

## SECOND DIVISION

**[ G.R. No. 116487, December 15, 1997 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GUILLERMO ARINGUE Y AMOGUIS ALIAS "ALONG," MICHAEL  
CABAL Y DUMADAG, ALIAS "GONGGONG", AND PERCIVERANDO  
PITAO Y GUMAPAC, ALIAS "BEBOT," ACCUSED. MICHAEL CABAL  
Y DUMADAG AND PERCIVERANDO PITAO Y GUMAPAC, ACCUSED-  
APPELLANTS.  
D E C I S I O N**

**PUNO, J.:**

On August 22, 1989, an information was filed before the Regional Trial Court, 10th Judicial Region, Branch 1, Butuan City, charging Guillermo Aringue y Amoguis alias "Along", Michael Cabal y Dumadag alias "Gonggong" and Perciverando Pitao y Gumapac alias "Bebot" of murder committed as follows:

"That on or about the 5th day of August, 1989, at about 8:45 o'clock in the evening more or less, in the City of Butuan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in consideration of a prize, reward or promise by accused Guillermo A. Aringue, conniving and confederating together and mutually helping one another, with the use of unlicensed firearms, with deliberate intent to kill, taking advantage of superior strength, with treachery and evident premeditation, accused Perciverando G. Pitao alias Bebot and Michael Cabal alias "Gonggong", did then and there willfully, unlawfully and feloniously attack, assault and shot one NICOMEDES SALAS hitting the latter on the chest (left side) and head (left side) and inflicting upon him the following physical injuries to wit:

"Internal hemorrhage due to gunshot wounds" and as a consequence of said injuries, Nicomedes A. Salas died almost instantaneously."<sup>[1]</sup>

The three (3) pleaded not guilty when arraigned on November 21, 1989.<sup>[2]</sup>

The prosecution established that: On August 5, 1989, the victim Nicomedes A. Salas, together with his wife Leticia and daughter Lotlot attended a school party at St. Joseph Institute of Technology (SJIT) of which he was President. At 8:45 in the evening, they left SJIT and proceeded to their jeep, a stainless, open (doorless) type, parked in front of the school's main gate. The place was illuminated by two (2) fluorescent lights at the gate of the building and four (4) mercury lights in the center island of Montilla Boulevard.<sup>[3]</sup>

Outside SJIT, Mr. Salas called his driver Rogelio Amora. Amora took the driver's seat and started the engine. Lotlot sat at the rear seat. Mrs. Salas was about to board the jeep when she heard a gunshot coming from her left side. She turned her head towards that direction and saw her husband fall on the ground face down. At the same time, she noticed a man running away. The man was 2 to 2 1/2 meters away from her. In a split second, another man, 1 1/2 meters away, pointed his gun at her. Startled, she pointed her finger at him and shouted, "Hoy, hoy!". The man did not shoot her, but fired at Mr. Salas, hitting him on the chest. Amora also saw the shooting. The man fled towards La Viva, Montilla Boulevard. Mrs. Salas and Amora identified the man as Perciverando Pitao.<sup>[4]</sup> Amora alighted from the jeep and ran towards the victim. They brought Mr. Salas to Santos Clinic where he died at 9:30 p.m.

On August 6, 1989, Dr. Reinerio Durano, the City Health Officer of Butuan City, autopsied the victim's body. He found the cause of death as severe internal hemorrhage due to two (2) gunshot wounds. One of the bullets hit the left side of the chest, two inches below the mid-clavicular line and passed through the chest and abdomen. It wounded the lungs, stomach, spleen and intestines and pierced the left lateral abdominal wall. The other bullet hit his head between the mastoid bone and the occipital prominence and wounded the left hemisphere of the brain. Both wounds were fatal.<sup>[5]</sup>

On August 8, 1989, at about six o'clock in the evening, Sgt. Leonardo Amora of the Philippine Constabulary's 103rd Criminal Investigation Service (CIS) Field Office, received information that the suspects in the killing of Nicomedes Salas were in Barangay Sumilihon. Sgt. Amora, along with some members of the Butuan City Police proceeded to Sumilihon where they found accused Pitao and Cabal playing basketball. Upon request of Sgt. Amora, accused Pitao and Cabal voluntarily went to the Butuan City police station.<sup>[6]</sup>

At about 11 o'clock in the evening of the same day, Cpl. Cipriano Cabaitan investigated accused Cabal. Atty. Roldan Torralba (IBP - Agusan del Norte and Butuan City Chapter) was asked by the police to assist in the investigation.<sup>[7]</sup> The investigation was conducted in the Visayan dialect but was typewritten in English. After the investigation, Cpl. Cabaitan read and translated in Visayan what he had typed to accused Cabal. Atty. Torralba, Capt. Arturo Pojas, and the Station Commander were present as the statement was read to accused Cabal. In his statement, Cabal admitted he killed Salas for P5,000.00. He implicated accused Pitao as the other assailant and accused Aringue as the mastermind. Accused Cabal affixed his signature to the statement after Atty. Torralba had signed it.<sup>[8]</sup>

With accused Cabal's revelation, accused Aringue was invited for questioning. Cpl. Cabaitan asked accused Aringue whether he was willing to accept Atty. Torralba as counsel. When accused Aringue acceded, Cpl. Cabaitan took his statement. The investigation was conducted in Visayan but typewritten in English. After the investigation, the statement was read to accused Aringue.<sup>[9]</sup> Accused Aringue declared he planned the assassination of his half brother Nicomedes Salas. Allegedly, Salas refused to deliver his share in the profits of San Jose Institute of Technology (SJIT), notwithstanding that it was established with his money. He admitted providing the firearms used in the killing.<sup>[10]</sup>

On August 9, 1989, between 6:00 to 7:00 in the morning, radio reporter Vicente "Boy" Montederamos went to the Butuan City Police Station when he learned that the suspects in the Salas' killing had been arrested. The Chief of Police gave him permission to interview the suspects. In the tape recorded interview, the three accused admitted they killed Nicomedes Salas. Montederamos made a transcription<sup>[11]</sup> of the taped interview and submitted it before the court.<sup>[12]</sup>

At 9:00 a.m. of the same day, accused Pitao and Cabal, and some members of the Butuan City Police went to Barangay Sumilihon to recover the firearms used in the shooting. Dionetela Pitao, sister of accused Pitao turned over two .38 cal. Smith and Wesson revolvers and ten (10) live ammunitions. Capt. Ernesto Muescan of the Philippine Constabulary (PC) Crime Laboratory, Camp Evangelista, Cagayan de Oro City found that the bullet recovered from the body of Nicomedes Salas, marked NS-1, and three (3) test bullets marked TD-1 to TD-3 (Exhs. R, R-1, R-2) turned over by Dionetela, were fired from the same firearm. He likewise found that the bullet marked as NS-2 also recovered from the body of the victim, and three (3) test bullets marked T-63-1, T-63-2 and T-63-4 (Exhs. R-3, R-4 and R-5) also among the bullets turned over by Dionetela, were fired from the same firearm.<sup>[13]</sup>

In the evening of August 9, 1989, Mrs. Salas arrived at the police station. Escorted by a police officer to the room where accused Pitao and Cabal were detained, she identified accused Pitao as the second man who fired at her husband.<sup>[14]</sup>

On August 21, 1989, Judge Jose C. Adao issued a Warrant of Arrest against accused Aringue, Cabal and Pitao.<sup>[15]</sup> They were apprehended and detained at the Butuan City Jail.<sup>[16]</sup> On May 17, 1990, accused Cabal and Pitao escaped. Pitao was re-arrested on June 26, 1990, while Cabal surrendered on July 5, 1990.

To avoid conviction, the three accused offered alibi and repudiated their extrajudicial confessions during the trial.

In his defense accused CABAL testified he was in his house the whole day and night of August 5, 1989. On August 8, 1989, he was playing basketball when several armed men approached him. One of them, Sgt. Amora, held his hands while another poked a firearm at his back. Sgt. Amora removed the six bullets from his revolver, inserted one bullet into the drum, turned it, and asked him whether he killed Nicomedes Salas. When he denied the killing, Sgt. Amora pointed his gun at him and played with the trigger. The police officers kept on asking him to confess. He became frightened and gave a confession. He was brought at the police station and placed inside a dark room. Sgt. Amora then ordered him to point at Aringue as the mastermind because the latter had a serious disagreement with Nicomedes Salas. When Mrs. Salas arrived at the station, she was told by Sgt. Amora that the killer already confessed.<sup>[17]</sup>

On the other hand, accused PITAO maintains he was not present at the scene of the crime for he was working at their farm in Sumilihon.<sup>[18]</sup> He denied leaving Sumilihon, except when he attended a bible seminar in Sto. Tomas, Davao del Norte. His diploma showed the seminar ended on June 12, 1988.<sup>[19]</sup>

On August 8, 1989, at about 5:00 p.m., he was playing basketball in Sumilihon, when Sgt. Amora, together with armed men in military uniform, took him and Cabal to the Butuan Central Police Station on a Tamaraw jeep. Inside the jeep, Sgt. Amora asked him whether he participated in killing Nicomedes Salas. He denied it. At the police station, Sgt. Amora slapped him, held his chin up and poured 7-up softdrink on his face. When he could no longer breathe, he admitted killing Nicomedes Salas. When Leticia Salas arrived, Sgt. Amora told her the killer had been arrested. Mrs. Salas slapped him.<sup>[20]</sup>

On August 9, 1989, between 8:00 and 9:00 a.m., Vicente "Boy" Montederamos, a radio reporter, interviewed him in the presence of police officers. Sgt. Amora instructed him to give the same answers to Montederamos as he had given to the police at the station. He was handcuffed to a chair during the interview. When it was over, Sgt. Amora told him to go outside and point to the alleged getaway car. He was made to hold a gun while his picture was being taken. At 10:00 a.m., he was brought to the Office of the Fiscal. He told the fiscal that his statement was untrue. He did not sign it. Back at the police station, Corporal Cabaitan tore the statement to pieces and told Mrs. Salas to just identify Pitao.<sup>[21]</sup> He escaped while detained at the City Jail as somebody told him he would be liquidated.<sup>[22]</sup>

Accused ARINGUE testified that on August 8, 1989, at about 8 o'clock in the evening, policemen came at his house and brought him to the police station. After his fingerprints were taken, he was made to sit on a chair while handcuffed to an old folding bed. A policeman with armalite guarded him. Later, Pfc. Ferdinand Dacillo entered the room and asked another policeman to start the interrogation. The policeman approached him and pointed the armalite at his temple. The policeman asked him to confess. He said that accused Cabal and Pitao had already confessed. Then, they threatened to shoot him. Frightened, he admitted the crime. Then the policemen led him to the second floor. He asked for Atty. Wilfred Asis and Corporal Cabaitan assured him that Atty. Asis would be contacted. However, he was interrogated at 12:00 midnight despite the absence of Atty. Asis. The investigation lasted for two (2) hours. Then, he was brought to the office of Col. Polientes where he found Cpl. Cabaitan, Pfc. Dacillo, Sgt. Amora and Atty. Torralba inside. Atty. Torralba asked him why he confessed. He told him he was afraid of the policemen.<sup>[23]</sup>

On August 9, 1989, the police brought him to the office of Fiscal Ernesto Brocoy. The fiscal read the statement to him in Visayan dialect and asked him whether he understood its contents. He said yes and he was asked to sign it.<sup>[24]</sup>

The trial court rendered a decision dated December 10, 1993 convicting accused Pitao and Cabal of murder and acquitting accused Aringue. The dispositive portion of the decision reads:

"WHEREFORE, in view of all the foregoing, this Court finds accused Michael Cabal and Perciverando Pitao guilty beyond reasonable doubt of the crime of murder and hereby sentences them to suffer imprisonment of reclusion perpetua; to indemnify, jointly and severally, the heirs of the victim Nicomedes A. Salas in the sum of P536,113.00 as actual damages, P2,000,000.00 as moral damages, and to pay the costs.

"Accused Guillermo Aringue is hereby acquitted on reasonable doubt. The immediate release of Guillermo Aringue is hereby ordered only as it affects this case and for as long as there is no order requiring his continued detention.

"SO ORDERED." [25]

On December 22, 1993, accused Pitao and Cabal filed their Notice of Appeal. In their Brief, they contended that:

**"I**

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS INSPITE (sic) THEIR INADMISSIBLE CONFESSION.

**"II**

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS BASED ON FACTS WHICH ARE CONTRARY TO THE TESTIMONY OF THE WITNESSES, BOTH BY THE PROSECUTION AND BY THE DEFENSE." [26]

The appeal has no merit.

It is incorrect for appellants to make it appear that they were convicted solely on the basis of their extrajudicial confessions. In truth, the trial court disregarded their confessions after finding that they were extracted without the assistance of a competent and independent counsel.[27] But, even without their confessions, the trial court found enough evidence to convict them.

Appellant Pitao was positively identified by Leticia Salas and Rogelio Amora, the wife and the driver of the victim, respectively. The trial court noted that Mrs. Salas was face to face with Pitao when the latter pointed his gun at her:

"ATTY. ROSALES (Private Prosecutor):

"Q: What else did you observe after seeing Mr. Salas fallen down with face up (sic), if there was any?

"MRS. LETICIA SALAS:

"A: I saw one man running away and I saw another man pointing his gun at me.

"Q: What was your reaction when you saw that man pointing his gun at you?

"A: I shouted at him.