

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO MACAPAS, TRANQUILINO O. CALO, JR. AND BELARMINO ALLOCOD, ACCUSED.

G.R. No. 94210. April 26, 1996

Ponente: VITUG, J.

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VITUG, J.:

Right after giving his testimony as the complainant-victim in a frustrated murder case,[1] Mariano Corvera, Sr., a former mayor of Nasipit in Agusan del Norte, was gunned down in cold blood by Pablo Macapas, the accused, inside the courtroom of the Regional Trial Court, Branch II, in Butuan City, then being presided over by Judge Rosarito F. Dabalos.

In due time,[2] a new charge for murder was filed against Macapas, along with his counsel, then Mayor Tranquilino O. Calo, Jr., and the latter's driver, Belarmino Allocod, in an information (docketed Criminal Case No. 3464) that read:

"That on or about morning of March 10, 1988 at Capitol Building, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and shot one Mariano Corvera, Sr., with the use of a handgun, hitting the latter on the different parts of the body resulting to his death.

"That the commission of the crime is attended with the following aggravating circumstances, viz.:

"1. That it was committed in contempt of or with insult to public authorities; and

"2. That it was committed in a place where public authorities are engaged in the discharge of their duties.

"CONTRARY TO LAW: (Art. 248 of the Revised Penal Code)"[3]

On 08 December 1988, Executive Judge Dabalos ordered the raffle of the case and the issuance of a warrant of arrest, without bail, against Macapas. At the same time, a bail of P50,000.00[4] was fixed for each of Calo and Allocod.

Corvera's son, Mariano Corvera, Jr., assailed before the Court of Appeals (CA-G.R. SP No. 16383) the legality of the grant of bail to Calo and Allocod. On 31 January 1989, the Court of Appeals[5] set aside the questioned order and directed the court a quo to resolve the matter only after conducting the requisite hearing to determine whether or not the evidence of guilt was strong.[6]

On 08 February 1989, Executive Judge Dabalos indorsed the case to Judge Jose Adao of Branch 1 of the same court,[7] stating that he had therefore requested authority from this Court for his inhibition on account of a previous lawyer-client relationship with one of the accused. The following day, Judge Adao, noting that accused Calo and Allocod had voluntarily surrendered themselves, placed the accused in the custody of the Provincial

Commander of the Philippine Constabulary at the detention center in Camp Rafael Rodriguez, Libertad, Butuan City.[8]

On 24 February 1989, Judge Adao, after hearing, fixed bail in the amounts of P100,000.00 and P60,000.00 for the provisional liberty, respectively, of Calo and Allocod.[9] This Court, however, upon petition of the prosecution in G.R. No. 87194, issued, on 15 March 1989, an order temporarily restraining the lower court from enforcing its order of 24 February 1989 while the case was pending disposition by the Court of Appeals to which the matter was referred.[10] Judge Adao thus directed the recommitment of Calo and Allocod at Camp Rodriguez.[11]

On 16 May 1989, the Court of Appeals[12] ultimately dismissed the petition (CA-G.R. SP No. 17142) on the basis of its finding that the lower court did not abuse its discretion in granting bail to Calo and Allocod.[13] The prosecution and private complainant Mariano Corvera, Jr., thereupon elevated the case to this Court via a petition for certiorari (G.R. No. 88531). On 06 July 1989, the Court ordered the cancellation of the bail in favor of Calo and Allocod and temporarily restrained the Court of Appeals from enforcing its resolution of 16 May 1989.[14] On 18 June 1990, through a resolution penned by Justice Abdulwahid A. Bidin, the Court granted the petition, set aside the 16th May 1989 decision of the Court of Appeals and made permanent the temporary restraining order it had previously issued.[15]

In the meanwhile, acting on the request of Executive Judge Dabalos in Administrative Matter No. 88-12-3478-RTC for the assignment of Criminal Case No. 3464 to another court, this Court, on 02 February 1989, issued a resolution requiring Judge Zenaida P. Placer to take over the case. The prosecution and complainant Mariano Corvera, Jr., however, later moved for her inhibition on the ground that Calo was the lawyer of Judge Placer's family. Judge Placer denied the motion on the strength of her having been designated by this Court.

Once again, the prosecution and Mariano Corvera, Jr., sought this Court's intervention through a petition for certiorari and prohibition (G.R. No. 87932). The Solicitor General prayed for the dismissal of the petition, stating that his Office had not authorized anyone to institute it. On 20 July 1989, the Court held that Mariano Corvera, Jr., being the offended party, had sufficient personality and interest to file the special civil action. On the merits of the case, the Court ruled that, considering her past professional relationship with one of the accused and the fact that the case was rather controversial in nature, Judge Placer should be disqualified from hearing it. In her stead, the Court designated Judge Alfredo Lagamon of the Regional Trial Court of Cagayan de Oro City to try the case.[16]

Finally, on 31 March 1989, Calo and Allocod were arraigned; both pleaded not guilty to the charge.[17]

The prosecution gave the following narration of its case.

Mariano Corvera, Sr., the town Mayor of Nasipit, Agusan del Norte, used to be the vice-president and manager of the Nasipit Integrated Arrastre Stevedoring Services, Inc., ("NIASSI"). He was replaced on 13 June 1986 by Benjamin Jaramillo, who, like Corvera, was a stockholder of the corporation.

Corvera questioned the election of the corporate officers before the Securities and Exchange Commission ("SEC") which thereupon issued a restraining order. Atty. Tranquilino Calo, Jr., another stockholder, received the order. Calo told Jaramillo that there was no need to be concerned about Corvera's complaint with the SEC. Later, during the conversation, Calo was heard to have remarked, "Ah, mas maayo pa tingale atong liquidahon si Anoy [Mariano Corvera] kay samokan (Ah, it is better to liquidate Anoy because he is troublesome)."[18]

On 20 November 1986, which was Jaramillo's birthday and the 11th anniversary of the founding of NIASSI, the late Mayor Pedrito Carmona of Nasipit and Calo met at Jaramillo's office. Once again, Calo threatened to liquidate Corvera.[19]

On 06 March 1988, Jaramillo received an injunction order, dated 29 February 1988, from the SEC. The following day, 07 March 1988, Jaramillo went to NIASSI to re-assume his position. In the afternoon, Corvera, together with Engr. Berido, Tiburcio Guno and Col. Esparagoza (retired), went to Jaramillo's office to congratulate him. All were taken aback when Calo, with his bodyguards, among them Macapas and Ignacio Albarrigo, banged the door, barged in and shouted at everyone else to get out of the room. Calo pointed his finger at Corvera and shouted, "I will see you dead!"[20]

In the morning of 10 March 1988, during the scheduled trial in Criminal Case No. 2850, Executive Judge Dabalos, Atty. Rosales, Corvera, Calo, court personnel Arturo Cinco and Calixtro Berol, Fiscal Ambrosio Gallarde, and four or five spectators, including Dr. Nelson Obeñita, were in attendance. Stating that Corvera was booked for the ten o'clock, a.m., flight for Cebu, Atty. Rosales moved for the re-setting of the hearing. Calo, counsel for accused Macapas, opposed the motion saying that he himself was scheduled to take the same flight that morning.[21] At about 9:30 a.m., Corvera took the witness stand. Atty. Rosales noticed that while Calo was conducting the cross-examination, he appeared agitated and tense, so much unlike his usual calm way in court.[22]

At about ten o'clock, the parties finally agreed to the resetting of the hearing to 22 April 1988. As soon as the judge banged his gavel to adjourn the proceedings, Calo stood up and walked towards the eastern door. Macapas left ahead of Calo but Calo overtook Macapas. Atty. Rosales himself was about to leave when he saw Macapas return to the courtroom holding a revolver and walking in calmly. Then, all of a sudden, he pointed the gun at Corvera. Visibly shaken, Corvera tried to open the western door of the room but it would not budge. Unable to exit, Corvera raised his hands, saying "Ayaw, ayaw, ayaw"[23] (Don't, don't, don't). Corvera tripped while retreating. He hastily stood up and grabbed a chair to shield himself, still pleading "Ayaw, ayaw." [24] Unmoved, Macapas took aim and pressed the trigger. Corvera fell, his hands and feet shaking. Macapas drew closer to Corvera and fired again at his victim. Macapas then turned away as calmly as when he entered the room.

Atty. Rosales tried to lift Corvera but found him too heavy. Soon four or five other persons came in to help, and they brought Corvera down the building and from there to the hospital. Fiscal Gallarde surfaced from under the lawyers' table, pale and scared.[25]

Fernando Casinao was with the group of Corvera that morning. With them were Raul Abao, Pacifico Larbonita and driver Oligario Barcelona. Corvera, Abao and Larbonita entered the courtroom while Casinao remained at the lobby near the eastern door.[26]

Shortly before ten o'clock, Casinao saw security men of Calo in the vicinity of the western door.[27] He later saw Calo leave the courtroom through the eastern door. A woman who had ascended the eastern stairs conversed with Calo for a few seconds. After the woman had left, Macapas walked towards Calo. Calo handed over a revolver to Macapas. After receiving the firearm, Macapas went back to the courtroom. At that moment, Calo's security guards were near the stairs while Larbonita was about a foot away to the left of Casinao.[28]

Casinao tried to follow Macapas but a person who was standing by the door pushed Casinao back sending him to the railing. Abruptly, there was a burst of gunfire, followed by two more gunshots. Casinao dashed in to the courtroom and, on the way, bumped on Macapas at the eastern door. Casinao saw Corvera lying flat on his back near the western door with his feet towards the podium. Seeing that Corvera was still alive and Atty. Rosales unsuccessfully trying to lift him up, Casinao rushed downstairs and summoned for help to get Corvera fast to the Santos Hospital.[29]

Pacifico Larbonita, a 63-year-old "alalay" of Corvera, left the courtroom at around ten o'clock that morning. He went near the eastern door, squatted a meter away from the door, and smoked. When Calo left the courtroom,

Larbonita stood up. Calo remained around two feet away from the eastern door. A lady approached Calo and conversed with him for around five seconds. Just as the lady was departing, Macapas came out of the courtroom and Calo handed a gun over to him. Larbonita was unable to see where Calo got the gun.[30] Macapas went back to the courtroom. Moments later, Larbonita heard a gunshot; then two more gunshots rang out.[31]

Dr. Nelson Obeñita, a physician of the Nasipit Lumber Company, was in the courtroom to attend the hearing.[32] After the court had adjourned, Dr. Obeñita promptly signed the certificate of attendance and exited through the gallery entrance. Outside the courtroom, he saw Casinao. Dr. Obeñita went down the capitol building through the main entrance. He was in the garden barely twenty meters away when he heard gunshots. He turned to look back; moments later, he saw a man rushing down the stairs of the capitol building. The man proceeded to a vehicle parked by the side of the provincial treasurer's office. Dr. Obeñita recognized the man to be Macapas. Macapas boarded the vehicle, taking the seat to the right of the driver.[33]

Maj. Rolando T. Brillantes, then assistant provincial commander for operations of the PC-INP in Agusan del Norte, was in the office of the provincial governor at between 9:00 and 9:30, a.m., of 10 March 1989, to discuss with the governor the laborers' strike in Nasipit. A commotion outside the building was heard. Then, someone shouted that Mayor Corvera had been shot. Maj. Brillantes went out to the balcony where he saw "the car of Mayor Calo (was) speeding away." [34]

Maj. Evacueto de los Santos, the deputy station commander and operations officer of the Butuan Police Station, learned of the shooting incident from the radio operator. Immediately, he boarded the police car and proceeded to the capitol building with some of his men. There, he was met by PC Major Rolando Brillantes and PC Captain Godofredo de los Santos. While Major de los Santos was being briefed by the two PC officers, the "armored car" of Calo returned to the capitol grounds. Maj. De los Santos directed his men to apprehend the driver and to bring him to the police station. At the police station, the driver, Allocod, denied involvement in the incident.[35]

Sixty seven-year old Corvera sustained three gunshot wounds - one on the right arm which hit and fractured the scapula with the bullet lodged at the trapereus muscle of the back; another on the chest which pierced the skin, costal muscle, blood vessels and right lobe of the lung with the bullet lodged at the serratus anterior muscle, and the third on the abdomen below the umbilicus piercing the abdominal muscle, the small intestines and the abdominal aorta, subclavia vein, with the bullet lodged at the tissue above the latissimus dorsi muscle.[36] Dr. Elsie Caballero concluded that Corvera died of "shock, internal hemorrhage, (and) multiple gunshot wound(s)." [37]

Police authorities were never able to apprehend Macapas.

In his defense, Calo pictured himself to be incapable of the dastardly act.[38] Although he was removed as a municipal judge for grave misconduct and gross ignorance of the law,[39] he, nevertheless, remained to be a respected practicing lawyer.[40] He was an undefeated candidate for mayoralty in Carmen, Agusan del Norte, and for a time headed the "mayors' league" of the province. He denied having given a gun to Macapas[41] or as having had him as a bodyguard.[42]

On 16 March 1990, the trial court promulgated the herein questioned decision disposing of the case, viz:

"WHEREFORE, the Court finds accused TRANQUILINO O. CALO, JR. and BELARMINO ALLOCOD guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code qualified by treachery and with the generic aggravating circumstance of evident premeditation, and hereby sentences both accused to suffer the penalty of Reclusion Perpetua.

"On the civil liability, the two accused are hereby jointly and severally sentenced to pay to the heirs of the late

Mariano Corvera, Sr. the following:

"a) P30,000.00 as death compensation;

"b) P20,000.00 as reimbursement of burial expenses;

"c) P100,000.00 as reimbursement of litigation expenses and attorney's fee;

"d) P800,000.00 representing unrealized net income for eight (8) years;

"e) P500,000.00 by way of moral damages; and

"f) P 100,000.00 as exemplary damages.

"SO ORDERED." [43]

When their motion for the reconsideration [44] of the decision was denied, [45] Calo and Allocod, through counsel, filed a notice of appeal to this Court. [46]

During the pendency of his appeal, Calo died of myocardial infraction secondary to coronary insufficiency at the New Bilid Prisons Hospital in Muntinlupa, Metro Manila, per the certificate of postmortem examination issued by the National Bureau of Investigation. [47] Pursuant to the ruling in *People vs. Bayotas*, [48] the instant appeal should thus be confined only to Allocod's case.

Appellant Allocod evidently was linked to the commission of the crime for being then the driver of Calo. The only evidence that could provide some indication on his possible involvement in the story of the prosecution would be a portion of the testimony of Dr. Obeñita, as well as that of Maj. Brillantes, in connection with the declaration of Dr. Obeñita. Dr. Obeñita testified:

"Q.

What did you do?

"A.

When I heard two shots, I turned my back and tried to observe what would happen next. Later on I saw a man coming down from the stairs of the capitol, he reached the capitol grounds, he made a few glances, left and right and proceeded to the parked vehicle on that side of the capitol, that side of the provincial treasurer's office.

"Q.

You said you saw that person, who was that person?

"A.

Macapas.

"Q.

You said he went to that vehicle which was parked on that right side, what happened after he went to that vehicle?

"A.

He went to the vehicle and boarded the vehicle on the right side of the driver. He took a seat and made a motion to hide in the vehicle and they left.

"Q.

Who is the owner of that vehicle which was parked and which was boarded by Pablo Macapas?

"A.

I presume it was owned by Atty. Calo since I often saw that vehicle being used by Atty. Calo."[49]

For his part, Maj. Brillantes stated:

"Q.

When you went out to the balcony of the Provincial Governor's Office, what did you see?

"A.

When I went out I saw the car of Mayor Calo speeding away.

"Q.

To what direction?

"A.

Towards the highway. From the Capitol towards the direction of the DBP.

"Q.

And what did you do after you saw the vehicle of Atty. Calo speeding towards the DBP?

"A.

I called the attention of the Central Police Station.

"Q.

What made you call the attention of the Central Police Station?

"A.

I called the Central Police Station from my hand set radio, because I saw that the car was running very fast. It was very unusual and very suspicious. So, what was on my mind was that it might be that the car was used by the assailant.

"Q.

Were you able to contact the Central Police Station?

"A.

Yes, sir, I was able to contact Major Evacueto delos Santos and I told him to please intercept the car of Mayor Calo which left the Capitol Building just a few minutes, and Major delos Santos reacted to my request.

"Q.

What happened after that?

"A.

He was able to apprehend the driver. Right then and there, he brought the driver to the police station.

"Q.

What was the name of the driver?

"A.

I do not know the name of the driver."[50]

What might have been expected to be the clincher had come from Maj. De los Santos who testified:

"Q.

Then, what did you do after being informed that ex-mayor Corvera was shot?

"A.

While I was informed, the armored car of Mayor Tranquilino Calo came back to the Capitol ground.

"Q.

When that armored car of Atty. Tranquilino Calo came back to the Capitol ground, what happened?

"A.

I was directed by Major Brillantes to apprehend the driver of the car because they saw that that was the getaway vehicle used by the assailant.

"Q.

In effect did you carry out the order of this officer?

"A.

Yes, Sir.

"Q.

What did you do next?

"A.

I ordered my men to bring the car and the driver of Mayor Calo to the police station for proper investigation.

xxx xxx xxx.

"Q.

When you went back to the police station, what did you do there, if any?

"A.

I looked for Allocod, the driver of the armored car of Mayor Calo.

"Q.

In effect did you meet Allocod there?

"A.

Yes, Sir, and I even asked him some questions but he denied everything."[51]

Regrettably, not one of the witnesses was able to definitively identify the driver of the get-away car. In fact, according to Maj. De los Santos, appellant Allocod was apprehended only because he "came back" to the capitol grounds.

The review of this case yielded the distressing fact that both the prosecution and defense vigorously focused the evidence and argument on the culpability of Calo. As a result, as regards appellant Allocod, the indispensable requirement of proof beyond reasonable doubt to convict an accused had all but been missed in the process.

WHEREFORE, the case against Tranquilino T. Calo, Jr., now deceased, is hereby dismissed. Appellant Belarmino Allocod is acquitted for the failure of the prosecution to establish his guilt beyond reasonable doubt. Costs de oficio.

SO ORDERED.

Padilla (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Criminal Case No. 2850, Exh. V. Briefly, the prosecution charged that at around 6:30 in the evening of 01 April 1985, Corvera was driving a jeep with Estelito Tecson, Jr., his passenger, on the way home to Nasipit from Kinabangan. Along the highway, three persons, one of whom was Pablo Macapas, hailed the vehicle and asked for a ride. Just as Corvera was slowing down, Macapas pointed a gun at Tecson who, upon seeing what was about to happen, parried the hand of Macapas. The gun exploded and a bullet hit the right parietal region of Corvera's head. Corvera recovered from the wound.

[2] Criminal Case No. 3464 was filed only on 29 November 1988. The original information, which was filed on 29 August 1988, had to be withdrawn after City Fiscal Macario Balansag, who filed it, was gunned down on his way to his office. As a result of his death, the National Bureau of Investigation filed murder charges against Calo, his son Jesus, and three other persons (Records, Vol. I, p. 164).

[3] Rollo, pp. 16-17.

[4] Records, Vol. 1, p. 69.

[5] Thru Associate Justice Segundino G. Chua, concurred in by Associate Justices Serafin E. Camilon and Justo P. Torres, Jr.

[6] Records, Vol. I, p. 160.

[7] Ibid., pp. 173-175.

[8] Ibid., p. 194. Their detention at Camp Rafael Rodriguez drew protests from the victim's camp. Some even criticized the military charged with their custody with allegedly giving undue favorable treatment to Calo who was seen attending to the duties of a municipal mayor several times and even dining at his home in Carmen, Agusan del Norte when he was supposed to be in jail (Rollo, pp. 339-406).

[9] Records, Vol. I, p. 504.

[10] Ibid., p.538.

[11] Ibid., p. 543.

[12] Thru Associate Justice Nicolas P. Lapeña, Jr., concurred in by Associate Justices Emeterio C. Cui and Justo P. Torres, Jr.

[13] Rollo in G.R. No. 88531, p. 45.

- [14] Records, Vol. 1, p.643.
- [15] Ibid., p. 459. See: 186 SCRA 620.
- [16] Records, Vol. 1, p. 646 & Vol. 2, p. 1.
- [17] Records, Vol. 1, p. 546.
- [18] TSN, April 20, 1989, p. 26.
- [19] Ibid., pp. 27-28.
- [20] Ibid., p. 34.
- [21] TSN, February 14, 1989, pp. 6-9.
- [22] Ibid., pp. 12-18.
- [23] Ibid., p. 102.
- [24] Ibid., p. 103.
- [25] Ibid., pp. 18-34.
- [26] TSN, February 14, 1989 (p.m.), pp. 7-11.
- [27] Exh. C; TSN, supra at pp. 11-12.
- [28] Ibid., pp. 12-16.
- [29] Ibid., pp. 16-20.
- [30]
- [31] Ibid., pp. 17-22.
- [32] Dr. Obeñita was the physician who attended to the wounded Corvera after his alleged 1985 ambush by Macapas.
- [33] TSN, February 15, 1989 (p.m.), pp. 5-8.
- [34] TSN, April 20, 1989, p. 71.
- [35] TSN, April 7, 1989, pp. 4-7.
- [36] Exh. C.
- [37] Records, Vol. I, p. 46.
- [38] TSN, December 12, 1989, pp. 82-83.
- [39] Ibid., p. 168.
- [40] Ibid., pp. 99-100.
- [41] Ibid., p. 61; TSN, December 11, 1989, p. 28.
- [42] TSN, December 12, 1989, pp. 131-132.
- [43] Records, Vol, II, pp. 474-475.

[44] Ibid., p. 476.

[45] Ibid., p. 575.

[46] Ibid., p. 623.

[47] Rollo, p. 418. His death certificate indicates that the cause of Calo's death was undetermined because it was issued when his body was yet to be transferred to the NBI morgue for autopsy (Ibid., p. 442).

[48] 236 SCRA 239.

[49] TSN, February 15, 1989, pp. 6-7.

[50] TSN, April 20, 1989, pp. 71-72.

[51] TSN, April 7, 1989, pp. 5-7.

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