

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SGT. FELIX PADILLA, ACCUSED-APPELLANT.***G.R. No. 75508. June 10, 1994*

Ponente: BELLOSILLO, J.

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MURDER is abhorrent; it becomes even more when the perpetrators are men in uniform, in active service, sworn to maintain the peace, protect the body politic and uphold the rule of law. This case may yet serve as a grim reminder, a foreboding, of the current state of affairs in the country -- policemen, military officers, agents of the law, garbed in filthy outfit, drinking inordinately in public places, flaunting their arms as symbols of their authority, rebuking, beating, maiming, killing one another without rhyme or reason, hitting innocent bystanders in the crossfires, a sheer antithesis of their role in civilized society.

SGT. FELIX PADILLA was a member of the Philippine Air Force (PAF) assigned to U-2, the intelligence unit of General Headquarters, Armed Forces of the Philippines (GHQ-AFP), then under the Eastern Command, now Regional Unified Command (RUC-8) stationed at Camp Lukban, Catbalogan, Samar. He was charged together with his Senior Officer, Maj. Ildefonso de la Cruz, before the then Court of First Instance of Catbalogan, Samar, with the crime of murder qualified by treachery, evident premeditation and taking advantage of his public position, for the fatal shooting on 5 May 1981 of his comrade-in-arms, Pfc. Edino Ontuca, Officer-in-Charge of the Talalora Police Sub-Station.[1] Two aggravating circumstances were alleged to have attended the commission of the offense, namely, the aid of armed men,[2] and abuse of superior strength.[3]

On 28 March 1983, upon motion of the prosecution, a re-investigation was granted by the trial court. As a result, the charge against Maj. de la Cruz was provisionally dismissed but trial proceeded as to accused Padilla.

After trial, the court a quo convicted Sgt. Padilla of murder qualified by treachery with the generic aggravating circumstance of taking advantage of his public position,[4] but appreciating at the same time the mitigating circumstance of sufficient provocation in favor of the accused.[5] After offsetting the two attendant circumstances, the court imposed the medium of the penalty prescribed for murder, which is reclusion perpetua, and ordered the accused to indemnify the heirs of the deceased in the sum of P30,000.00, and to pay the costs.[6]

Accused-appellant now comes to us claiming that the prosecution failed to prove his guilt beyond reasonable doubt. Specifically, he imputes the following errors to the court a quo: (1) in finding that he shot and killed the victim when no clear evidence supports it; (2) in finding that the deformed slug, Exh. "I," was the same slug extracted from the cadaver of the victim and basing its conviction thereon; and, (3) in giving high probative value to the testimony of Pat. Daniel Q. Omega notwithstanding his apparent bias for the victim who was his superior in the police force.

Clearly, the evidence for the prosecution is woven around the testimony of Pat. Daniel Q. Omega who gave a detailed account of the incident. On 4 May 1981, Pat. Omega was on duty at Pier 1 in Catbalogan, Samar, from eleven o'clock in the evening to seven o'clock the following morning. At past midnight, 5 May 1981, Pfc. Edino

Ontuca, Officer-in-Charge of the Talalora Police Sub-Station, approached him for assistance claiming he was maltreated by strangers. Pat. Omega responded and both proceeded to where complainant was reportedly assaulted, passing by Malayan Hotel at the pier area to get Ontuca's service revolver.

When they reached the corner of Rizal Avenue and Del Rosario Street, the two (2) policemen saw three (3) men in the company of a woman. Pat. Omega approached them, identified himself as a police officer, and then began to investigate the reported "castigo" or manhandling of complainant. A certain C1C Belino spoke for the group. He introduced himself first and then his companions, Maj. de la Cruz and Sgt. Padilla. At that juncture, Pfc. Ontuca gave his name, rank and position, and then remarked, "Why have you done this to me? Brod, we are not adversaries; we are of the same feather." After saying this, Pat. Omega tapped Pfc. Ontuca's shoulder and admonished the latter saying, "Brod, let us stop; just keep silent; just go home and sleep." [7] Pfc. Ontuca took the advice and returned to the pier with Pat. Omega.

When they reached Malayan Hotel, Pfc. Ontuca stayed behind at the entrance while Pat. Omega proceeded to the Lion's Waiting Shed some fifty (50) meters away. Suddenly, there was a commotion in front of the hotel. Pfc. Ontuca was being ganged up by three (3) men. Pat. Omega then rushed towards the hotel where he saw his companion already down on his right knee with both arms stretched behind him, his left arm held by Maj. de la Cruz and his right by Sgt. Padilla, while C1C Belino held him by the waist and took his service revolver away. [8] Pat. Omega tried to intervene but C1C Belino and Maj. de la Cruz poked their pistols at him. C1C Belino disarmed Pat. Omega and handed over his service pistol to Maj. de la Cruz who then grabbed Omega by the collar saying, "Let us go to the hospital because you are drunk."

Pat. Omega denied that he was drunk and reasoned out that he was on duty at the pier and would be responsible if something went wrong at his post. But Maj. de la Cruz did not listen to him; instead, he ordered Pat. Omega and Pfc. Ontuca to go to the hospital. The accused held the victim at the back of his waist and at the collar of his shirt as they walked along Del Rosario Street on their way to the hospital. When they reached Lorenz Barber Shop, Maj. de la Cruz summoned a certain Sgt. Bongosia to accompany them to the hospital purportedly in order to have the two policemen undergo "liquor test." Sgt. Bongosia obliged and then cocked his armalite. He even boasted that he came from Mindanao and was not afraid of anyone. [9]

All six (6), namely, Maj. de la Cruz, Pat. Omega, Pfc. Ontuca, C1C Belino, Sgt. Bongosia and the accused then proceeded east along Curry Avenue with the accused holding Pfc. Ontuca, followed by Sgt. Bongosia and C1C Belino to their right, then Pat. Omega and Maj. de la Cruz. At the intersection of Curry Avenue and San Bartolome Street, Pfc. Ontuca managed to free himself from the grasp of the accused and ran north along San Bartolome Street. Upon reaching the intersection of Rizal Avenue and San Bartolome Street, Pfc. Ontuca turned right, eastward. The accused, followed by Maj. de la Cruz and Pat. Omega, pursued Pfc. Ontuca, while Sgt. Bongosia did not take the same route; he ran straight along Curry Avenue and then turned left, north, along San Francisco Street. C1C Belino dashed to the opposite direction, turning left towards Del Rosario Street. When Pfc. Ontuca reached a fruit stand beside Cinex Theater, he grabbed a girl named Lilia, an employee at the nearby Bahay Kawayan Disco situated along Callejon, a narrow street connecting Rizal Avenue. Lilia struggled and screamed for help as Pfc. Ontuca held her tightly by the waist, using her as a human shield against the accused who was pointing his pistol at him. Finally, Pfc. Ontuca and Lilia fell to the ground giving the latter a chance to escape. Left without any protection, Pfc. Ontuca squatted on the ground and reached for a piece of plywood which he held upward to cover his head.

Maj. de la Cruz and Pat. Omega were just across the street standing in front of the Bonifacio Nardo Store some fifteen (15) meters away. From where they stood, they could clearly see the side view of the accused and the victim facing each other. The area was fairly illuminated from the mercury lamp at the corner of Callejon and

Rizal Avenue, from the light in the gasoline station at the corner of San Francisco Street and Rizal Avenue, and from the incandescent bulb at the Bonifacio Nardo Store.[10]

Pfc. Ontuca begged for his life. "I am not going to fight with you," he said. But the accused, showing no mercy, squeezed the trigger of his .45 cal. automatic pistol pumping a single bullet into the head of his victim who was just some three to four meters from him. The time was exactly two o'clock in the morning.[11] After shooting Pfc. Ontuca, the accused backtracked and then returned to the fallen policeman and tauntingly kicked him saying, "Are you still alive?" The accused then went to Maj. de la Cruz and talked to him.

Some fifteen (15) minutes later, members of the military police (MP) arrived aboard their jeep. The MPs requested Sgt. Padilla and Maj. de la Cruz to surrender their firearms but they refused, so the two (2) were told to go with them to the barracks and surrender their firearms to their Commanding Officer. Maj. de la Cruz, Sgt. Padilla and Pat. Omega obliged and walked with the MPs to the barracks. The MPs then loaded the victim, Pfc. Ontuca, in their jeep and brought him to the Samar Provincial Hospital where he died the following day.[12]

Appellant Sgt. Felix Padilla has a different version. He says that at about one o'clock in the morning of 5 May 1981, he was with the late Capt. Mario Ty and his men of the 9th Infantry Brigade. They had just arrived from a covert operation in Bgy. Rama, Catbalogan, Samar. Upon their arrival at Pier 1 they parted ways, he going to the house of his first cousin Monica Racuyal at the southwest corner of Mabini Avenue and 7th Street, Patag District, while the rest of the group proceeded to Calbayog City, home of his brigade. He took San Bartolome Street then turned right on Rizal Avenue walking along the right or southern side. On the left or northern side of the street near the Cinex Theater, he noticed a man forcing himself on a woman who was struggling and screaming for help. Being an officer of the law, he responded. He identified himself and ordered the man to release the woman. The man ignored him and so he fired a single warning shot into the air using his .45 cal. pistol. Before he could even lower his arm, he heard a gun report emanating some thirty (30) meters away near the intersection of San Bartolome Street and Rizal Avenue where the Catbalogan Hardware was located.

At that very moment, the man holding the woman slumped to the ground. He then saw two (2) men from the street corner beside the hardware store dart towards Rizal Avenue. Immediately, he took cover behind a parked jeep and called upon a bystander to summon the police. From where he was, he heard someone near the Catbalogan Hardware saying, "Patay na yan," referring to the person who had just been gunned down. Members of the military police soon arrived and took the victim to the hospital.[13]

A painstaking review of the records fails to convince us that somebody else shot the victim to death. This Court gives credence to the contrary testimony of Pat. Daniel Omega who narrated the events with elaborate details before, during and after the shooting. We are satisfied, as was the trial court, with his story which rings true throughout.

The account of the defense that the victim was shot at the head by unidentified men is inconsistent with human experience, observation and reason, and is further belied by the positive testimony of a principal witness. The improbability of appellant's narration lies principally on the admitted medical findings on the point of entry of the bullet, the size of the gunshot wound and its characteristics, as well as the location of the slug taken from the head of the victim, all of which point to the culpability of the accused.[14]

The autopsy report shows that the bullet entered the mid-parietal region of the victim's head where the left and the right parietal bones forming part of the upper portions of the skull unite or are joined by a bony seam called the sagittal suture that runs along a point anterior or above the forehead and a point posterior or about the level of the ear.[15] The testimony of Dr. Caridad Quimbo, the resident physician who conducted the post-mortem examination, as well as the diagram in the anatomical chart (Exh. "H") marking the entrance wound, reveals that

the bullet entered the roof of the skull and embedded itself beneath the left parietal bone. From the location of the slug in relation to the entry wound, it could be safely concluded, according to the doctor, that the trajectory of the bullet took on a downward curve, inferring that the assailant was on a higher plane than the victim.[16] She also observed the bursting of the edges of the stellar shaped entrance wound indicating that the bullet was fired at close range.[17] Furthermore, the size of the gunshot wound - about 3-1/2 inches in diameter - which caused the cerebral tissues to spill out from the cranium, was too large for the bullet to have been fired from a distance of thirty (30) meters.

We find it difficult to believe that the alleged gunman fired the shot that hit the victim at the top of his head from his right side, while the latter was at a distance struggling with a woman at the time he was hit. Indeed, it is highly incredible[18] for a person with ordinary shooting skills to hit an extraordinary mark at a range of thirty (30) meters using only a handgun, especially when the target is mobile and the sight is blocked by some persons, and the area is not comfortably lighted. Even if the shooting was accidental, or if purposely done was consigned to chance, the probability that the bullet would fatally hit the victim was remarkably remote.

Accused-appellant takes issue on whether the slug marked Exh. "I" could be considered by the court notwithstanding the failure of the prosecution to formally offer it in evidence.[19] The records show that when Fiscal Cobriros offered his evidence in court he inadvertently skipped Exh. "I." After he offered Exh. "H" and its sub-markings, he proceeded to offer Exh. "J" and its sub-markings, thereby omitting to offer Exh. "I." The accused maintains that under Sec. 35, Rule 132, of the Rules of Court, evidence not formally offered, such as Exh. "I," cannot be considered by the court.

This is untenable. Although Exh. "I" was not formally offered, it was nevertheless duly identified by Ireneo Ordeano, Senior Ballistician of the NBI. It was accordingly noted and subsequently incorporated in the records. Such oversight could not be fatal to the cause of the prosecution as its entire evidence had been recorded and the witness who was competent to testify on the matter had properly identified the challenged exhibit. But even without the exhibits incorporated into the records, the prosecution can still establish its case as its principal witness properly identified Exh. "I" and his testimony was recorded.[20] The most vital pieces of physical evidence of the prosecution - the copper jacketed slug taken from the head of the victim and the empty shell recovered from the scene of the crime - indubitably point to the accused as the author of the crime.

To strengthen the theory of the prosecution that the slug taken from the head of the victim was fired from the pistol of the accused, the prosecution detailed the procedure followed by the ballistics expert of the PC Crime Laboratory. The evidence specimen shell was marked "OCA" and the four (4) test specimen shells taken from four (4) live ammunition which were test-fired into a bullet recovery box using the pistol of the accused were marked "T-82-1" to "T-82-4." The specimens were then mounted on a special ballistics microscope. On the left stage was placed the evidence specimen shell, while on the right, the standard (test) specimen shell. The microscope was so designed for comparing ballistics empty shells with a single eyepiece where the examiner could view both specimens side by side and thoroughly compare the impressions appearing thereon. A photomicrograph was then taken of the objects appearing on the lens of the microscope.[21] The results showed that the impressions on the evidence specimen shell were identical with the impressions on the standard specimen. On the basis of the result of the examination, the ballistics expert of the PC Crime Laboratory concluded that the evidence specimen shell and the standard specimen shells were fired from one and the same firearm of the accused.[22]

A ballistics examination on the deformed copper jacketed slug marked Exh. "I" was also conducted by the NBI. Following the same procedure adopted by the PC Crime Laboratory by comparing the evidence copper jacketed slug marked Exh. "I" with the three standard slugs marked Exhs. "L," "L-1" and "L-2," the NBI observed that the

evidence copper jacketed slug possesses identical characteristic markings with those of the standard slugs. The conclusion reached by the NBI was that the bullets were fired from one and the same firearm.[23] A photomicrograph was also taken of the specimens and they vividly showed parallelism in the impressions.[24]

Accused-appellant postulates that the evidence copper jacketed slug marked Exh. "I" was not the same slug taken by the medico-legal officer from the head of the victim during the post-mortem examination. According to appellant, it was physically impossible to conduct a ballistics examination on the evidence slug because it was in a "disintegrated form" and was "fragmented in smaller bits" when taken out of the head of the victim. The accused also banks on the inconsistency between the finding of Dr. Quimbo that the evidence slug was covered with a "bronze jacket" and the NBI ballistics expert who said that the slug was coated with a "copper jacket." [25]

There is nothing in the records to show that the evidence copper jacket was splintered into several pieces when it was taken out of the head of the deceased. Neither is there evidence on record to show that the evidence slug examined by the NBI ballistics expert is different from that extracted by Dr. Quimbo from the victim. The ballistics report of the NBI Criminalistics Division showed that the evidence slug submitted for examination on 24 February 1984 in *People v. Sgt. Felix Padilla* was one-piece deformed copper jacketed slug fired from a .45 cal. pistol, and not a fragmented slug.

Accused-appellant should not rely on the recollection of Dr. Quimbo as to the form or shape of the evidence slug. The post-mortem examination on the body of the victim was made more than a year before Dr. Quimbo testified and she herself admitted that she was no longer certain on the shape or form of the evidence slug [26] as she was more concerned with the post-mortem examination of the cadaver and not with forensic ballistics examination.

Finally, accused-appellant asserts that the testimony of Pat. Omega should not have been accepted with precipitate credulity since the witness was too partial for the victim who was his superior in the police force. This argument is patently flawed. The credibility of a principal witness is a perennial object of attack by an accused in distress who endlessly fabricates convenient tales and incredible notions to impugn a particularly damaging testimony. We quote with approval the observation of the Solicitor General [27] -

There is not a whit of truth to this claim considering that Ontuca was already dead at the time Pat. Omega gave testimony of the criminal incident. Moreover, the defense has shown no motive for personal or financial gain on the part of Pat. Omega when he testified and provided the trial court with the facts on the commission of the crime.

Moreover, as the trial judge observed of the deportment of principal witness Pat. Omega: "Omega is a peace officer. He testified in a straightforward manner. His testimony has the ring of truth. No credible reason has been given why said witness would testify except to tell the truth."

While we affirm the conviction of accused-appellant, we take exception to the findings of the court a quo on the attendant circumstances. We do not agree that there was treachery in the killing of the victim to qualify it to murder. There was no treachery or alevosia because the accused did not deliberately employ means, methods or forms in the mode of his attack which tended directly and specially to insure his safety from any offensive or retaliatory act the victim might make. Appellant did not consciously adopt a particular method or manner of killing the victim that would eliminate any risk to himself, for it was not until Pfc. Ontuca and the woman he was holding hostage accidentally fell to the ground that appellant was accorded the instant opportunity to kill his victim with facility. [28]

In the early case of *People v. Cañete*, [29] we held that "[t]he circumstance that the deceased had fallen to the ground gave to the accused, it is true, the opportunity, of which he promptly availed himself, to come up with the deceased and to dispatch him at once. But that act of so doing cannot be interpreted as evincing a design to

employ a method indicative of alevosia. The contrary is true in the case where the victim is bound before being slain or is driven to take refuge behind the closed door of a closet.”

Moreover, the assault on the victim was not made in a sudden and unexpected manner. Pfc. Ontuca apparently sensed the sinister plan of his malefactors when he fled and forcibly took a woman hostage to use as a human shield. Clearly, the victim was forewarned of a graver evil when accused and his companions mauled him, and when Maj. de la Cruz had to summon an armed military man purportedly to bring him and Pat. Omega to the hospital for a “liquor test.”

The absence of treachery or alevosia notwithstanding, the crime committed by accused-appellant is still murder. The killing was qualified by the aggravating circumstance of abuse of superior strength which was alleged in the information and proved during the trial.[30] Abuse of superior strength is present not only when the offenders enjoy numerical superiority, or there is a notorious inequality of forces between the victim and the aggressor, but also when the offender uses a powerful weapon which is out of proportion to the defense available to the offended party. The accused was armed with a powerful pistol which he purposely used, gaining him an advantage over his victim who only had a piece of plywood to cover himself after he was disarmed.[31]

The accused did not abuse his public position in committing the crime. For this circumstance to be appreciated as aggravating, the public official must use his influence, prestige and ascendancy which his office gives him in realizing his purpose. It could not be said that the accused purposely used or took advantage of his position or rank in killing the victim because he could have committed the crime just the same by using another weapon not necessarily his service firearm. Besides, Pfc. Ontuca, himself a military man, resisted the assault on his person and did not adhere to the accused, nor to C1C Belino, neither to Maj. de la Cruz, who was a ranking officer of the Philippine Air Force.[32]

Sufficient provocation could neither mitigate the criminal liability of the accused. He cannot claim that he was provoked by Pfc. Ontuca when the latter ran away from him because, understandably so, the hapless victim feared for his life having been beaten up twice by his assailants that same evening. To flee when danger lurks is human and can never be regarded as a source of provocation sufficient to come within the ambit of The Revised Penal Code. In fact, when an offended party flees from his aggressor, the latter has no reason to pursue and attack him.

All told, the crime committed by accused-appellant is murder qualified by abuse of superior strength. The penalty for murder is reclusion temporal maximum to death. In the absence of any mitigating or aggravating circumstance, the penalty should be, as correctly imposed by the court a quo, reclusion perpetua, which is the penalty for murder.

WHEREFORE, the judgment of the court a quo finding accused-appellant SGT. FELIX PADILLA guilty of murder and imposing upon him the penalty of reclusion perpetua is AFFIRMED, with the modification that the civil indemnity of P30,000.00 awarded to the heirs of the deceased Pfc. Edino Ontuca is increased to P50,000.00. Costs against accused-appellant.

### **SO ORDERED.**

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

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[1] People v. Sgt. Felix Padilla, Crim. Case No. 1986; Original Record, p. 49.

[2] Art. 14, par. 8, The Revised Penal Code.

[3] Id., par. 15.

- [4] Id., par. 1.
- [5] Art. 13, par. 4.
- [6] Decision penned by Judge Sinforiano A. Monsanto, Court of First Instance, Br. II, Catbalogan, Samar.
- [7] TSN, 13 July 1983, pp.7-8.
- [8] Id., pp. 9-10.
- [9] TSN, 13 July 1983, pp. 10-14.
- [10] TSN, 30 August 1983, pp. 6-7, 9.
- [11] Dr. Caridad Quimbo, Senior Resident Physician at the Samar Provincial Hospital, who conducted an autopsy on the victim, testified that death could have been instantaneous as the brain tissues were extruded from the gunshot wound.
- [12] TSN, 13 July 1983, p. 22.
- [13] Rollo, pp.35-36; TSN 15 Oct. 1985, pp. 89-93.
- [14] The autopsy conducted on the remains of the victim by Dr. Caridad Quimbo, Senior Resident Physician at the Samar Provincial Hospital, shows the following: “A. External: Extremities - contusion on the left wrist and on the right cubital fossa; Head - a) Gunshot wound, with point of entry at the midparietal region. There is bursting of the edges of the entrance wound, assuming a stellar shape, and measuring 3 1/2 inches along its widest diameter. Part of the cerebral tissue can be seen extruded from the wound; b) Hematoma on the left parietal region of the head.
- B. Internal: Head - Fracture of the underlying parietal bones of the sagittal suture. The bronze jacket of the slug was lodged beneath the parietal bone, close to the entrance wound x x x The lead component of the slug was recovered on the left parietal region, beneath the fractured left parietal bone, and surrounded by hematoma.
- Immediate Cause, of Death: Cardio-respiratory arrest secondary to laceration of the cerebral tissue.”
- [15] Thompson, J.S., Textbook of Anatomy (1977), p. 189; Thorek, Philip, Anatomy in Surgery, 2nd Ed., pp. 6-8.
- [16] TSN, 18 January 1984, p.9.
- [17] TSN, 18 January 1984, pp. 9-11; Solis, Pedro, Legal Medicine (1964), p. 181.
- [18] People v. Callao, G.R. No. 94643, 21 February 1992, 206 SCRA 420.
- [19] Accused-Appellant’s Reply Brief, pp. 1-4.
- [20] People v. Mate, No. L-34754, 27 March 1981, 103 SCRA 484; People v. Jose, No. L-28397, 17 June 1976, 71 SCRA 273; Co v. Court of Appeals, G.R. No. 52200, 21 August 1980, 99 SCRA 321.
- [21] Exh. “E,” Original Record, p. 4.
- [22] TSN, 9 January 1984, pp. 47-50; Original Record, pp. 4-5.
- [23] Original Record, p. 15.
- [24] Exh. “N,” Original Record, p. 14.
- [25] Accused-appellant’s Brief, pp. 13-15.

[26] Ibid.

[27] Appellee's Brief, p. 15.

[28] *People v. Tumaob*, 83 Phil. 738 (1949); *People v. Saez*, No. L-15776, 29 March 1961, 1 SCRA 937; *People v. Abalos*, 84 Phil. 771 (1949); *People v. Satore*, No. L-26282, 29 November 1976, 74 SCRA 106.

[29] *People v. Cañete*, 44 Phil. 478 (1923).

[30] Taking advantage of superior strength as provided under Art. 14, par. 15 (1), The Revised Penal Code, means to use purposely excessive force out of proportion to the means of defense available to the person attacked (*People v. Cabiling*, No. L-38091, 17 December 1976, and other cases).

[31] *People v. Canciller*, G.R. No. 97296, 4 March 1992, 206 SCRA 827; *People v. Bigcas*, G.R. No. 94534, 20 July 1992, 211 SCRA 631.

[32] In *Montilla v. Judge Hilario*, 90 Phil. 49 (1951), we held: The fact that, as alleged, the accused public officers made use of firearms which they were authorized to carry or possess by reason of their positions, could not supply the required connection between the office and the crime charged (murder). Firearms however and wherever obtained are not an ingredient of murder or homicide.

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