

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 01808, June 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO AGLIGAR ALIAS "ANOG" AND MELVIN MAGNO ALIAS
"KOKOK", ACCUSED-APPELLANTS, AND JONEY LOREDO ALIAS
"DONAY", ACCUSED.**

DECISION

AZCARRAGA-JACOB, J.:

Before Us is an appeal from the *Decision dated 04 June 2008* of the Regional Trial Court (RTC) of P.D. Monforth North, Dumangas, Iloilo, Branch 68, in Criminal Case No. 00-1233 convicting accused-appellants Mariano Agligar alias "Anog" and Melvin Magno alias "Kokok" of the crime of Homicide.

THE ANTECEDENTS

On 18 July 2000, appellants Mariano Agligar alias "Anog" and Melvin Magno alias "Kokok" together with co-accused Joney Loreda alias "Doney" were charged with the crime of murder with the use of unlicensed firearm in the following Information^[1]:

That on or about the 16th day of January 2000, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with an unlicensed firearms of unknown caliber, conspiring, confederating and helping one another, with intent to kill, by means of treachery, with the use of superior strength and number and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot ANICETO SILUBRICO, with the said firearms they were then provided at that time, hitting him and causing upon him gunshot wounds on his body which caused his death thereafter.

CONTRARY TO LAW.

Appellants, together with accused Loreda pleaded not guilty when they were arraigned on 21 April July 2001. A pre-trial was conducted on 25 September 2001, and the trial followed thereafter.

Quoted hereunder is the trial court's recital of facts based on the evidence presented:

EVIDENCE FOR THE PROSECUTION

The prosecution presented four (4) witnesses, namely: Nicasio Botin, NBI, Region VI. Iloilo City, Rolando Casipe, Chief of Police of Janiuay, Sr. Inspector Eugenio Espejo and Alberto Soriaso. As synthesized from the

testimonies of prosecution witnesses, the following are established facts:

At about 6:00 o'clock in the evening of 16 January 2000, Alberto Soriaso arrived at barangay proper of Barangay Abangay, Janiuay, Iloilo. He inquired at the storeowner if they had seen Aniceto Silubrico alias "Nesing". Somebody at the store pointed the house of Rolando Casipe where his relative "Nesing" was at the time. He then proceeded to said house and upon arrival thereat, he saw three (3) persons in the yard having a drinking spree. He inquired from the three if Anecito Silubrico was there. Then, Anecito appeared at door. Upon seeing him, he invited Alberto Soriaso to come inside and thereafter, offered him a seat. Alberto brought the matter of his intention of meeting Aniceto. Aniceto later introduced Alberto to Rolando Casipe and to the three who were drinking then outside the house. Thus, the three informed Alberto that they were Mariano Agligar, Joner Loreda and Melvin Magno. Alberto saw each of them having a gun tacked in their waistline.

When Aniceto saw that the liquor is not enough for the (*sic*) them (*sic*). He pulled out his wallet with bundles of money from his pocket and instructed Mariano to buy another liquor. The three invited Alberto to join them but the latter refused instead he told the three that he would just join Aniceto because he had an important matter to talk to him.

At about 7:00 o'clock in the evening, more or less, Alberto saw Mariano, Joney and Melvin stood up and hurriedly went out of the yard heading (*sic*) west. The three were also seen by Rolando Casipe who was then inside the house keeping an eye on them. Rolando told Aniceto [of] the departure of the three. He [was] also told by Alberto to go home and together they went home also. Aniceto hurried up to catch up with the three so that he may have companions in going home.

When they were able to catch up with the three, Aniceto asked the three why they were still here and Mariano answered him that they were waiting for him so that he would have companions in going home. This conversation was heard by Alberto Soriaso who was listening at (*sic*) them while the four (4) were heading towards Aniceto's residence. Alberto while following them, had later changed his direction towards the highway as he would be going home to Cabatuan, Iloilo.

After five (5) minutes or less, Alberto heard two (2) gun fires coming from the direction where Aniceto and three (3) companions were heading. He did not mind the gun fires, but instead proceeded to the highway to catch up with the vehicle in going to Cabatuan.

On the following morning of 17 January 2000, Alberto while at his house at Barangay Talanghawan, Cabatuan, Iloilo was informed by Anecito's daughter that the latter was found dead at the rice paddles in their place with gunshot wounds.

On 26 July 2000, upon the request to conduct an autopsy on the cadaver [of] Aniceto Silubrico, by Chief Inspector Eugenio Espejo, PNP, Janiauy, Iloilo, Dr. Nicasio Botin, Medico-Legal Officer, NBI WEVRO, Iloilo City

conducted an autopsy on the cadaver of Aniceto Silubrico at Dionil's Funeral Parlor at Janiauy, Iloilo. [The following is the result of the autopsy]

AUTOPSY REPORT NO. 2000-NO-02

Decedent: Anecito Silubrico y Pallada, 62 years old, Male, Malay, Filipino, Married, Businessman, a resident of Brgy. Abangay, Janiuay, Iloilo.

Identified by : RUBY SILUBRICO Y PAJARILLA, Daughter, Brgy. Abangay, Janiuay, Iloilo.

Found dead at Brgy. Abangay, Janiuay, Iloilo, January 17, 2000, 7:00 A.M.

Allegedly resulting from shooting, Brgy. Abangay, Janiuay, Iloilo, January 16, 2000, 7:15 P.M.

Autopsied at Dionil's Funeral Parlor, Janiuay, Iloilo, January 20, 2000, 1:35 P.M., 148.0cms.

Requesting Party: CINSP EUGENIO A ESPEJO, Chief of Police, Janiuay, Iloilo.

POSTMORTEM FINDING

Body embalmed.

Contused abrasion, abdomen, (*sic*) hypochondriac region, right, 1.8 x 2.2 cms.

Shotgun wounds:

1. Entrance, 1.5 x 4.8 cms., sutured, edges contused and inverted, located at the neck, right side, upper portion, 4.0 cms. Behind and 3.0 cms. Below the right external auditory meatus directed slightly upward and forward, and from right to left, involving the skin and underlying soft tissues fracturing comminutely the middle and posterior cranial bases, with radiating linear fracture on the frontal and parietal bones, lacerating the cerebellar hemispheres and the brainstem, wherein one (1) plastic wad and four (4) pellets were lodged and recovered, the making two(2) points of Exits, edges irregular and everted 2.0 x 2.8 cms. At the cavum conchae of the left ear, and .5 x 3.5 cms., sutured, located at the postauricular region, 1.5 cms. below and 1.5 cms. behind the left external auditory meatus.

2. Entrances, nine (9) in number with sizes ranging from 0.8 x 0.9 cm. to 1.0 x 1.2 cms., within an area of 11.8 x 19.5 cms., located at the chest and abdominal area; highest is 113.0

cms. and lowest is 101.0 cms. from the left heel; farthest to the right is 12.0 cms. from the anterior median line and to the left is 8.0 cms. from the anterior median line, generally directed backward, slightly downward and laterally; involving among others the ribs, coastal cartilages, heart, right lobe of the liver, lower and middle lobes of the right lung, the intestines and the right kidney; then making nine (9) points of Exits, edges everted with sizes ranging from 0.5 x 1.2 cms. to 0.8 x 2.2 cms. right infrascapular region and lumbar region, highest is 103.5 cms. and lowest is 91.5 cms. from the left heel; farthest to the right is 14.0 cms. and to the left of the posterior median line is 5.0 cms.

CAUSE OF DEATH: Shotgun Wounds.

Scalp hematoma: frontal region, right sides; temporo-occipital region, right, temporal region, left.

Other visceral organs, pale.

Stomach, almost full with noodles and other food particles.

Remarks: Five (5) pellets allegedly recovered by the embalmers from shotgun wound # 2

One (1) plastic was and four (4) pellets were recovered by the undersigned Medico-Legal Officer from shotgun wound #1.

NICASIO M. BOTIN, M.D.
Medico-Legal Officer
NBI, WEVRO, Iloilo City

Dr. Botin testified that when [he] examined the nature of the wound in the body of Aniceto Silubrico he recovered pellets therein. He declared that the firearm used was a shotgun although he has no scientific basis whether or not it was a short or long homemade shotgun. When asked by Prosecutor Frank Divinagracia if how many persons could have inflicted the wounds on the victim Aniceto Silubrico, he said that it is possible that they can be more or less two persons. As regards the first gunshot wound he testified that [the] relative position of the assailant could have been slightly right behind the victim at a distance of four (4) feet. While the no. 2 gunshot wounds (*sic*), the assailant could have been in front slightly to the left of the victim at a distance of six (6) to seven (7) meters. Both gunshot wounds are fatal and could cause the immediate or instantaneous death of the victim. Gunshot wound no. 1 involves brainstems as it controls the vital function of the body. If it is destroyed, it would produce instantaneous death.

EVIDENCE FOR THE DEFENSE

Defense presented the following witnesses, namely: Accused Mariano Agligar, Rogelio Lasanas Acollador, Alex Solinap, Wilfredo Caputli,

Accused Melvin Magno and Joney Loreda.

FOR MARIANO AGLIGAR:

On January 16, 2000, in the morning, Mariano Agligar claimed that he was at the time in Barangay Abangay, Janiuay, Iloilo. Even at 4:00 o'clock in the afternoon of that day, he went to the house of Barangay Kagawad Rogelio Acollador to drink liquor and watching (*sic*) basketball game over the television set. After the basketball game was completed, he went home at 10:30 o'clock in the evening, together with his wife and son. In that evening, his wife and son had fetched him from the house of Barangay Kagawad Acollador.

On the following day (January 17, 2000), while he was grazing his carabao, somebody passed by and [he] heard about the news that Aniceto Silubrico was already dead.

When confronted by the testimony of Rolando Casipe by counsel Atty. Mandelvin Dadivas, that he and companions Joney Loreda and Melvin Magno were having a drinking spree at his (Rolando Casipe) house on January 16, 2000, he denied the same, insisting [that] there was no drinking spree and he was not together with aforesaid persons. He even denied that he was seen with the two for whole month of January, 2000.

He also denied that he heard the news that he is one of the suspect in the killing of Anecito Silubrico. While he denied having [been] arrested by the police, he admitted that he was invited by the police officers to the police station. When they arrived at the police station, he was placed inside the lock-up cell. He asked the policemen why they locked him up in the cell but the policemen told him to stay inside the cell. While he was detained one and a half months in jail, he never asked them why they placed him inside the jail. Ultimately, he asked the policemen but was told to face the charge because he was one of the suspects in the killing of Anecito Silubrico.

While his co-accused Joney Loreda and Melvin Magno considered them as his friends, he did not meet them as oftentimes. However, he admitted that the two lived at the adjoining Barangay Magbato, Lumbunao, Iloilo. If there were no occasions to meet, each of them stayed at their respective place.

He had known Joney Loreda a long time as he is a farm worker in a farm at his barangay. He also knew Melvin Magno for quite a time for the latter's barangay is adjacent to his barangay. Melvin's parents have (*sic*) also a farm which is being tilled by Melvin.

Barangay Kagawad Rogelio Acollador was presented to corroborate accused Mariano Agligar's testimony that he was in his house at Barangay Abangay, Janiuay, Iloilo at 4:00 o'clock in the afternoon of January 16, 2000, until 10:00 o'clock in the evening when Mariano was fetched by his wife and son. He and Mariano Agligar had a drinking spree and Mariano never left his house until 10:00 o'clock in the evening.