

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILOMENO ROALLOS, ANTONIO ROALLOS AND NESTORIO ANOG,
ACCUSED-APPELLANTS.**

G.R. No. L-32196. April 20, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Due to a shooting incident that occurred at about 7:30 o'clock on the night of December 21, 1968, at Barrio Alupay, Municipality of Rosario, Batangas, Filomeno Roallos, Antonio Roallos and Nestorio Anog were charged with the crime of Murder, committed as follows:

"x x x, the above named accused, armed with long and short firearms, conspiring and confederating together, acting in common accord and mutually aiding one another, with intent to kill, treachery, evident premeditation, and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with their said firearms, one Camilo Magnaye, suddenly and without warning, thereby inflicting upon the latter multiple gunshot wounds in the different parts of his body causing severe internal and external hemorrhage, which directly caused his death.

"Contrary to law."[1]

On May 27, 1969, the accused were arraigned, and they pleaded not guilty.[2]

After trial, or on June 19, 1970, the Circuit Criminal Court of Batangas, rendered a decision, the dispositive portion of which reads, as follows:

"In the light of the foregoing circumstances, the Court finds the three accused, Filomeno Roallos, Antonio Roallos, and Nestorio Anog, guilty beyond reasonable doubt as Principals of the crime of Murder, qualified by treachery and, there being no mitigating nor aggravating circumstance to consider, hereby sentences each of them to suffer the penalty of Reclusion Perpetua, to jointly and severally indemnify the heirs of the deceased victim in the sum of Twelve Thousand Pesos (P12,000) and to pay the costs.

"The carbine, Exhibit 'H' used in the commission of the crime is hereby declared confiscated and forfeited in favor of the government.

"So Ordered."[3]

All of the accused appealed to this Court. On April 5, 1978, however, the appellant Filomeno Roallos withdrew his appeal.[4]

The version of the prosecution is as follows:

PC Sergeant Francisco Kalalo wanted to settle a misunderstanding between Vicente Roallos (father of accused Filomeno and Antonio Roallos) and Remigio Ilao, so that he called both parties to his house at Bo. Alupay, Rosario, Batangas, in the evening of December 21, 1968. Isagani Ramos, Lucio Mangundayao, Tolentino Clerigo,

Ricardo Leyness and Abundio Laluna went to the house of Sgt. Kalalo upon invitation of Remigio Ilao.[5]

When the group arrived at the said house at around 7:30 o'clock, Laluna, Leynes, and Clerigo went up the house to find out if Vicente Roallos had already arrived. Remigio Ilao, Isagani Ramos and Lucio Mangundayao stayed at the gate.[6]

Not long thereafter, Isagani Ramos and Lucio Mangundayao saw the victim Camilo Magnaye pass by at a distance of about 10 meters.[7] At the same time, Ramos saw the accused Filomeno and Antonio Roallos, and Nestorio Anog seeking cover beside the wooded portion of the road.[8] He saw Filomeno Roallos, using a carbine, fire at the victim at a distance of one meter. Antonio Roallos and Nestorio Anog simultaneously fired at the victim with their .45 caliber guns from a distance of about one meter. Filomeno Roallos was at the left while Antonio Roallos and Nestorio Anog were at the right front of the victim. After the initial shots, the victim fell, but the appellants fired three more shots at him.[9]

Witnesses Ramos and Mangundayao then ran away. They were able to see and identify the accused during the incident because of a Coleman lamp at the balcony of the house of Sgt. Kalalo.[10]

Witness Isagani Ramos stated that he revealed what he knew of the incident to his mother and to the three Rosario police officers led by Sgt. Gatdula who investigated him in his house the day after the shooting.[11] He had known the appellants for ten years. Filomeno and Antonio Roallos are brothers, while Nestorio Anog is their cousin. They are the sons of Vicente Roallos with whom Remigio Ilao had a misunderstanding.[12]

Dr. Cesario V. Conti, Municipal Health Officer of Rosario, Batangas, conducted the post mortem examination of the victim and prepared Exh. "A", revealing the following gunshot wounds:

1. Gunshot wound, thru & thru, entrance 2 cm. at the left anterior axillary line a little above and to the left of the nipple directed slightly downward and posterolaterally exit 1 cm. x 1 cm. at the right mid-axillary line 9 cm. to the right of the right nipple.
2. Gunshot wound without exit, 1 cm. x 1 cm. at the left mid-axillary line 8 cm. lower than the wound no. 1, 11-1/2 cm. deep directed upwards medially and posteriorly.
3. Gunshot wound, thru and thru, entrance 1 cm. x 1 cm. at the left anterior axillary line near the end of the left sub-cortical arch, exit 1 cm. x 1 cm. lumbar area, right 2-1/2 cm. to the left of the right mid-axillary line.
4. Gunshot wound, thru and thru, right foot, entrance 1 cm. x 1-1/2 cm. behind the medial malleolus exit 1 cm. x 1 cm. 5 cm. below the posterior and lateral malleolus.

Witness Conti stated that wound No. 1 was a gunshot wound and powder burns could be seen. Wound No. 1 passed thru the heart, a vital organ, hence it was a mortal wound. Wound No. 2, also a gunshot wound augmented victim's death as it affected the posterior aspect of victim's left lung. Wound No. 3 was not mortal, as it probably affected victim's anterior surface of the intestine. Wound No. 4 was a slight one.[13]

NBI Agent Sancho G. Sulit testified that on December 22, 1968, upon instruction from his chief, Atty. Ramon Lapiña, he went to Rosario, Batangas, and subjected Abundio Laluna, Filomeno Roallos, Antonio Roallos and Nestorio Anog to paraffin test. The tests were brought to the NBI Regional Office and then to the Central Office.[14]

NBI Chief of the Chemistry Division, Jose Obando testified as to the results of the paraffin test. Examination of Antonio Roallos (Exh. "E") revealed both his hands were positive for nitrates. The examination (Exh. "F") of Filomeno Roallos also showed both hands were positive for nitrates. These nitrates were caused by gunfire. Examination of appellant Nestorio Anog (Exh. "G" and Exh. 3, Anog) showed negative results or absence of

nitrites, although absence of nitrites on the hands of a person does not conclusively prove he did not fire a gun.[15]

Chief of Police Ireneo M. Bautista of Rosario, Batangas, testified that in the evening of December 21, 1968, he was informed in his house by Cpl. Arasula of the shooting incident at Bo. Alupay, Rosario. He went to the Municipal building where he was given details by Sgt. Kalalo. Together with Sgt. Crispulo Perez and the Mayor of Rosario, they proceeded to the scene of the crime. In the house of Sgt. Kalalo, he inquired about witnesses to the shooting and the suspects. He gathered that the suspects were Filomeno Roallos, Antonio Roallos and Nestorio Anog. He ordered Deputy Chief Lt. de Castro to conduct further investigation and directed Cpl. Arasula to question Anog who was in the hospital. He took possession of the carbine found by Sgt. Kalalo at the scene of the crime.[16]

Appellant Anog refused to give any statement to Cpl. Arasula in the hospital, while Filomeno and Antonio Roallos denied any participation in the crime.[17]

Witness Cpl. Diego C. Arasula of the Police Force of Rosario, Batangas, corroborated the testimony of Chief of Police Bautista.

On the strength of these evidence, the trial court convicted the appellants.

On the other hand, the defense version is as follows:

On December 21, 1968, between six and seven in the evening, appellant Antonio Roallos and his father Vicente Roallos were inside the house of PC Technical Sergeant Francisco M. Kalalo in Barrio Alupay, Rosario, Batangas. Sgt. Kalalo wanted to settle a misunderstanding between Antonio Roallos and Remigio Ilao. He sent for Remigio Ilao and the latter arrived at around 7:00 p.m. with Abundio Laluna, Lucio Mangundayao, Ricardo Leynes, Isagani Ramos, Tolentino Clerigo. All of them proceeded upstairs and seated themselves in the sala.[18]

They were then gathered, and Mrs. Juliana Aguila Kalalo had just brought in a bowl of pulutan for their drinks, when suddenly shots rang out. Sgt. Kalalo stood up and went down the house, followed by Vicente Roallos, while the rest remained. The sound of the shots came from west of the house. About 50 meters from the gate of Sgt. Kalalo, in the dark unlighted street, victim Camilo Magnaye was found, sprawled on his stomach, his face touching the ground.

Sgt. Kalalo called on the people in the nearby houses to bring lights for a better view of the scene. Blood flowed from the body and into the ground covering a distance of some 10 to 12 meters. Beneath and pinned under the body, right under the chest of Camilo Magnaye was the carbine marked Exh. "H". Some fifty meters away from the body of Camilo Magnaye and less than 100 meters from the gate of Sgt. Kalalo's house was appellant Nestorio Anog, shot in the left leg, and found by Sgt. Kalalo in a squatting position, writhing in pain. Nobody else was around, and aside from the carbine, no other firearm was at the scene.[19]

The defense claims that earlier, at about 6:30 o'clock in the evening of December 21, 1968, Remigio Ilao, Abundio Laluna, Ricardo Leynes, Isagani Ramos and Tolentino Clerigo were in the house of Lucio Mangundayao, a house located about two kilometers away from Sgt. Kalalo's house. They claim that the victim Camilo Magnaye was with the group. It is the claim of the defense that Remigio Ilao carried the carbine Exh. "H" which he borrowed from Tolentino Clerigo and which he intended to return. Clerigo accepted the carbine from Ilao, but victim Magnaye requested Clerigo to allow the former to carry the carbine. Clerigo consented and gave the carbine to Magnaye. At that juncture, the eleven-year old boy sent by Sgt. Kalalo to invite Remigio Ilao to Sgt. Kalalo's house arrived and delivered the message. On invitation of Ilao, the group, Tolentino Clerigo, Ricardo Leynes, Isagani Ramos, Abundio Laluna, Lucio Mangundayao and Camilo Magnaye, accompanied Ilao to the

house of Sgt. Kalalo. All of them went up the house of Sgt. Kalalo, except Camilo Magnaye who decided to drop by the store of Mario Aguila. Magnaye had the carbine with him when the group left him at Aguila's store.[20]

As to accused appellant Nestorio Anog, the defense's version is that at about 7:30 p.m. of December 21, 1968, he was in the house of his uncle, Barrio Captain Jose Dimaculangan, just along the highway. He went there with his father and mother to get supplies of onions, pepper and mongo, to be sold the next day, a Sunday, and market day. They were able to get onions and mongo, but the stock of pepper ran out, and Jose Dimaculangan suggested that the pepper be taken from the store of his brother, Felix. Nestorio Anog was sent on that errand while his parents stayed behind. The store of Felix Dimaculangan was eastward that of Jose, a little farther than the house of Sgt. Kalalo. Anog covered a distance of 50 meters from the house of Jose Dimaculangan, about two or three minutes after he started out, when a burst of gunfire rang out. Nestorio tried to retrace his steps to the house of his uncle Jose but he felt he had been hit, and he fell to the ground. A bullet pierced his left thigh.

In the meantime, a few minutes after the gunfire, Jose Dimaculangan, rushed out of his house and into the street to investigate. In the street, along the shoulder of the road, he found Nestorio, wounded, and being helped by some people into a waiting jeep to be taken to the hospital.[21]

The trial court in convicting the accused gave complete credence to the testimony of supposed eyewitness Isagani Ramos and disregarded the testimonies of the three accused and their seven witnesses, after correctly stating that the issue can be decided on the question of credibility.

The trial court did not commit an error in not giving credit to the testimony of defense witness Sgt. Kalalo of the P.C. that appellant Antonio Roallos could not have participated in the crime because when the shooting happened, Antonio was inside the house of Sgt. Kalalo. As a P.C. sergeant, this witness had the duty and moral obligation, in the interest of truth and as an act of simple justice, to inform the police authorities of Rosario, Batangas, upon learning of the arrest of the accused Antonio, or soon thereafter that Antonio could not have been a participant in the crime. But, Sgt. Kalalo had to wait nine months to give that information. The trial court under these circumstances, did not believe in the sincerity of his testimony.[22]

Witness Sgt. Kalalo did not also make any written statement to the police authorities despite his alleged first hand knowledge about the crime.

Sgt. Kalalo's explanation about his omission to give a written statement about the crime to the police authorities was "I am careful to intervene in the matter, Your Honor, because of the situation in our town." Witness was referring to the bitter political enmity that existed between Vicente Roallos, father of the two accused, and Councilor Jose Guerra.[23] This explanation is a lame excuse. It was incumbent upon Sgt. Kalalo to tell the police authorities that they were wrong in suspecting Antonio Roallos because at the time of the perpetration of the crime the suspect was with him. That act could be considered as merely partisanship in the attainment of truth, and not political partisanship. As a police officer he was sworn to defend the truth.

Sgt. Kalalo also pretended that when appellant Roallos was arrested, witness was already in Manila because he was officially detailed with a certain Major Kalalo.[24] Appellants never produced the supposed papers detailing Sgt. Kalalo for one month to Major Kalalo. Major Kalalo is a retired PC officer who became a radio commentator.[25]

He represented that the deceased victim Camilo Magnaye was his compadre, when in truth they were not.[26] Sgt. Kalalo claimed that when he found the deceased Magnaye, the latter's right hand was on the trigger of the carbine. Subsequently, he stated that Magnaye was not holding the trigger.[27] He claimed that the Rosario police did not listen to him, yet his very first action upon learning of the crime was to report to the Rosario police.[28] He

claimed he made a written report to the PC Headquarters about the incident, but he could not produce a copy.[29] He claimed that the carbine he found at the scene of the crime was full of blood and could have fingerprints, yet he did not immediately surrender it, but took it to his house, where the Chief of Police asked for it.[30]

After learning that Antonio Roallos was arrested, Sgt. Kalalo said he did not inform the Rosario police that they had the wrong man, because Kalalo did not want to intervene because of the situation in their town, but later, he changed his reason to lack of knowledge of "anything about it." [31]

These irreconcilable contradictions and inherently improbable testimony of Sgt. Kalalo are sufficient reasons for the court to discredit his testimony.

Likewise, the trial court did not err in not giving credit to the recanted testimony of Lucio Mangundayao. Lucio Mangundayao testified that the eyewitness Isagani Ramos could not have seen the crime, because the latter was upstairs when the shooting took place.

The trial court observed that with respect to the testimonies of Lucio Mangundayao and Remigio Ila, both retracted the previous statements they had given to the police authorities of Rosario, Batangas. They also retracted their sworn testimonies given before the Municipal Judge of Rosario, Batangas, during the preliminary investigation of this case. Mangundayao affirmed the truth of the statement he gave to the police, Exh. 3 (Anog) and Exh. 2 (Roallos) when he testified in the preliminary investigation of the case before the Municipal Judge of Rosario, Batangas. He also confirmed the veracity of the contents of the said statement and also his testimony in the preliminary investigation as shown in the transcript of stenographic notes taken, Exh. "P", when he testified as prosecution witness on June 29, 1969.[32]

Appellant's argument that Lucio Mangundayao executed Exh. 2 (Roallos) and testified as a prosecution witness because of threat and intimidation, cannot be given credit. The alleged threat against witness Mangundayao was not serious to overcome his free will and consent. The alleged threat was that if witness would not testify as prosecution witness, he would be charged as the killer.[33] No violence was even employed against witness Mangundayao.[34] This alleged threat of false prosecution could not have caused the witness Mangundayao to perjure himself. Both Councilor Guerra, the supposed political rival of the political leader of Vicente Roallos, father of the accused, and the Rosario police force did not have sufficient reason nor motive to compel Mangundayao to be a false witness and to perjure himself. The retracted affidavit, Exh. 2 (Roallos), was acknowledged by Mangundayao before the Municipal Judge of Rosario twice.[35]

In the Circuit Criminal Court of Batangas, during the trial on the merits, witness Mangundayao affirmed the truth of Exh. 2 (Roallos), several months after its alleged execution, when no kind of duress existed.[36] Mangundayao had many chances to repudiate his affidavit Exh. 2 (Roallos), but he did not do so.

The justification of the retraction of Lucio Mangundayao, that he allegedly suddenly realized piety and decided to tell the truth regardless of the safety of his life, may be considered lightly, as a mere afterthought.

The trial court did not commit any error in considering the retraction testimony of Mangundayao as worthless.

Remigio Ila, the other prosecution witness who also retracted his previous written statement, Exh. "N", in favor of the prosecution, is similarly situated as the witness Mangundayao, and We find no sufficient reason to set aside the trial court's finding that their recanted testimonies cannot be given credit.[37]

The trial court did not give credence to the testimony of Vicente Roallos, father of the two accused, because of the latter's failure to inform the police authorities at the first opportunity, or at a reasonable time after the arrest of his sons, that accused Antonio was with them inside the house of Sgt. Kalalo when the shooting occurred. The records

of the case show a complete absence of any statement by Vicente Roallos to any police authority of Rosario, Batangas, to the effect that his son Antonio could not have participated in the crime as he was then inside the house of Sgt. Kalalo when the shooting took place. That version was stated after so many months. Mrs. Nieves Ilao, mother of the accused also failed to do what the father of the accused did not do.[38] Vicente Roallos did not inform the Rosario police that Sgt. Kalalo could be a witness to save his son Antonio from prosecution.[39] No error can be detected on this stand by the trial court.

The trial court concluded that the positive testimony of eyewitness Isagani Ramos should be given greater weight and must prevail over the recanted testimonies of Mangundayao and Ilao.[40]

Appellants question the prosecution's version that Remigio Ilao and Isagani Ramos waited at the gate of the house of Sgt. Kalalo's house, while the three other companions went inside to verify the presence of Vicente Roallos inside. Appellants insist that the entire group went upstairs, and that Isagani Ramos could not have seen the shooting because he was not at the gate.[41]

Remigio Ilao remained at the gate because he wanted his companions to check whether Vicente Roallos was already inside the house of Sgt. Kalalo. Ilao could have a feeling that the alleged invitation for a conference might be a death trap as it turned out to be for victim Camilo Magnaye. Three of the companions had to verify the presence of Vicente Roallos because Ilao and company feared they might be walking into a death trap. Because of the tension, the eerie atmosphere, the temper of the parties, it took five minutes before the companions of Ilao could report to the latter. Five minutes was not too long a time and during that time Ilao and his companions had already seen the silhouettes of the assassins.[42] The lower court's belief in this version of the prosecution is not a reversible error.

Appellants also argue that Dr. Cesario Conti opined that there was only an assailant, and that, from the nature of the wounds, there was probably a struggle, a grappling for the gun between the victim and the assailant.[43] Dr. Conti, himself, testified that it was possible that guns of different calibers were used, considering the sizes of the wounds.[44]

Appellants argue that according to NBI ballistic expert Mr. Felicisimo S. Lunasco, cartridges Exhibits "I", "I-1" to "I-3", allegedly found at the scene of the shooting, were all fired from one gun. This argument falls because the four empty shells were not the only ones found at the scene of the shooting.

It is also argued that the testimony of Ramos that accused Anog also fired during the shooting, is negated by the evidence Exhibits "G" and "G-1", showing the result of the paraffin test conducted on Anog as negative.[45] It has been shown by the testimony of Acting Chief of the Chemistry Division Jose Obando of the NBI that it is possible for a person to fire a gun and yet be negative for the presence of nitrates, as when firing while wearing gloves, or by washing the hands afterwards.[46]

The foregoing are clear indications that the trial court did not err when it ruled that the testimony of Isagani Ramos is supported by the physical facts established in this case.

The trial court's acceptance of the credibility of the eyewitness Isagani Ramos as against the recanted testimonies of Remigio Ilao and Lucio Mangundayao, must necessarily place beyond doubt the positive identification of the accused as participants in the crime. That positive identification by the witness Ramos who have known the appellants for not less than ten years, cannot be overcome by the defense of alibi.

WHEREFORE, and upon recommendation of the Solicitor General, the Decision dated June 19, 1970, in CCC-VIII-103-Batangas, is hereby AFFIRMED in toto, with respect to appellants Antonio Roallos and Nestorio Anog. With costs.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, Ericeta, and Escolin, JJ., concur.
Abad Santos, J., on official leave.

- [1] Original Record, pp. 1-2.
- [2] Id., p. 178.
- [3] Id., pp. 449-450.
- [4] Rollo, pp. 151-154.
- [5] pp. 6-10, t.s.n., June 25, 1969; pp. 5-8, t.s.n., June 26, 1969.
- [6] pp. 23-30, t.s.n., June 25, 1969; pp. 2-6, t.s.n., June 26, 1969.
- [7] pp. 35, 40-41, t.s.n., Jan. 25, 1969; pp. 6-13, t.s.n., June 26, 1969.
- [8] pp. 30-41, t.s.n., June 25, 1969.
- [9] pp. 13-17, 36, 41, t.s.n., June 25, 1969; pp. 13-14, t.s.n., June 26, 1969.
- [10] p. 12, t.s.n., June 25, 1969; p. 12, t.s.n., June 26, 1969.
- [11] p. 45, t.s.n., June 25, 1969.
- [12] p. 13-17, t.s.n., June 25, 1969.
- [13] pp. 12-16, t.s.n., June 24, 1969.
- [14] pp. 3-7, t.s.n., July 30, 1969.
- [15] pp. 29-44, Id.
- [16] pp. 3-19, t.s.n., August 12, 1969.
- [17] pp. 9-10, 16-28, t.s.n., Id.
- [18] pp. 6-17, t.s.n., Sept. 19, 1969; pp. 4-7, t.s.n., Sept. 24, 1969; pp. 19-21, t.s.n., Sept. 24, 1969; pp. 4-9, t.s.n., Oct. 16, 1969; pp. 10-12, t.s.n., Nov. 6, 1969; pp. 32-34, t.s.n., Jan. 6, 1970.
- [19] pp. 17-20, 45, t.s.n., Sept. 19, 1969; pp. 9-12, t.s.n., Oct. 16, 1969.
- [20] pp. 15-20, t.s.n., Sept. 24, 1969; pp. 4-10, t.s.n., Nov. 6, 1969.
- [21] pp. 5-15, t.s.n., Jan. 29, 1970; pp. 31-37, t.s.n., Jan. 29, 1970; pp. 17-18, 20, 36-42, t.s.n., Sept. 19, 1969.
- [22] p. 140, Appellants' Brief.
- [23] p. 22, Id.
- [24] pp.15-16, Id.
- [25] pp. 57-58, t.s.n., Sept. 19, 1969.
- [26] pp. 4, 64, t.s.n., Id.
- [27] pp. 19, 47, t.s.n., Id.

- [28] pp. 26, 47, t.s.n., Id.
- [29] p. 65, t.s.n., Id.
- [30] pp. 49, 55, 64-65, t.s.n., Id.
- [31] pp. 20, 35, t.s.n., Id.
- [32] p. 142, Appellants' Brief.
- [33] pp. 50-51, t.s.n., Sept. 24, 1969.
- [34] p. 40, t.s.n., Sept. 29, 1969.
- [35] p. 45, t.s.n., Sept. 29, 1969; pp. 12-15, t.s.n., Sept. 26, 1969.
- [36] pp. 2-62, t.s.n., July 26, 1969.
- [37] p. 143, Appellant's Brief.
- [38] pp. 140-141, Id.
- [39] p. 58, t.s.n., Oct. 10, 1969.
- [40] p. 143, Appellants' Brief.
- [41] pp. 85-86, Id.
- [42] pp. 30-32, Appellee's Brief.
- [43] p. 29, Appellant's Brief.
- [44] pp. 21-23, t.s.n., June 24, 1969.
- [45] p. 95, Appellant's Brief.
- [46] pp. 42, 58-60, t.s.n., July 30, 1969.

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