

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME MUYANO Y QUINTO AND RICKY FAJARDO Y OLVIDO, ACCUSED-APPELLANTS.**

*G.R. Nos. 105621-23. August 05, 1994*

Ponente: FELICIANO, J.

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**FELICIANO, J.:**

Jaime Q. Muyano was charged with the murder of Mar S. Rebustes (Criminal Case No. 89-79688) and illegal possession of firearm (Criminal Case No. 89-79689). Ernesto H. Gonzales and Ricky O. Fajardo were also charged with the murder of Mar S. Rebustes (Criminal Case No. 89-79881). All the Informations were filed before the Regional Trial Court, Branch 5, Manila.

All three (3) pleaded not guilty upon arraignment. A few months later, Jaime Muyano was re-arraigned and pleaded “guilty” to the charge of illegal possession of firearm. Accordingly, the trial court issued an order sentencing him to the penalty of imprisonment of two (2) years and four (4) months of prision correccional to eight (8) years of prision mayor, for illegal possession of firearm.

The criminal cases for the murder of Mar Rebustes were jointly tried and after such joint trial, the trial court acquitted Ernesto Gonzales for failure of proof beyond reasonable doubt, but convicted appellants Jaime Muyano and Ricky Fajardo, and sentenced each of them to the penalty of life imprisonment and to indemnify the heirs of the deceased victim in the amount of P30,000.00.

Jaime Muyano and Ricky Fajardo, in their present appeal, assign a single error: “The trial court erred in finding the accused Jaime Muyano and Ricky Fajardo guilty beyond reasonable doubt of the crime of murder.”

From the decision of the trial court and the underlying record of the case, the relevant facts may be summed up as follows.

The slaying of Mar Rebustes happened on 16 November 1989, at about 7:30 p.m., near the entrance door of the Inland Trailways Bus Terminal at F. Cayco Street, Sampaloc, Manila. On that day and time, Mar Rebustes, who was a security guard of the Terminal, was on duty manning his post near the entrance of the Bus Terminal. Approximately a meter away from the victim stood Gil Gamitin, Jr., a janitor of the Bus Terminal. With their hands placed inside their shirts, Jaime Muyano and Ricky Fajardo passed by in front of Gamitin and proceeded to where Rebustes, who was facing the street, stood. Without saying a word, they approached Rebustes frontally, and encircled him and after Fajardo had placed his right arm on Rebustes’ nape, walked behind him and thereupon shot Rebustes on the right side of the back of his head, with a .38 caliber pistol. Muyano, for his part, took Rebustes’ service firearm from his waist as the latter lay sprawled on the ground. Muyano and Fajardo then ran across the street and went inside the restaurant or “pub house” owned by Ernesto Gonzales.

Immediately after the shooting, Editha Ocampo, who was employee-in-charge of the canteen at the Bus Terminal, reported the incident to the police. The following day, the police arrested Gonzales, Muyano and Fajardo.

Gonzales was arrested because it appeared that on the evening on 15 November 1989, the day before the slaying of Rebustes, he (Gonzales) was inside the Bus Terminal very upset and angry over the fact that one of his employees had apparently been “held-up” by an employee of the Bus Terminal. Gonzales told Fajardo and the latter’s companion that they should have taken some firearms from his (Gonzales’) house, and should have broken the lock of the cabinet where the firearms were kept. On the early afternoon of the day of the killing of Rebustes, Gonzales, Muyano and Fajardo were inside the Bus Terminal, with Gonzales still in a foul mood, saying “Paano ‘yan, nasaktan ang isang bata ko.”[1]

The autopsy report rendered by Dr. Florante Baltazar of the Western Police District Crime Investigation Laboratory, indicated that Rebustes had sustained a “penetrating gunshot wound, right occipital region as the point of entry, 163 cms. from head, 0.7 cm. from posterior mid-line x x x.”

The defense of appellants Muyano and Fajardo consisted of denying involvement in the slaying. Muyano testified that on 16 November 1989, at around 7:30 p.m., he was inside the Bus Terminal when he heard a gunshot coming from behind him. Turning around, he saw Rebustes, from a distance of about four (4) meters, fall down on the sidewalk. Muyano said that he also saw a certain Toto Mayo, allegedly a “siga-siga” gang member, about eight (8) meters away from Rebustes holding a short firearm. Muyano noticed that there was a .38 caliber revolver on the sidewalk about two (2) meters away from the victim; Muyano walked over, picked up the pistol and handed it over to his compadre, one Boy Cruz, allegedly for surrender presumably to the police authorities. Muyano stated finally that he did not see either Gonzales or Fajardo at the scene of the shooting.[2] Upon the other hand, appellant Fajardo testified that on 16 November 1989, he was inside the “pub house” owned by Ernesto Gonzales, from 6:00 p.m. to 12:00 a.m. The “pub house” was approximately ninety (90) meters away from the situs of the killing. According to Fajardo, he did not leave the “pub house” up to the time he was arrested the following day.[3]

The trial court disposed of the defenses of Muyano and Fajardo very quickly:

“x x x. The claim of accused Muyano that he merely heard a shot and saw a gun lying on the ground and for some hidden instinct picked it up and claim to have given it to somebody is, to the mind of the Court, the height of the fallacy which accused want the Court to believe. Why would a man, after hearing a shot, expose himself to bodily harm, even death, by going to the place where the shot came from and picking the gun lying on the ground just for the exercise and claim to have given it to somebody who did not even bother to come to Court to testify and give credence to his claim?”[4]

Because Gil Gamitin, Jr., with the corroboration of Edith Ocampo, had positively identified appellant Ricky Fajardo as the man who had passed by him (Gamitin) in the company of accused Muyano, and as the man who had approached Rebustes from the front, held him with his right hand on the neck, went behind him, and then shot him on the back of the head with a .38 caliber pistol, the trial court gave scant consideration to the alibi of Fajardo:

“x x x. The denial by the accused Fajardo of any participation in the killing and his vain attempt to throw the blame to somebody else by claiming the alibi that he was at that time in a carinderia a short distance away from the place of the incident is again, to the mind of the Court, another vain attempt to free himself from the consequences of his act, that is, the killing and shooting of a terminal guard Mar Rebustes.”[5]

Appellants Fajardo and Muyano claim that the findings of the trial court were “contradictory [of] the testimony of witness Gamitin in the transcripts of stenographic notes.”[6] We do not think so. The findings of the trial court that “said two (2) accused encircled the guard Rebustes and then Fajardo approached Rebustes from the front, held him with his right arm on the neck and fired that fatal shot with a .38 caliber revolver, making Rebustes fall dead on the ground,”[7] do not contradict the testimony of prosecution witness Gil Gamitin, Jr. Gamitin testified

that without uttering a word, appellants had approached Rebustes frontally, encircled him, and after Fajardo placed his right arm on the victim's nape, went behind the victim and there shot him on the right side of the back of his head with a .38 caliber revolver, while Muyano took Rebustes' service weapon from the latter's waist.[8] We observe only that the trial court did not mention the detail that after Fajardo had placed his right arm on Rebustes' nape, Fajardo went behind Rebustes and shot him on the back of the head. That additional detail was supplied by Gamitin. Upon the other hand, the trial court did not find that Fajardo had shot the victim from the front or fired on his face. Thus, the "contradiction" asserted by appellants was more apparent than real.

We agree with the trial court that the element of treachery had been proven in the instant case. Muyano and Fajardo had surrounded Rebustes and Fajardo shot Rebustes from behind, at the back of his head. This rendered Rebustes helpless to defend himself; appellants had employed means which assured the execution of the crime without risk to themselves arising from any defense that their victim might make.[9] It is also evident that the appellants had acted in concert and had corroborated with each other in slaying Rebustes. The appellants had first encircled Rebustes and then one of them went behind Rebustes and shot him on the back of the head while the other took away Rebustes' service weapon. The two (2) had then together fled across the street towards Gonzales' "pub house." [10]

The settled doctrine is that alibi cannot prosper as a defense where the accused was positively identified as the killer.[11] It is equally settled that alibi is unavailing as a defense where there was no physical impossibility of the accused having committed the crime charged.[12] The "pub house" where Fajardo had allegedly stayed all night on 16 November 1989, and until the next day, was only ninety (90) meters away from where Rebustes had been shot to death.

We agree, however, with the Solicitor General that the aggravating circumstance of evident premeditation, which had been alleged in the informations for murder, cannot be appreciated in the instant case because the essential requisites of that circumstance were not proven. The essential elements which were not established were:

- (1) the time when the offender determined to commit the crime;
- (2) an act manifestly indicating that the offender had clung to his determination to commit the offense; and
- (3) the lapse of an interval of time between determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[13]

Finally, we must correct the penalty imposed by the trial court, which was the penalty for life imprisonment. The appropriate penalty is, of course, that of reclusion perpetua. As the Court has said a number of times, life imprisonment and reclusion perpetua are juridically different, the latter being imposed by the Revised Penal Code and having its specific duration and corresponding accessory penalties.[14]

ACCORDINGLY, for all the foregoing, the decision of the trial court is **AFFIRMED**, with the modification that the penalty imposed upon appellants Jaime Q. Muyano and Ricky O. Fajardo is hereby **CHANGED** to reclusion perpetua and the award of indemnity for the death of Mar Rebustes is hereby **INCREASED** to P50,000.00 in line with recent jurisprudence of this Court. Costs against appellants.

### **SO ORDERED.**

Bidin, Romero, Melo, and Vitug, JJ., concur.

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[1] Decision of the Trial Court, p. 4; TSN, 28 May 1990, pp. 7-8.

[2] TSN, 17 January 1991, pp. 3-8.

[3] Id., pp. 16-18.

[4] Rollo, p. 62.

[5] Id.

[6] Appellants' Brief, p. 9.

[7] Decision of the trial court, p. 6.

[8] TSN, 14 June 1990, pp. 12-14.

[9] E.g., *People v. Cuyo*, 196 SCRA 447 (1991); *People v. Laredo*, 185 SCRA 383 (1990).

[10] E.g., *People v. Benitez, Jr.*, 202 SCRA 478 (1991); *People v. Base*, 196 SCRA 688 (1991); *People v. Catubig*, 195 SCRA 505 (1991).

[11] *People v. Arenas*, 198 SCRA 172 (1991).

[12] *People v. Belon*, 194 SCRA 447 (1991).

[13] *People v. Balatucan*, 206 SCRA 81 (1992).

[14] *People v. Serdan*, 213 SCRA 329 (1992).

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