

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANASTACIO CARICUNGAN, MARIO CARICUNGAN, MARTINIANO
CARICUNGAN, AND WINNIE CARICUNGAN, ACCUSED-APPELLANTS.**

G.R. No. 71461. September 30, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an automatic review by the Court because of the imposition of the death penalty by the Regional Trial Court, Region I, Branch 38, Lingayen, Pangasinan, on June 24, 1985, in Criminal Case No. L-2882, entitled, "People of the Philippines v. Anastacio, Mario, Martianiano and Winnie, all surnamed Caricungan." The verdict is as follows:

X X X X X X X X

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this Court finds and holds the accused, ANASTACIO, MARIO, MARTINIANO and WINNIE, all surnamed CARICUNGAN, guilty beyond reasonable doubt as principals of the crime of DIRECT ASSAULT UPON AN AGENT OF A PERSON IN AUTHORITY WITH MURDER defined and penalized under the provisions of Article 248 in relation to Articles 148 and 48 of the Revised Penal Code, and conformably thereto, hereby sentences each of the accused to the penalty of DEATH for the killing of the late Primo Milanés, Chief of the Barangay Tanod of Tombod, Villasis, Pangasinan, and to pay proportionately the costs of the proceedings.

The accused are further ordered by this Court to indemnify jointly and severally the heirs of the late Primo Milanés in the sum of Four Thousand (P4,000.00) Pesos as actual damages and Thirty Thousand (P30,000.00) Pesos as moral damages.[1]

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The information reads as follows:

X X X X X X X X

That on or about 7:00 in the evening of April 26, 1983, at barangay Tombod, municipality of Villasis, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, with intent to kill, conspiring together and mutually helping one another, with treachery, aid of armed men and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously shoot, attack and assault Primo Milanés, a duly appointed and qualified Rural Police Chief who was in the performance of his official duties and known as such by the accused, thereby inflicting upon him several wounds on the different parts of his body which caused his instantaneous death.

Contrary to Art. 248, in relation to Arts. 148 and 48 of the Revised Penal Code.

Lingayen, Pangasinan, August 3, 1983.[2]

At the arraignment, the four accused, all surnamed Caricungan and closely related to each other, pleaded not

guilty.[3]

The prosecution's version of the violent incident precipitating this case, as found by the trial court, is stated in the appealed decision, as follows:

Briefly, the evidence for the prosecution tends to establish the following facts: that at about 7:00 o'clock in the evening of April 26, 1983, while the late Primo Milanes, who was then Chief of Barangay Tanod of Tombod, Villasis, Pangasinan, together with Barangay Captain Ernesto Ordonez, Enrique Orbiso, Paquito Leonen, Benigno Bulatao and Santos Ordonez were inside the house of Leonardo de Guzman, located in barangay Tombod, Villasis, discussing things about the good and improvements of their community, they heard the accused, Anastacio Caricungan and his son Mario shouting the following words, to wit: "rumuar ti malalaki" (those who are tough men come out). After hearing the shouts, Primo Milanes being the Chief of the Barangay Tanod went out followed by Barangay Captain Ernesto Ordonez, Santos Ordonez, and other members of the group. When Primo Milanes was about 2 to 3 meters away from the accused, who were all armed, Mario with a shotgun (Exhibit F), Anastacio with a short firearm (Exhibit H), Martiniano (Idring) with a short firearm (Exhibit G) and Winnie with a piece of wood, he (Milanes) asked the accused why they were shouting and Anastacio answered, saying, that since they were already involved in trouble, they should continue with it." Thereupon, Anastacio Caricungan shot Primo Milanes with his homemade armalite (Exhibit H). As a result of the shooting, Primo Milanes fell down and as the latter lay prostrated (sic) on the ground, Mario, Idring, and Winnie simulta-neously attack [sic] and struck the victim on the head and different parts of his body and upon seeing that the victim was already life-less, the accused all ran away. As soon as the accused were gone, Arturo Cariaga and others went near the body of the victim and later on brought Primo Milanes to the clinic of Dr. Banez in Carmen, Rosales, Pangasinan, but unfortunately, the victim did not survive.

After the shooting, Barangay Captain Ernesto Ordonez proceeded to the police headquarters of Villasis and reported what happened. Upon receipt of the report, patrolmen Reinario Acosta, Itok, Imos and Menita proceeded to the clinic of Dr. Banez in Carmen, Rosales and when they saw that the victim was already dead, they proceeded to Barangay Tombod where the incident took place. Police Lt. Romeo Bascos and patrolman Jovencio Sta. Cruz also repaired to the crime scene and during the spot investigation conducted, the policemen were able to recover a bolt housing of a shotgun (Exh. A) and also a piece of wood. The police were likewise able to locate witnesses to the shooting namely, Arturo Cariaga, Enrique Orbiso and Barangay Captain Ernesto Ordonez and these witnesses gave their written statements to the police (Exhibits C, D, & E series). After the police were informed of the identities of the assailants they tried to look for the suspects but the accused could not be found in their houses.

On April 29, 1983, the accused surren-dered to the police through Councilor Divina dela Cruz and on the following day (April 30, 1983), Mario and Winnie Caricungan voluntarily gave their written statements (Exhibits J and K). The two accused also informed the police that the firearm used in the killing were kept in Palina Central, Urdaneta, Pangasinan, and on May 2, 1983, the police accompanied by Mario Caricungan went to Palina Central in the house of Narciso Bautista and Arturo Armendez where they found Exhibit "F" (shotgun with one unspent bullet), Exhibit "G" (sjprt [sic] firearm, caliber .22 with eight (8) live ammunitions), and Exhibit "H" (homemade armalite caliber 5.56 milimeter with one live ammunition). Police likewise found in the house of Bautista short and long bullets of caliber .22 (Exhibits L & M, series).

That on April 27, 1983, Dr. Elpidio Aggasid, MHO of Sto. Tomas, Pangasinan was requested by the police to conduct an autopsy (sic) examination on the body of Primo Milanes and per the findings (Exhibits 0 & 0-1), of Dr. Aggasid, the deceased suffered the following injuries:

EXTERNAL FINDINGS:

- Lacerated wound, measuring 9 cms. in length located at the parrieto-occipital region, right;
- Lacerated wound, measuring 3.5 cms. in length over the pina of the right ear;

- Lacerated wound, measuring 3.5 cms. in length at the right temporal region;
- Lacerated wound, measuring 3.5 cms. in length located at the mandible region;
- Gunshot wound, irregular edge, with colar contusion, measuring .4 cms. in diameter located over the left lateral on the level of the umbilicus and 7.5 cms. from it.

INTERNAL FINDINGS:

- Gun shot wound, penetrated the descending colon thru and thru (sic), large intestines directed at the sacrum;
- Slug embedded at the sacrum, 2 inches above the coccyx;
- Multiple fracture of the skull on the parieto-occipital region;
- Blood clots over the whole brain;

That the cause of death of the deceased was shock due to cerebral hemorrhage secondary to gunshot wound; that the lacerated wounds suffered by the victim on the different parts of his body were caused by blunt instruments like a butt of a gun and the cause of multiple fracture on the skull was due to force or violence applied on the head with the use of a blunt instrument like a butt of a gun; that injury No. 1 and 5 are fatal wounds, because the fracture was depressed and it affected the brain, and the gunshot wound produced massive hemorrhage inside the abdominal cavity. x x x[4]

Mario Caricungan is a son of Anastacio Caricungan. Winnie Caricungan on the other hand married Anastacio's stepdaughter, Merly Ermita, and is considered by Anastacio as a son.[5] Edring Caricungan is the same person as Martiniano Caricungan,[6] and Martiniano is a nephew of Anastacio.

All the four accused interposed the defenses of alibi and denial during the trial. But not only were conflicting versions of the incident offered by the accused-appellants, they pointed the accusing finger at each other.

According to Anastacio, all throughout the evening of April 26, he did not leave his house.[7] In the evening of April 29, 1983, when the authorities went to apprehend him, he was not home.[8]

Moreover, Anastacio claims that Mario, Winnie, and Edring admitted to him that they had killed Primo Milanes, and the only reason why he surrendered himself or "submitted" himself as he prefers to say it was because he was placed under arrest.[9]

Winnie's version is patently different from Anastacio's. Anastacio, whom Winnie considers as his father, told him that he had shot one Primo Milanes in barangay Tombod, Villasis.

At the time this incident happened, Winnie was walking behind Mario who was also closely following Anastacio Caricungan.[10] Winnie and Anastacio were accompanying Mario Caricungan as he was surrendering himself to the police authorities for another crime, which was his shooting of Mamerto Orbizo.[11]

When Martiniano (Edring) Caricungan's turn to testify came, he said he suspected that prosecution witness Ordoñez only implicated him because Ordoñez thought he could get some money from him.[12]

He had gone to Villasis only because he had been asked to build a rooster pen for his uncle,[13] and had no idea at all that his uncle would kill Primo Milanes along the way.

When Primo was shot, Martiniano (Edring) claimed that he was at his daughter-in-law's place.[14]

Mario Caricungan, on the other hand, said he had shot one Mamerto Orbizo about 20 minutes before seven o'clock in the evening of the same day. Mario's companions at the shooting of Orbizo were his father Anastacio,

and Winnie Caricungan.[15] After he shot Mamerto Orbizo, Mario, along with Anastacio and Winnie, went home.[16] Later on, he was asked by his father to go "east" with Winnie, in order to evade arrest.[17]

It was on their way "east" that Mario's father shot Primo Milanés.[18] Mario had no idea that his father would shoot Primo Milanés. In fact, because of this incident they were not able to surrender to the authorities at all as originally planned.[19] He (Mario) and Winnie were walking behind Anastacio when the latter pointed his gun at Primo.[20] Mario heard a gunshot, and by instinct he ran away, but he had seen his father shoot Primo Milanés.

Mario's father was three (3) meters away from the victim Primo Milanés, and Mario was seven (7) meters away from his father.[21] Anastacio later on followed Mario to his house.[22]

Mario was told by his father that they should go into hiding in case Milanés' family sought revenge.[23]

Mario did not see Martiniano after the shooting incident except at the place of the daughter-in-law of the latter. Only Mario, Anastacio, and Winnie made up their minds to proceed to the barangay.[24]

The accused-appellant, Anastacio Caricungan, submits in his separate brief filed with this Court by his counsel de oficio, Atty. Manuel A. Barcelona, Jr., that the trial court erred in ruling that:

- THE KILLING OF PRIMO MILANES WAS COMMITTED WITH THE QUALIFYING CIRCUMSTANCE OF ALEVOSIA.
- THE KILLING OF PRIMO MILANES WAS ACCOMPANIED BY THE ADDITIONAL QUALIFYING CIRCUMSTANCES OF TAKING ADVANTAGE OF SUPERIOR STRENGTH AND WITH AID OF ARMED MEN.
- THE DECEASED, PRIMO MILANES, WAS AT THE TIME OF HIS DEATH, AN AGENT OF A PERSON IN AUTHORITY.
- THAT THE TRIAL COURT ERRED IN FAILING TO EXTEND THE BENEFIT OF THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER TO A PERSON IN AUTHORITY OF THE ACCUSED.
- THAT THE TRIAL COURT ERRED IN NOT EXTENDING TO THE ACCUSED THE BENEFIT OF THE MITIGATING CIRCUMSTANCE CONFERRED BY PAR. 10 ART. 13 OF THE REVISED PENAL CODE.[25]

On the other hand, the accused-appellants Martiniano (also known as Edring), Winnie, and Mario, assign the following errors of the court a quo, in their own brief submitted by their counsel de oficio, Atty. S. Katherine Luczon-Barinaga:

- THE TRIAL COURT ERRED IN HOLDING THAT MARIO, WINNIE AND MARTINIANO CARICUNGAN PARTICIPATED IN THE KILLING OF PRIMO MILANES.
- THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF PROSECUTION WITNESSES.
- THE TRIAL COURT, INTERPRETING THE INJURIES OF PRIMO MILANES, ERRED IN RULING AGAINST NON-PARTICIPATION OF HEREIN THREE ACCUSED-APPELLANTS.
- THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS MARIO, WINNIE AND EDRING CARICUNGAN.[26]

After a close scrutiny of the records and transcripts of this case, we find no reason to overturn the assailed decision of conviction promulgated by the lower court.

The accused-appellant Anastacio Caricungan's defense in the lower court was alibi, but in his appeal brief, he pleaded through counsel that the "crime be adjudged as simple HOMICIDE." [27] We consider this an admission that he did kill the victim.

In addition, there were many people who had witnessed Anastacio's shooting of the victim, among them Barangay Captain Ernesto Ordonez [28] and Enrique Orbiso. [29] Also, the other accused-appellants, Mario and Winnie, pointed [30] to Anastacio as the triggerman. With such an overwhelming evidence presented against Anastacio, his defense of alibi before the trial court can not possibly prevail; thus there is no doubt that he did fatally and treacherously shoot the deceased as found by the trial court.

In as much as Anastacio is a member of the community of barangay Tombod and lives not far from Milanes, he cannot deny that he knew Milanes to be the Chief of their Barangay Tanod. At the time that the victim was killed, the latter was in the performance of his duty of maintaining peace and order in their community.

With regard to the invocation of the mitigating circumstances of voluntary surrender and the provisions of paragraph 10, Art. 13 of the Revised Penal Code, we could not find any basis from the records of the case to justify the appreciation of such mitigating circumstances in favor of Anastacio.

As to the three other accused-appellants, the Solicitor General convincingly argues:

Appellants' attempt to discredit the testimonies of prosecution witnesses is futile. In the first place, appellants failed to present any valid ground to show that their testimonies are incredible, or point out any material inconsistencies therein.

Moreover, the testimonies of the witnesses of the prosecution are confirmed by physical facts of the case, not to mention the inference of a consciousness of guilt arising from appellants' flight immediately after the incident. [31]

While the evidence establishing the guilt of appellants Martiniano, Winnie, and Mario may not be as overwhelming as that of Anastacio, it is more than sufficient bases to affirm the judgment of conviction against them. A number of eyewitnesses testified seeing the said appellants actually strike with their weapons the victim, Primo Milanes, immediately after he was gunned down by their co-accused, Anastacio. Among them were Barangay Captain Ernesto Ordonez, [32] Enrique Orbiso, [33] and Santos Ordonez. [34] Thus the killing of the deceased was committed not by Anastacio Caricungan alone, but also with the help of Martiniano, Winnie, and Mario.

Thus, the assignment of errors pointed out by all the accused-appellants is devoid of merit.

We are convinced that the guilt of all the accused-appellants had been proven beyond reasonable doubt.

WHEREFORE, except with the modification that the penalty of death be changed to reclusion perpetua in view of the prohibition of the imposition of the death penalty by the 1987 Constitution, and that the moral damages be increased from P30,000.00 to P50,000.00 in line with recent jurisprudence, the appealed decision is hereby **AFFIRMED** in all other respects.

Costs against the appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

- [1] Rollo, 70.
- [2] Id., 6.
- [3] Records of the Case, 46.
- [4] Rollo, 61-63.
- [5] TSN, August 1, 1984, 82-84, 85 and 88; TSN July 25, 1984, 8.
- [6] TSN, June 6, 1984, 6.
- [7] Ibid.
- [8] Ibid.
- [9] Ibid.
- [10] TSN, July 25, 1984, 5.
- [11] Ibid.
- [12] TSN, June 6, 1984, 7.
- [13] Ibid.
- [14] TSN, April 24, 1984, 30.
- [15] Ibid., 20.
- [16] Ibid., 21.
- [17] Ibid., 22.
- [18] Ibid., 25.
- [19] Ibid.
- [20] Ibid., 50.
- [21] Ibid., 28.
- [22] Ibid., 30.
- [23] Ibid., 31.
- [24] Ibid., 32.
- [25] Brief for appellant Anastacio, 1-2; rollo, 117-118.
- [26] Brief for the Accused-Appellants Martiniano, Winnie and Mario, 11; rollo, 206.
- [27] Brief for Accused-Appellant Anastacio, 18; rollo, 134.
- [28] TSN, October 14, 1983, 17.
- [29] TSN, December 22, 1983, 8.
- [30] Rollo, 56-58.
- [31] Brief for Appellee, August 31, 1990, 20-21.

[32] TSN, October 14, 1983, 17-19.

[33] TSN, December 22, 1983, 8-9.

[34] TSN, January 23, 1984, 4.

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