

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO D. ROSALES, ALIAS "NARDING DE
ROSALES", DEFENDANT-APPELLANT.**

G.R. No. L-31694. December 14, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

We agree with the Solicitor General that appellant is entitled to an acquittal.

At about 6:00 p.m. on January 29, 1966, at the Home Economics Building of the Cabay Elementary School, located at Barrio Cabay, Municipality of Tiaong, Quezon Province, a shooting incident occurred during a drinking spree that resulted in the instantaneous death of Miguel Hernandez, a resident of Barrio Cabay.[1]

An information dated December 15, 1966 was filed in Criminal Case No. 15986 of the Court of First Instance of Quezon, as follows:

"The undersigned, Provincial Fiscal, accuses Leonardo D. Rosales alias "Narding de Rosales", Genaro Lardizabal, Renato de Rosales and Cesar Razon, of the crime of murder, defined and punished under Article 248 of the Revised Penal Code, committed as follows:

"That on or about the 29th day of January, 1966, in the Barrio of Cabay, Municipality of Tiaong, Province of Quezon, Philippines, and with-in the jurisdiction of this Honorable Court, the said accused, Leonardo D. Rosales alias "Narding de Rosales" and Genaro Lardizabal, together with Renato de Rosales and Cesar Razon, who are both still at large, armed with pistols and carbine, calibers .45 and .30, respectively, with intent to kill and with evident premeditation and treachery, and taking advantage of their superior strength in arms and in person, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously shoot at one Miguel Hernandez while the latter was sitting in a drinking spree, thereby inflicting upon the latter mortal gunshot wounds in the different parts of his body which caused his death.

"Contrary to law."[2]

After arraignment, plea of not guilty,[3] and trial, the Court of First Instance of Quezon, Branch II, in its Decision, dated September 23, 1969, acquitted the three accused Genaro Lardizabal, Cesar Razon and Renato de Rosales, and convicted accused appellant Leonardo D. Rosales alias "Narding de Rosales", with dispositive portion, as follows:

"VIEWED IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the court finds the accused Leonardo D. Rosales alias "Narding de Rosales" guilty beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code. There being no aggravating or mitigating circumstance, the court hereby sentences the accused Leonardo D. Rosales alias "Narding de Rosales" to life imprisonment; with the accessories of the law; to indemnify the heirs of the deceased in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency in view of the nature of the penalty imposed;

and to pay the costs of the proceedings.

"With respect to the accused Genaro Lardizabal, Cesar Razon and Renato de Rosales, the court finds them not guilty of the crime charged and therefore, hereby acquits them, with the corresponding proportionate costs de oficio.

"SO ORDERED."[4]

It is not controverted that at about 6:00 p.m. on January 29, 1966, at Barrio Cabay, Municipality of Tiaong, Quezon Province, a shooting incident occurred during a drinking spree at the Home Economics Building of the Cabay Elementary School, wherein Miguel Hernandez, a resident of Barrio Cabay, was shot several times, resulting in his instantaneous death.[5]

The Deputy Chief of Police of Tiaong, as authorized by the Chief of Police, went to the scene of the shooting the following day, January 30, 1966, to investigate the incident. He recovered from the scene of the shooting the following:

"Two (2) copper cal. .45 slugs, said to have been found lodged in the wooden parts of the eskaparte inside the sala of the Building wherein the victim was shot;

"One (1) lead cal. .38 slug, deformed, said to have been taken by a post inside the building; and

"One (1) Revolver, Cal. .38, Smith & Wesson bearing Serial Number 117621, with two (2) live ammos and four (4) empty shells, all within the cylinder thereof, said to have been found with the body of the victim."[6]

On that same date, January 30, 1966, the Chief of Police of Tiaong, forwarded a "progress report" on the case to the Commanding Officer of the P.C. Command at Camp Wilhelm, Lucena City, mentioning the recovery of the aforementioned evidence from the scene of the crime and stating that his office "has not yet found sufficient evidence to warrant filing the necessary criminal action against anyone or any persons who perpetrated the incident."[7]

Dr. Ernesto Brion, medico legal officer of the NBI, was summoned to Batangas, Batangas on January 31, 1966, to perform an autopsy on the embalmed cadaver of Miguel Hernandez. Dr. Brion made the following findings based on the autopsy: The deceased sustained four wounds. Two on the left chest, one on the left upper arm, and a fourth on the upper right part of the back.[8]

Dr. Brion also found lodged in the first chest wound of the deceased, a metal jacketed slug from a .45 caliber firearm.[9] The second chest wound of the deceased had its exit at the right, upper back of the deceased; the wound in the left arm likewise came out at the left scapular region of the back. The back wound made its exit just 1.5 cms. away super-laterally from the entrance wound.[10] From the position of the slug recovered from the first chest wound, and from the nature of all four wounds, Dr. Brion made the conclusion that the first three wounds must have been caused by a .45 caliber firearm, while the fourth wound at the back must have been caused by a .30 caliber bullet.[11]

Dr. Brion opined that any of the two chest wounds sustained by the deceased could have been fatal.[12] The wound in the forearm was "dangerous to life", that at the back was "superficial." [13] Dr. Brion observed that most of the gun wounds sustained by the deceased must have been inflicted at a distance of from 2 feet to 25 yards from the points of entry.[14] The assailant, in firing at the victim, must have been on the left side of the victim, slightly in front of and on a higher level than the latter.[15]

In the meantime, the Chief of Police of Tiaong started questioning those who were supposed to be present at the drinking spree when the victim was shot. On February 1, 1966, statements were taken from Emilio Robles,

officer-in-charge of the Cabay Elementary School;[16] from Virgilio Matuto, helper of Robles;[17] and from Ireneo Guerra, a guest at the drinking spree. Said statements were sworn to before Municipal Judge Juan D. Montecillo of Tiaong. All of the dec-larants uniformly stated that there were only five persons present during that drinking spree.[18] They were the three affiants (Emilio Robles, Virgilio Matuto and Ireneo Guerra), the victim Miguel Hernandez and the accused appellant Leonardo D. Rosales. The five were all drinking at that time "lambanog, when they suddenly heard shots coming from outside. When the shooting stopped, they saw Miguel Hernandez lying dead on the floor. The survivors could not say who shot Hernandez.[19]

A further inspection of the scene of the shooting yielded additional evidence, consisting of six more .45 caliber slugs; twelve .45 caliber empty shells; and one caliber .30 carbine shell. These slugs and shells, together with those previously found in the same premises, and the slug recovered from the body of the deceased, were all sent to the NBI in Manila for ballistics examination.[20] The results are:

"(a) Nine .45 cal. empty shells were fired from the same .45 cal. firearm, while three other .45 cal. shells were fired from another firearm of the same caliber;

"(b) One .30 cal. shell was fired from a .30 cal. carbine;

"(c) Three .45 cal. slugs were fired from the one and the same firearm;

"(d) One deformed .38 cal. slug was fired from a .38 cal. Smith & Wesson revolver, and the firearm probably used in firing the same is the .38 cal. Smith & Wesson revolver recovered from the scene of the crime.[21]

"(e) Two .45 cal. shells and five .45 cal. slugs did not have sufficient individual characteristics for determining whether or not they were fired from the same firearm."[22]

The Chief of Police of Tiaong, under the belief that sufficient evidence existed against those responsible for the shooting of the victim, filed on February 11, 1966, Criminal Case No. 1185, with the Municipal Court of Tiaong, charging Leonardo D. Rosales, Ireneo Guerra, Virgilio Matuto, and Emilio Robles with the crime of homicide in a tumultuous affray.[23] After the first phase of the preliminary investigation, and satisfaction of the existence of a prima facie case against the four accused, the Municipal Judge issued warrants of arrest against them on February 22, 1966.[24]

On February 14, 1966, Natividad Magadia, widow of the deceased Miguel Hernandez, and Armando Castillo, supposed to be an eyewitness to the crime, went to the P.C. Headquarters in Lucena City and executed statements regarding the shooting of victim Hernandez on January 29, 1966.[25] Said statements were subscribed and sworn to before the Municipal Judge of Tiaong on February 16, 1966. On that same day, P.C. Sgt. Filemon Atienza filed Criminal Case No. 1203, for murder, before the Municipal Court of Tiaong, against Leonardo D. Rosales, Genaro Lardizabal, Renato de Rosales, and Cesar Razon for the shooting and killing of victim Miguel Hernandez on January 29, 1966.[26]

The Municipal Judge of Tiaong conducted investigation simultaneously on the two different criminal cases.[27] The Municipal Judge dismissed Criminal Case No. 1185, for homicide in a tumultuous affray, and forwarded Criminal Case No. 1203 to the CFI for filing by the Provincial Fiscal of the proper information. On December 16, 1966, the Provincial Fiscal filed the information for murder against Leonardo D. Rosales, Genaro Lardizabal, Renato de Rosales and Cesar Razon.[28]

Appellant was convicted on the testimony of Armando Castillo, the only supposed eyewitness to the shooting of Miguel Hernandez. Castillo testified that he was present during the drinking spree, together with Miguel Hernandez (victim), accused Leonardo D. Rosales, and six others whom he did not know because they were simple visitors in the place.[29] Earlier that day, there was a conference or meeting of barrio teachers at the school

premises, and some of the visitors stayed for the drinking party.[30] When witness Castillo arrived at the drinking spree at about 6:00 p.m. of January 29, 1966, victim Miguel Hernandez offered him two drinks. Immediately after Hernandez offered him the second drink, witness Castillo heard accused appellant Narding Rosales ask in an angry manner why Hernandez disturbed his gambling game. Hernandez replied: "Do not mind that incident as we are friends." At that time appellant Rosales was standing by the window on the east side of the room, while victim Hernandez was sitting on a chair near the northern wall about 1-1/2 meters from Rosales. Immediately after the exchange of words, Rosales suddenly fired his .45 cal. pistol at Hernandez.[31]

Witness Castillo did not know how many times Rosales fired at Hernandez, but Castillo knew that Hernandez was hit as he saw the left arm of Hernandez bleeding.[32]

Immediately after Rosales fired at Hernandez, the three other accused Renato de Rosales, Genaro Lardizabal, and Cesar Razon (whom witness Castillo claimed he already saw behind the building, all of them armed, on Castillo's way to the party) entered the room. Each one was with a firearm. Renato Rosales and Cesar Razon were each armed with a .45 cal. pistol. Genaro Lardizabal was armed with a carbine. The three simultaneously fired at the already wounded Hernandez.[33]

Witness Castillo was about to leave the room after Rosales shot Hernandez, but became afraid when the three other accused entered the room with their firearms, so Castillo took cover behind the door.[34]

Up to the time the three others went up the building, and fired at the victim, the room was still lighted by a kerosene lamp, but when witness left the room, there was no more light.[35] After the shooting, Castillo left the place and ran home.[36] Witness Castillo never told the members of his family what he saw. Even after he learned of the death of Miguel Hernandez the next day, Castillo did not tell anybody of what he knew of the incident. It was only on February 15, 1966, at the P.C. Headquarters, when Castillo revealed for the first time what he knew of the incident. He did so because the widow of the victim requested him to tell the truth.[37]

The three accused Genaro Lardizabal, Cesar Razon and Renato de Rosales interposed the defense of alibi and were all acquitted by the trial court.[38] The Chief of Police and Municipal Judge of Tiaong testified on their official participation in the investigation and filing of the proper charges in this case.[39] Virgilio Matuto and Ireneo Guerra, the two who were formerly charged by the Chief of Police with homicide in a tumultuous affray, affirmed the statements in their affidavits[40] that there were only five persons present during the drinking spree. They were Virgilio Matuto, Ireneo Guerra, Emilio Robles, victim Miguel Hernandez and accused appellant Leonardo D. Rosales.[41]

While the five were drinking, they suddenly heard shots, but did not see or know where the shots came from.[42] After the shooting, they saw Miguel Hernandez dead. They did not know who killed him.[43] No other person entered the room before the shooting.[44] Both Matuto and Guerra ducked, laid on the floor face down during the shooting.[45] When they got up, they did not see the accused appellant Rosales anymore.[46] Ireneo Guerra declared that only the victim Miguel Hernandez came to the drinking spree armed with a .38 cal. pistol tucked in his waist. Victim Hernandez fired once during the shooting.[47]

Accused appellant Leonardo D. Rosales testified that the persons present during the drinking spree in question were Emilio Robles, Ireneo Guerra, Virgilio Matuto, the deceased Miguel Hernandez and himself. The prosecution's supposed eyewitness Armando Castillo was not there.[48] Appellant Rosales and Ireneo Guerra were invited to the drinking party by the victim Hernandez when the latter saw the former at the market place of Cabay where Rosales was acting as banker in a game of monte. Hernandez stopped the game and invited Rosales and Guerra to the drinking party.[49] Rosales was unarmed when he went to said party. Hernandez had with him a revolver tucked at his left waistline.[50]

As they were drinking, a shot sounded from downstairs. Hernandez put out the gasoline lamp and fired his revolver. Mr. Robles lighted the lamp again, and Hernandez put out the light for the second time.[51] Rosales did not know what direction Hernandez fired his gun. Shots came from downstairs. Rosales lay down during the shooting. When it was over, Rosales jumped out of the balcony and he went home.[52] Rosales does not know how to fire gun, as he was never a policeman, a trainee, or a guerilla.[53]

During the ocular inspection conducted by the trial court at the scene of the shooting, the Court and the parties agreed on the following observations and findings:

- (a) That there were at least ten bullet holes on the eastern, northern, and southern walls of the room where the deceased Miguel Hernandez was shot, indicating that not less than ten shots were fired that night;
- (b) That there is a bullet hole about 5 ft. from the floor on the northern wall, and another hole more than 5 ft. from the floor near the door of the cabinet, on the northeastern corner of the northern wall[54] showing that the shots that caused these holes were fired upwards, or from a lower to a higher elevation;
- (c) That there are at least six bullet holes on the glass cabinet aforementioned, the highest of which is more than 5 ft. high,[55] showing at least six shots were fired towards the direction of that cabinet, and with various trajectories;
- (d) That at least two bullet holes, one on the southern wall and another on the eastern wall, were caused by bullets fired from inside the room,[56] showing that at least two shots were fired from the inside, one directed towards the south and the other towards the east.[57]

Witness Armando Castillo claimed that he and the deceased Miguel Hernandez were the only residents of Barrio Cabay who were present during that drinking spree on January 29, 1966, and that six other persons were visitors from other places.[58] The impartial investigations of the Tiaong Police Department the very day after that drinking spree, clearly revealed that five persons, all residents of Cabay, were present on that occasion. They were Emilio Robles, Matuto, Irmo Guerra, victim Miguel Hernandez and appellant Leonardo D. Regales. Statements were taken from Robles, Matuto, and Guerra.[59] On the basis of those statements, the Chief of Police filed a case of homicide in a tumultuous affray. The testimony of Armando Castillo on that point falls against the very clear evidence that in the drinking spree of January 29, 1966, only five persons were present and Armando Castillo was not one of the five.

The falsehood uttered by Castillo on the aforementioned point destroys his credibility completely as his presence at the scene of the incident during the drinking spree and the shooting is overwhelmingly negated by the evidence for the defense.

The prosecution itself asserts that even the manner by which said witness Castillo came to be the star prosecution witness in this case and his conduct after the incident appear altogether "strange, suspicious, contrary to the natural course of things, and inconsistent with ordinary human conduct." [60]

Although witness Castillo claimed that he was an eyewitness to a shocking occurrence (the sudden and treacherous shooting of Miguel Hernandez, a barrio mate known to witness for fifteen years), Castillo did not even stop in the house of Hernandez after the incident to tell Mrs. Hernandez what happened. Castillo did not report to any barrio or police authority what he allegedly saw. He calmly went home. He did not reveal anything even to the members of his family what he allegedly saw.[61] The following day, January 30, 1966, his cousin informed Castillo of the death of Hernandez, yet Castillo continued to keep silent.[62] On that day, and on succeeding days, the police investigated the case and even filed a criminal case against those believed to be culprits on February 11, 1966, after the statements of other persons have been taken, yet Castillo remained silent.

Castillo admitted he never revealed to anyone what he allegedly saw on January 29, 1966, not even to the widow of victim Hernandez, from said date until he gave his statement at the P.C. Headquarters on February 15, 1966.[63] According to the prosecution, that conduct of witness Castillo "is too strange, unnatural, and inconsistent with the instincts and promptings of human nature, to be taken at face value." [64]

The prosecution believes that witness Armando Castillo's belated and suspicious entrance into this case more than two weeks after the commission of the crime charged, claiming that he alone knew the true facts of the same and accusing for the first time appellant Rosales and the three other accused of its commission, "cannot but create the impression that his testimony is a mere afterthought." [65]

Another supposed eyewitness Pablo Solomon,[66] who claimed he saw the shooting incident was never mentioned by witness Castillo and never presented as a witness by the prosecution.[67]

The trial court, itself, doubted the credibility of supposed eyewitness Armando Castillo, by stating that this witness was not able to identify the accused Genaro Lardizabal, Cesar Razon and Renato a Rosales as the persons who fired at the victim Hernandez on that night.[68] The trial court also stated that no conspiracy was proven among the accused.[69]

The Solicitor General in the belief that the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt and that while it is the duty of the fiscal to prosecute the guilty, it is also his duty to protect the innocent, recommends the acquittal of accused-appellant Leonardo de Rosales in this case.[70]

WHEREFORE, and upon recommendation by the Solicitor General the decision dated September 23, 1969, in Criminal Case No. 15986, con-victing appellant Leonardo D. Rosales for murder is hereby REVERSED and SET ASIDE, entering a new one ACQUITTING him of the crime charged, with costs de oficio.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.
Aquino, J., in the result.

[1] p. 435, Original Record; Exhs. "D" and "M".

[2] pp. 98-99, Original Record, Criminal Case No. 15986.

[3] p. 190, Original Record.

[4] p. 440, Original Record.

[5] Exhs. "D" and "M"; p. 435, Original Record.

[6] Exh. "Q"; Exhs. 6, 8, 9, p. 3, Appellee's Brief.

[7] Exh. "Q".

[8] Exhs. "C", "C-1", "D", "D-1", "E", "E-1", "E-2"; pp. 44-48, t.s.n., December 4, 1967.

[9] Exh. "D"; p. 44, t.s.n., December 4, 1967.

[10] Exh. "D".

[11] pp. 35, 48, 53, t.s.n., December 4, 1967.

[12] p. 46, t.s.n., December 4, 1967.

- [13] p. 46, Id.
- [14] p. 51, Id.
- [15] p. 51, Id.
- [16] Exh. 12.
- [17] Exh. 11.
- [18] Exh. 13.
- [19] p. 6, Appellee's Brief.
- [20] Exhs. "J" and "9".
- [21] Exh. "7".
- [22] Exh. "J"; p. 6, Appellee's Brief.
- [23] Exh. "6".
- [24] p. 7, Appellee's Brief.
- [25] Exhs. "2" and "3".
- [26] p. 7, Appellee's Brief.
- [27] Crim. Cases 1185 and 1203.
- [28] p. 8, Appellee's Brief.
- [29] pp. 3-4, 34-35, t.s.n., Ignacio.
- [30] pp. 33-34, t.s.n., Ignacio.
- [31] pp. 33-44, 4-5, 5-6, 6, 10, 13, 14, t.s.n., Ignacio.
- [32] p. 33, t.s.n., Ignacio.
- [33] pp. 6-10, t.s.n., Ignacio.
- [34] pp. 6-7, t.s.n., Ignacio.
- [35] pp. 18-19, 21, t.s.n., Ignacio.
- [36] p. 7, t.s.n., Ignacio.
- [37] pp. 36, 38, t.s.n., Ignacio.
- [38] p. 440, Original Record.
- [39] p. 11, Appellee's Brief
- [40] Exhs. "11" and "13".
- [41] pp. 115, 124, t.s.n., Ignacio.
- [42] pp. 117, 124-125, 128, t.s.n., Ignacio.
- [43] pp. 117, 122, 123, t.s.n., Ignacio.

[44] pp. 116, 119, 126, t.s.n., Ignacio.

[45] pp. 117, 127, t.s.n., Ignacio.

[46] pp. 122, 136, t.s.n., Ignacio.

[47] p. 127, 140, t.s.n., Ignacio.

[48] p. 30, t.s.n., Eclavea.

[49] p. 31, t.s.n., Id.

[50] p. 34, t.s.n., Id.

[51] pp. 34-35, t.s.n., Id.

[52] pp. 33-35, t.s.n., Id.

[53] p. 36, t.s.n., Id.

[54] p. 3, t.s.n. Ocular Inspection.

[55] p. 3-5, t.s.n. Id.

[56] pp. 5 & 6 t.s.n., Id.

[57] pp. 13-14, Appellee's Brief.

[58] pp. 3-4, t.s.n., Ignacio

[59] Exhs, "11", "12", "13".

[60] p. 19, Appellee's Brief.

[61] pp. 35, 36, 38, 39, t.s.n., Ignacio.

[62] p. 38, t.s.n., Id.

[63] p. 36, 38, 39, 40, t.s.n., Ignacio.

[64] p. 20, Appellee's Brief.

[65] p. 21, Appellee's Brief.

[66] Exh. "R".

[67] pp. 21-22, Appellee's Brief.

[68] pp. 436, 437, Original Record.

[69] p. 438, Id.

[70] pp. 14-15, Appellee's Brief.

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