alim.

While they (Edgar, Ronald, Amando, Herrera and Balano [sic]) in the position and order above indicated were in the progress of their walk, accused Edgar Villanueva suddenly lighted his lighter and not long thereafter his co-accused brother Wilson Villanueva appeared from nowhere and hacked Amando Mandane who instinctively cried 'aray' upon being hit and then slumped on the ground as a result of the injury he sustained. Accused Edgar Villanueva then rushed to the side of his co-accused brother and joined the latter. Ronald Aviso who was steps ahead of the fallen Amando heard the latter's 'aray' cry about (sic). He then saw Wilson hacking the helpless Amando. Ronald went back for Amando and tried to lift him up from the ground but Wilson hacked him (Ronald) on his right shoulder, followed by Edgar who struck him on the right side of his waist determined to finish him too, so, he ran for his life.

Pacifico Herrera, Jr., who was walking out quite far behind of Edgar, Ronald and Amando, also noticed the lighting of the lighter and heard the hacking immediately thereafter which he thought to be just a thud or sound of one boxing another. He likewise observed persons running away after the thud. However, as he and his companion Balano approached the place where the thud came from, he saw a person lying on the ground and when he stooped to investigate who it was, the accused brothers Wilson and Edgar Villanueva, at a distance of about a meter from them, aimed their bolos and motioned to hack him and Balano. This sent them (Herrera and Balano) scampering to safety. They ran towards the ricefield and then went separate ways. Herrera, still afraid, went home and changed clothes so that he could not be recognized and proceeded to the plaza to attend the dance where he heard people talking about a dead person at the Municipal Building. He went there to verify and recognized the dead man to be Amando Mandane, son of Pat. Mandane.

Shortly after the incident, spouses Osias Gabarda and Elena Gabarda were taking Tres Marias Drive on their way to the Donsol Emergency Hospital to bring their son Anecito for treatment of fever. From their residence at Barangay Boang, Donsol, Sorsogon, two and half kilometers from the town proper. Osias had with him a two-battery flashlight. Upon reaching a certain portion of the road leading to the hospital, Osias noticed three persons along the way one of whom he recognized to be Wilson Villanueva. Osias then focused his flashlight towards and he saw Wilson holding a bolo and a dead man lying on the road. Wilson told him to lower his flashlight which he did. Shortly, thereafter, Osias and his wife decided to go home because of fear. The place where they saw the dead man and Wilson holding a bolo was more or less 150 meters from the Municipal Building."