

FIRST DIVISION

[G.R. No. 116122, September 06, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNOLD CASTILLO Y MANGUIAT, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

Salvador Delmo, a former mayor of Calamba, Laguna, was found dead with three gunshot wounds in the morning of 20 May 1990 on a dusty road in Barangay Bañadero. For his death ARNOLD CASTILLO Y MANGUIAT, AURELIO CASTILLO and BENITO VIÑAS were charged with murder attended with treachery, evident premeditation and abuse of superior strength before the Regional Trial Court of Calamba.

On 30 June 1994 Arnold Castillo y Manguiat was declared by the trial court guilty as charged, sentenced to *reclusion perpetua*, and ordered "to indemnify the heirs of Salvador Delmo the amount of P200,175.00 as actual damages, P500,000.00 for the death of Salvador Delmo and moral damages, and to pay the costs."

Aurelio Castillo and Benito Viñas were acquitted.^[1]

The evidence shows that Aurelio Castillo had a house and lot situated in Bañadero, Calamba, Laguna, which he mortgaged with the Rural Bank of Calamba. After he became delinquent in the payment of his loan the bank foreclosed the mortgage and subsequently sold the property to Mayor Salvador Delmo.

On 3 May 1993 the sheriff, the bank lawyer and bank officials, and the security guards hired by Mayor Delmo proceeded to Bañadero to implement the writ of possession issued by the trial court. Aurelio pleaded with the bank lawyer not to implement the writ yet because he would elevate the case to the Court of Appeals. The bank lawyer however replied that he could not do anything anymore because the court order was already final and executory. Aurelio retorted, *Magkakamatayan tayo dito; ang hirap ninyong pakiusapan*. Thereafter, he entered his house. A few seconds later, the bank lawyer heard a resounding blow against the wall of the house, followed by a loud outcry from Aurelio.

After a while, a nephew of Aurelio came out. He informed the bank lawyer that they could proceed with the removal of the personal properties inside the house. The sheriff and his men then did as they were told. There was no resistance from anybody. After the sheriff turned over the possession of the property to the bank lawyer the latter delivered it to Mayor Delmo.

On 20 May 1993, at around six o'clock in the morning, Juan Bongga, a helper of Mayor Delmo, went to the *kalamansi-an* of his father-in-law in Bañadero to gather

kalamansi. A few minutes later Maria Cristina Delmo, wife of Salvador Delmo Jr. and daughter-in-law of Mayor Delmo, arrived and sought permission also to gather *kalamansi*. It was at about seven o'clock that same morning when Juan Bongga saw Mayor Delmo and Aurelio Castillo arguing in the middle of the road. Juan was about twenty meters away. With Aurelio were his son Arnold and brother-in-law Benito Viñas.

While Mayor Delmo and Aurelio were arguing, Arnold went suddenly behind the mayor and fired a shot at the back of his head causing him to fall to the ground with face downward. Arnold fired a second shot at the back of Delmo's body, and a third shot at the lower portion of his buttocks. Juan then ran towards the house of Salvador Delmo Jr. and informed him of the incident. He did not however name the perpetrator/s of the crime.

After hearing the shots, Maria Cristina headed towards the direction where the shots came from. She was astounded when she saw her father-in-law lying on the road some forty to forty-five meters away. She readily recognized him. He was wearing a white T-shirt and a pair of checkered shorts, the same attire he was wearing when she talked to him before proceeding to the *kalamansi-an*. She also saw Arnold pointing a short firearm at her father-in-law with Aurelio and Benito standing nearby. Upon seeing the victim she ran towards home. Her husband was in the kitchen when she arrived but was not able to say anything to him immediately because he was in a state of shock. She just went straight to their bedroom. After some two to five minutes Primo, a houseboy of Mayor Delmo, also arrived with another helper and informed Salvador Jr. of the shooting of his father.

Maria Cristina rushed back to the crime scene, this time together with her husband Salvador Jr. After a few minutes policemen arrived and conducted an investigation. But Maria Cristina had yet to regain her physical and mental equipoise.

The medico-legal report showed that Mayor Delmo suffered three gunshot wounds: at the back of his head, at the middle of his back, and at the back of his left thigh, and that he died of hemorrhage as a result of gunshot wounds.

That same morning Arnold and Benito were invited by the investigators to the police station but were released after interrogation. Aurelio also gave his statement to the police that afternoon.

On 23 May 1993 Aurelio and Arnold went to Balele, Tanauan, Batangas. They stayed in the house of a sister of Aurelio and then in the house of a brother until June or July 1993. They returned to Calamba, Laguna, and stayed in a house in Bucal under the custody of Col. Cesario Barairo. They were later turned over to the Jail Warden.

According to Dr. Marcelina Delmo, widow of Mayor Delmo, she was shocked upon seeing the lifeless body of her husband and could neither eat nor sleep. She said she was also forced to close her medical clinic and to stop her practice of medicine, and that she spent P180,000.00 for funeral services, P1,635.00 for masses, P3,540.00 for mortuary services, P5,000.00 for pictures, and P15,000.00 for obituary in *The Daily Bulletin*. She presented documentary evidence to support her assertions. She claimed she even had other expenses in connection with the wake for her husband but could no longer produce the corresponding receipts.

She also testified that Mayor Delmo was sixty-five years old at the time of his death, in good health, and engaged in the real estate business, owning and administering several apartments and a grocery store.

Arnold Castillo alleges in his appeal that the trial court erred (a) when it lent credence to the testimonies of Juan Bongga and Maria Cristina notwithstanding signs of fabrication and defiance of human nature; (b) when it did not appreciate the documentary evidence for the defense, i.e., the *Initial Report* dated 20 May 1993 and the *Joint Affidavit of Arrest* dated 8 June 1993; and, (c) when it ruled that the killing was attended with treachery while discarding his claim of voluntary surrender.

Appellant assails Juan Bongga's *Salaysay* and his testimony in court: *First*, Juan's statement in his *Salaysay* that Mayor Delmo was shot by appellant three times at the back of his head runs counter to his testimony in court that the Mayor was shot at the back of his head, at the back of his body, and at the lower portion of his buttocks; *Second*, Juan admitted in his *Salaysay* that he did not know what the accused and Mayor Delmo were arguing about but later contradicted himself by testifying that they were arguing about the house and lot; and, *Third*, Juan made it appear in his *Salaysay* that he went to the *palikong daan* to ascertain what the accused and the mayor were quarreling about, and yet, failed to mention this fact at the witness stand.

Appellant further disputes the credibility of Juan by calling attention to the fact that the latter did not immediately report to the police authorities or to the widow of Mayor Delmo what he had witnessed that morning of 20 May 1993 and that he executed a statement on the incident only on 8 June 1993.

The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those he makes on the witness stand do not necessarily discredit him because it is a matter of judicial experience that an affidavit being taken *ex-parte* is almost always incomplete and often inaccurate. The exceptions thereto, which impair the credibility of witnesses, are when the narration in the sworn statement substantially contradicts the testimony in court, or when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness could not be expected to fail to mention.^[2] The point of inquiry therefore is whether the contradictions and omissions are important and substantial, and we find that they refer to trivial matters. What is significant though, as properly observed by the Office of the Solicitor General, is the circumstance common to both the sworn statement and the testimony in court that Juan witnessed the shooting of the victim by appellant.

The initial silence of Juan Bongga should not be taken against him. The delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained,^[3] as in this case. When Juan was asked during the cross-examination why he did not report the incident at once to the police authorities he answered that he was then taken aback.^[4] Moreover, it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case, as in fact the natural tendency of most people not to get involved is of judicial notice.^[5]