

SECOND DIVISION

[G.R. Nos. 111066-67, August 15, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VILLAMOR ORDOÑA @ AMOR, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Two cases, one for Murder and the other for Frustrated Murder, are before us on appeal. In a Decision dated July 12, 1993, the Regional Trial Court of Guimba, Nueva Ecija, Branch 32 found accused-appellant Villamor Ordoña @ Amor guilty of murdering Felicitas Dayag-Valenzuela, as well as for frustrated murder of Marcelo Valenzuela.^[1]

At about five o'clock in the afternoon of April 25, 1992, the spouses Marcelo Valenzuela and Felicitas Dayag Valenzuela were on their way home from Villa Bautista, Pangasinan. Marcelo was driving their tricycle and Felicitas was seated inside the sidecar as they traversed the irrigation dike in Barangay Luna, Cuyapo, Nueva Ecija. Suddenly, someone started shooting at them. Felicitas was hit and fell face down about two meters from the tricycle after she attempted to escape. Marcelo saw the gunman Villamor Ordoña, herein accused-appellant, and eventually ran into him with the tricycle. As Marcelo tried to escape, he saw Ordoña reload his long firearm. The latter shot at Marcelo who was hit twice, on the chest near his fifth rib and on the arm. When Marcelo looked back, the accused was some fifty meters away. Marcelo also saw the latter return to where Felicitas was and fire at her as she lay prostrate. Despite his injury, Marcelo reached their house. With the assistance of a tricycle driver, he reported the incident to the Philippine National Police in the town of Cuyapo. Two policemen and his aunt brought him to the Provincial hospital in Tarlac, Tarlac.^[2]

The autopsy of Felicitas revealed that she had died on the spot after sustaining a gunshot wound on her chest which hit her heart and lungs and fractured a rib and another gunshot wound on the forehead exposing the brain and detaching part of her skull.^[3] Marcelo was more fortunate because the gunshot wound on his chest, although potentially fatal, exited without causing internal injuries.^[4]

The gunman who ambushed them was SPO1 Villamor Ordoña, nicknamed Amor, a rifleman of the 126th Philippine Constabulary (now Philippine National Police) company based in Barangay Cavite, Guimba, Nueva Ecija. The attack occurred on Saturday, April 25, 1992. Ordoña was attending a course on Urban Counter-Terrorist Warfare at Cabanatuan City from March 9, 1992 to May 1, 1992, Mondays to Saturday noon. In his defense, Ordoña presented the alibi that on April 25, 1992, from four thirty in the afternoon up to six thirty the same evening, he was watching basketball games at their 126th PC Company headquarters in Cavite, Guimba, Nueva Ecija. The defense presented Crescencio Marzan who testified that he saw the

accused at the games.

Ordoña's family residence is located some 600 meters away from Marcelo Valenzuela's house in Barangay Luna, Cuyapo, Nueva Ecija. When asked why Ordoña wanted kill them, Marcelo surmised that the accused bore a grudge against him for buying an irrigation pump for the latter's father, Basilio Ordoña, in December, 1991. Marcelo testified that he bought the pump for P 3,500.00 on December 15, 1991 and that the accused was angered when he learned of the sale and wanted the pump back. Marcelo added that he was unable to use the pump as the accused and Basilio Ordoña, his father, returned for it on the same day, giving him back the purchase price.^[5]

Basilio Ordoña testified that Marcelo bought the pump at the very cheap price of P 1,000.00. Villamor Ordoña accompanied him when he returned the money to Marcelo. They brought the pump home in a sled (pasagad in Tagalog) as instructed by the latter.^[6]

Villamor Ordoña was charged with murder and frustrated murder on July 14, 1992 in Informations which read:

Criminal Case No. 866-G

"That on or about the 25th day of April 1992, in the Municipality of Cuyapo, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long firearm, with intent to kill by means of treachery and evident premeditation, as the attack is sudden and unexpected, which methods directly insured the execution of his plan without risk to himself from the defense which the victim might have done, did then and there, willfully, unlawfully, criminally and feloniously attack, assault and shoot one Felicitas Dayag Valenzuela thereby inflicting upon her gunshot wounds in her body which caused her instantaneous death.

CONTRARY TO LAW

Criminal Case No. 867-G

"That on or about the 25th day of April 1992, in the Municipality of Cuyapo, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with long firearm, with intent to kill by means of treachery and evident premeditation, did then and there, willfully, unlawfully, criminally and feloniously attack, assault and shoot one Marcelo Valenzuela thereby hitting him on the different parts of his body with gunshot wounds, thus performing all the acts of execution which should have produced the crime of Murder as a consequence but nevertheless, did not produce it by reason of causes independent of his will, that is, the timely an able medical assistance extended to said victim which prevented his death.

CONTRARY TO LAW."

After trial, the appealed decision convicting Villamor Ordoña of the crimes charged was rendered on July 12, 1993. The lower court found Ordoña's alibi unavailing and appreciated treachery to qualify the killing of Felicitas into murder. The dispositive portion of the decision reads:

"WHEREFORE, this Court finds the accused Villamor Ordoña alias "Amor" guilty beyond reasonable doubt of the crimes charge in the information, to wit:

In Criminal Case No. 866-G for the Murder of Felicitas Dayag-Valenzuela, in Violation of Article 248 of the Revised Penal Code, without aggravating or mitigating circumstances, and hereby sentences the said accused to RECLUSION PERPETUA, with the accessory penalties provided by law;

In Criminal Case No. 867-G for the Frustrated Murder of Marcelo Valenzuela, without aggravating or mitigating circumstances, in Violation of Article 248 in relation to Article 50 of the Revised Penal Code and hereby sentences the accused to the indeterminate penalty of 6 years, 1 month and 11 days of prision mayor as minimum and 12 years, 5 months and 11 days of prision mayor as maximum with the accessory penalties provided by law.

The accused is hereby ordered to indemnify the heirs of the victim for the death of Felicitas Dayag-Valenzuela of (sic) the amount of P 50,000.00 and to pay the said heirs the amount of P 37,157.00 by way of funeral and other expenses.

SO ORDERED."^[7]

The accused is here represented by both counsel de oficio and counsel de parte who filed an appellant's brief and a supplement thereto, respectively.^[8] Accused-appellant here points out several errors committed by the trial court including the alleged inconsistencies in Marcelo Valenzuela's testimony, the misappreciation of his alibi, the failure to prove treachery, the lack of motive to kill and its failure to apply the "equipoise rule."

After a thorough review of the records in the case before us, the Court is convinced that Ordoña was proven guilty beyond reasonable doubt.

Accused-appellant cites two inconsistencies in Marcelo's testimony. Marcelo initially stated that fifteen shots were fired at them^[9] and later said there were fifteen shots more or less.^[10] The Court accepts Marcelo's explanation that he could not precisely recall how many shots were fired because the accused suddenly appeared and fired at them.^[11] In such situation, it is quite understandable that one cannot keep track of the number of shots fired because one's immediate concern would be to flee or seek cover in order to survive.

Accused likewise makes much of the fact that Marcelo first stated that Villamor Ordoña was the one who gave back the purchase price for the water pump but later declared it was Basilio Ordoña. The transcript of stenographic notes reveals a