

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO EVANGELISTA, ACCUSED-APPELLANT.***G.R. Nos. 84332-33. May 08, 1996*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-84332-33/>**MENDOZA, J.:**

On January 1, 1985, when Priscilla Arceo[1] and her children arrived home at 15 Libis Gochico, Caloocan City at 10:30 p.m. from the Luneta, her husband Efren was having an altercation with accused-appellant Reynaldo (Regie/Reggie) Evangelista, the latter's brother-in-law Armando Perez, and a certain Tito Santos. In the investigation conducted by then Pfc. Paulino Batarina, it was shown that a certain Hipolito was also with the accused-appellant at the time of the incident.[2] Priscilla asked Armando Perez what the matter was, to which the latter replied that she had nothing to worry about but just to tell her husband to repair the damage he had caused to a house. The house referred to was the house of accused-appellant's mother, who was then away, in the province.[3] Accused-appellant was angry at Efren Arceo because the latter had destroyed a part of the house of accused-appellant's mother. The records do not show for what reason or by what authority Efren did this. Neither was accused-appellant aware of any reason.[4]

As Efren was destroying the house with a bolo, the accused-appellant and his brother-in-law tried to stop him by throwing stones at him and after he had left accused-appellant and his brother-in-law followed him to his house and hurled stones at his house.[5] It was at that point that Priscilla arrived.

The next day, two barangay officials saw Priscilla and asked her and her husband to go to the barangay headquarters for a meeting with the other party concerning the incident. On their way to the barangay headquarters, Priscilla and her husband met accused-appellant who upon seeing Efren started cursing him. Accused-appellant told Efren to fix the house he had destroyed or else something would happen to him.[6]

Accused-appellant did not attend the barangay conference. Only Armando Perez and his wife did. Priscilla and Efren therefore left and went instead to visit relatives in Tondo. They returned home at around 9:30 p.m. and retired to bed shortly thereafter. At around 12:00 p.m., Priscilla was awakened by a loud explosion which turned out to be a gunshot. She looked out of the window to find what it was about and saw a man running away. Turning to her husband and holding her face against his cheeks, Priscilla felt something wet with her fingers. She saw her husband covered with blood, his skull open and his brains spilling out.[7] Efren Arceo died before reaching the hospital.

An investigation pointed to accused-appellant Reynaldo Evangelista as the assailant. An information for the murder of Efren Arceo (Criminal Case No. C-23861) and another one for violation of P.D. No. 1866 Illegal Possession of Firearms (Criminal Case No. C-23862) were filed against him with the Regional Trial Court of Caloocan City. Accused-appellant pleaded not guilty to both charges, whereupon he was tried.

The prosecution presented six witnesses, namely, Priscilla Arceo; Dr. Bienvenido Muñoz, the medico-legal officer who conducted the autopsy; Honorato Flores, NBI Supervising Ballistician; Pfc. Paulino Batarina,

investigating officer; Pat. Carlos Ladia; and Luis Sakdalan, a cigarette vendor.

Pfc. Batarina testified that the house of Efren and Priscilla was a bungalow and that the window of the bedroom was just three (3) feet above the ground. The bed of the victim was close to the window and was placed perpendicular to it. Priscilla and her husband Efren slept with their heads near the window. The window had wooden grills four (4) inches apart and it was easy to insert a hand between the grills. Anyone standing outside the window could see who was sleeping on the bed.[8]

Dr. Bienvenido Muñoz testified that Efren died of a gunshot wound.[9] He recovered a slug inside the victim's cranial cavity and later submitted it to the NBI for examination.[10]

The ballistics expert, Honorato Flores, testified that the bullet was fired from the firearm (a homemade gun called paltik) recovered from the accused-appellant. His report, contained the following:

FINDINGS-CONCLUSION:

Comparative examination made between evidence bullet marked "EA" and the test bullets fired from the submitted Paltik Pistol marked "PTB" revealed that they possess similar individual characteristic markings; said evidence bullet was fired through the barrel of this particular firearm.

The transcript of stenographic notes of the testimonies of Pat. Ladia and Luis Sakdalan are not in the records of this case. An order for the retaking of their testimonies was issued by this Court, however, Pat. Ladia and Luis Sakdalan could no longer be located. But the records contain Pat. Ladia's affidavit in which he said that accused-appellant had confessed to the commission of the crime. Ladia also gave the circumstances surrounding such admission.[11] In addition, the trial court's decision contains a summary of the testimonies of Pat. Ladia and Luis Sakdalan, to wit:[12]

On January 7, 1985 police investigator Carlos Ladia, Jr. apprehended the accused Reynaldo Evangelista. At first, he denied participation in the killing of the deceased. But later on he confided to Ladia that his conscience bothered him because the victim happened to be his friend. Ladia then asked him where the gun he used in the killing was and the accused said he had entrusted it to a friend at Marcela Street. So accompanied by another policeman, Renato Guevarra, Ladia and the accused proceeded to Marcela Street where they looked for a certain "Wiwit" or Luis Sakdalan, a cigarette vendor. The accused asked Sakdalan to get the gun from a friend whose name was not disclosed. Sakdalan hesitated to do the errand at first but when assured that he would not be involved in the case he consented. Sakdalan left and about twenty minutes later came back with a firearm wrapped in a plastic. The gun turned out to be a paltik armalite-type pistol, caliber. 223. (Exh. "C").

Priscilla Arceo pointed to accused-appellant Reynaldo Evangelista as the man she saw running away after the explosion. She stated that even if she saw the assailant with only his back turned on her, she was certain that it was accused-appellant because she had known him for a long time, accused-appellant having been their former neighbor. Her testimony on this point is as follows:[13]

Q.

....

You relayed that your husband died at around twelve midnight how did you find out your husband is dead, how did you come to know that your husband was dead?

A

I heard a loud explosion coming from the outside through our window and I saw a person, a man, about to go away, sir.

Q

Did you come to know who that man was?

A

I only noticed his body contour, sir.

Q

From what you observed it?

A

Yes, sir.

Q

Who?

A

Redgie, sir.

Q

How far were you from him when you noticed him?

A

The distance from our house until the other house, sir. Around four meters, sir.

x x x x x x x x

Q

And when you looked through the window what did you expect to see at that time?

A

Nothing, sir.

Q

And from your testimony you saw the contours or appearance of a man?

A

Yes, sir.

Q

In other words, 'it is like a silhouette of a person?

A

I just saw the whole body of a person, sir.

Q

And the silhouette or contour of a person was it frontal or on the back or dorsal?

A

Back parts, sir.

Q

And upon further questioning by the prosecutor you conclude the person being have the silhouette is the one who shot your husband?

A

Yes, sir.

FISCAL FARAON:

I object to the words silhouette.

A

It was a shape of a person, sir.

Q

Frontal or backward when you mentioned it refers to a shape of a person?

A

Backwards, sir.

Q

Now, you mentioned or you testified that the shape of a person belonged to the accused Reynaldo Evangelista, why do you say that?

A

Because I have known him for a long time already, sir.

Q

So what, if you have known him for a longtime, why did you conclude that silhouette from?

A

Because if you know somebody even from behind you can recognize him, sir.

Accused-appellant had an alibi. He claimed that on January 2, 1985, at around 12:00 p.m., he was at a wake, playing sakla and that he stayed there until 2:00 a.m. of January 3. He said his presence there could be confirmed by people who played sakla with him.[14] Accused-appellant was supposed to present a witness, Severino Biasong, to attest to his presence at the wake, but the witness failed to testify. When questioned as to the identity of the person who died and as to the person who owned the house, accused-appellant said he did not know who the dead man was and who owned the house, as he went there only to play sakla.[15]

The Regional Trial Court of Caloocan City, Branch 130, found the accused guilty of murder and aggravated illegal possession of firearm under P.D. No. 1866, §1 par. 2. The dispositive portion of its decision, dated April 23, 1986,[16] reads:

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds the accused Reynaldo Evangelista guilty beyond reasonable doubt of the crimes charged and hereby sentences him as follows:

In Criminal Case No. C-23861, for murder, to suffer the indivisible penalty of reclusion perpetua and to indemnify the heirs of the deceased Efren Arceo y Marcos in the sum of FIFTEEN THOUSAND PESOS (P15,000) as compensatory damages and another THIRTY THOUSAND PESOS (P30,000) as civil indemnity.

In Criminal Case No. C-23862, for illegal possession of firearm, to suffer the supreme penalty of death.

Costs against the accused in both cases.

The case came up to this Court on automatic review. Meanwhile the 1987 Constitution took effect, prohibiting the imposition of the death penalty except in cases involving heinous crimes determined by Congress.[17] As a result, the death sentence on the accused-appellant was automatically reduced to reclusion perpetua.[18] The accused-appellant was asked to inform the Court if he wanted to pursue his appeal and, if so, to file his appellant's brief. Accused-appellant indicated he did, submitting for this purpose his appeal brief. He assigns as errors the following:[19]

I. THE TRIAL COURT GRAVELY ERRED IN FINDING MUCH WEIGHT AND CREDENCE ON THE EVIDENCE PRESENTED BY THE PROSECUTION.

II. THE TRIAL COURT GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF MURDER AND ILLEGAL POSSESSION OF FIREARM CHARGED IN TWO SEPARATE INFORMATION.

I. In G.R. No. 84332, several reasons exist which show beyond reasonable doubt that accused-appellant is guilty of murder.

First, there was sufficient identification of accused-appellant by the widow, Priscilla Arceo. Priscilla was positive that accused-appellant was the one who had shot her husband even though he saw only the back part and the body contour of the assailant, because she had known accused-appellant for a long time and she was familiar with him.[20] At the time she saw him, accused-appellant was only four meters away. There was sufficient illumination from a lamppost six meters away from Priscilla's house. Thus, Priscilla testified:[21]

Q

The distance according to you to the silhouette that you saw depicting the body shape of a person was about four meters away?

A

Yes, sir.

Q

That would be same yard to that window?

A

Yes, sir.

Q

And the time was midnight?

A

Yes, sir.

Q

During that time was it dark, very dark, light or very bright?

A

It was not so dark because there is a light coming from the lamppost, sir.

Q

How far is that from the lamppost or silhouette?

A

Six meters away, sir.

Q

From the lamppost, because of that you will be able to recognize, did you shout to the person?

A

No, sir.

Q

And how long did that person stay in that place?

A

He just disappeared to that distance, sir.

Q

How long did you see him there up to the time he disappeared?

A

Just a minute, sir.

Q

For one minute there and before he ran away?

A

Yes, sir.

Q

When you watched that silhouette for one minute what was that silhouette doing for that one minute?

A

He was in the act of running away, sir.

Q

Was that silhouette carrying anything?

A

I did not notice it anymore, sir.

Q

Aside from that silhouette did you notice another silhouette?

A

No, sir.

Q

So there was only one silhouette that you saw?

A

Yes, sir.

Second, accused-appellant had a motive for killing Efren Marcos Arceo. He had an altercation with the deceased the day before the deceased was shot. He threatened the deceased with something dire if the latter did not do something to repair the damage which he had caused to the house of accused-appellant's mother.

Generally speaking, motive is irrelevant, but when the question is the identity of the accused-appellant, motive becomes very relevant.[22] When it is coupled with evidence from which it may be reasonably deduced that the accused was the malefactor, it is sufficient to support a conviction.[23] In this case, there was positive identification of the assailant by the wife of the victim.

Thirdly, the bullet which felled Efren Marcos Arceo was found by the NBI ballistics expert to have been fired from the homemade gun (paltik) recovered from the person to whom accused-appellant confessed he had given it. The evidence regarding this circumstance comes from the testimony of Pat. Ladia of the Caloocan Police Station. According to Ladia, accused-appellant confessed to him on January 7, 1985 that he (accused-appellant) had shot Efren. Pat. Ladia saw accused-appellant in a store in front of the Caloocan Police Station. He and Ladia knew each other.

Ladia said he invited accused to sit down and have something and then asked him about the incident.[24] According to Pat. Ladia, after some hesitation accused-appellant confessed to the killing. Upon accused-appellant's information, the gun used in the killing was recovered from Luis Sakdalan, a cigarette vendor. Pat. Ladia said he was able to persuade Sakdalan to give him the gun after assuring him that he would not be implicated in the crime.

Sakdalan also testified for the prosecution. Although the transcript of his testimony can no longer be reproduced, it is not denied that his testimony corroborates that of Pat. Ladia. Sakdalan confirmed that the fatal weapon had been given to him by accused-appellant.

Accused-appellant denies that he confessed to the crime. While he does not deny knowing Sakdalan, he claims that Pat. Ladia simply took him along to see Sakdalan and that after Pat. Ladia and Sakdalan had talked to each other, Sakdalan handed the paltik to the policeman. It is improbable, however, that Sakdalan was the culprit. He had no motive. There is no allegation that he was hired to kill Arceo.

It is argued that in any event the confession of accused-appellant is inadmissible in evidence having been given by him without the benefit of warning of his constitutional rights to remain silent and to counsel. Accused-appellant was not, however, under custodial interrogation. He and Ladia met in a store in front of the police station and it was there he confessed to the killing of Efren Arceo. While it is true that accused-appellant had been a suspect, the fact is that he was not in custody when he confessed. The right to be given what have come to be known as the Miranda warning[25] applies only when the investigation has ceased to be a general inquiry into an unsolved

crime and has begun to focus on the guilt of a suspect and the latter is taken into custody or otherwise deprived of his freedom in a substantial way.[26] In this case, it was only after accused-appellant had admitted to Pat. Ladia that he had killed Arceo and the gun used in the killing had been recovered that accused-appellant was placed under arrest and detained at the police station.

To summarize, the facts established by the prosecution point to the guilt of accused-appellant, namely: (1) Priscilla saw the assailant whom she identified as accused-appellant, fleeing; (2) the accused-appellant had an altercation with the victim the day before the shooting and had a motive for killing him; (3) the bullet which killed the victim was fired from the gun recovered from accused-appellant; (4) accused-appellant confessed to the killing to Pat. Ladia. His defense of alibi was properly rejected by the trial court. He claimed that at the time of the shooting he was playing sakla in a place around 300 meters away from the scene of the crime.[27] This defense cannot prevail over Priscilla's positive identification of accused-appellant. Nor was it physically impossible for him to have been present at the scene of the crime at the time of its commission,[28] since the place where he supposedly was could easily be negotiated in a matter of minutes, being only 300 meters away from the scene of the crime. In the context of this case it can truly be said that of all defenses which an accused may put up, alibi is the weakest.

II. Accused-appellant questions the trial court's finding of treachery which qualified the killing as murder. But there is no question that the victim was shot while asleep. It was 12:00 midnight when he was killed. The victim's wife testified they were already asleep when she was awakened by the loud explosion.[29] It has been held that there is treachery where the victim was killed while he was asleep.[30]

Accused-appellant also cites certain circumstances as mitigating his liability. He claims voluntary surrender. We do not think he can be credited with the mitigating circumstance of having voluntarily surrendered to the authorities. In order that this circumstance may be appreciated, it must be shown that the intention of the accused was to surrender unconditionally to the authorities either because he acknowledged his guilt or because he wished to save them the trouble and expense in looking for him and capturing him.[31] In the case at bar accused-appellant's purpose in going to the Caloocan Police Station was not to give himself up but, according to him, to clear himself of involvement in the killing because he was not guilty.

Nor may accused-appellant be credited with the mitigating circumstance of having committed the crime in the immediate vindication of a grave offense committed against his mother because the victim had demolished the house of accused-appellant's mother. The killing was not done while the victim was destroying the house of accused-appellant's mother, which was at around 10:00 in the evening. In fact by 10:30 accused-appellant and his brother-in-law had already left, after throwing stones at the victim and the latter's house. Art. 13(5) of the Revised Penal Code requires that the act done be committed "in the immediate vindication" of a grave offense committed against the accused or the latter's relatives therein enumerated. As the Solicitor General points out, it was no longer to vindicate the wrong done to him and his family but rather to take revenge that accused-appellant killed the victim.

Accordingly, we hold that the trial court correctly found accused-appellant guilty of murder and sentenced him to reclusion perpetua there being neither aggravating nor mitigating circumstance present. However, the indemnity fixed by it in the amount of P30,000.00 must be increased to P50,000.00 in accordance with current rulings on this matter.

III. In G.R. No. 84333, however, we hold that accused-appellant cannot be found guilty of illegal possession of firearm, much less of illegal possession of firearm in its aggravated form.

The information charged accused-appellant with simple illegal possession of firearm but the trial court found him

guilty of illegal possession of firearm in its aggravated form under P.D. No. 1866, §1, par. 2, after finding that accused-appellant had used an unlicensed firearm in killing Efren Arceo. This cannot be done.

That an unlicensed firearm was used in the commission of murder or homicide is a qualifying circumstance. Consequently, it must be specifically alleged in the information, otherwise the accused cannot be sentenced to death for illegal possession of firearm in its aggravated form without violating his right to be informed of the nature and cause of the accusation against him.[32]

The information for the violation of P.D. No. 1866 is bereft of any allegation that the unlicensed firearm mentioned in it was used to commit murder. The information simply alleges:[33]

The undersigned Assistant City Fiscal accuses REYNALDO EVANGELISTA Y AGRAVANTE @ REGIE, of the crime of VIOLATION OF P.D. No. 1866 (Illegal Possession of Firearm), committed as follows:

That on or about the 2nd day of JANUARY 1985, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) piece of home made paltik, pistol armalite type without ammunition and also carried outside of his residence said firearm and without the necessary permit and/or license.

Neither does the information for murder allege that accused-appellant committed the murder with the use of an unlicensed firearm:[34]

The undersigned Assistant City Fiscal accuses REYNALDO EVANGELISTA Y AGRAVANTE @ REGIE, of the crime of "MURDER," committed as follows:

That on or about the 2nd day of JANUARY 1985, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one EFREN ARCEO Y MARCOS, thereby inflicting serious physical injuries upon the latter, which injuries caused his death upon arrival at the Martinez Memorial Hospital, this city.

Indeed accused-appellant cannot be convicted even of simple illegal possession of firearm because of lack of evidence that the firearm is unlicensed. The trial court based its decision simply on the fact that the firearm used in this case is a homemade gun known in the dialect as paltik, apparently being of the opinion that a paltik cannot be licensed. This view was rejected in *People v. Ramos*:[35]

We do not agree with the contention of the Solicitor General that since a paltik is a homemade gun, is illegally manufactured as recognized in *People vs. Fajardo*, [17 SCRA 494 (1966)] and cannot be issued a license or permit, it is no longer necessary to prove that it is unlicensed. This appears to be, at first blush, a very logical proposition. We cannot, however, yield to it because Fajardo did not say that paltiks can in no case be issued a license or a permit, and that proof that a firearm is a paltik dispenses with proof that it is unlicensed.[36]

The decision in G.R. No. 84333 must, therefore, be reversed and accused-appellant must be acquitted of the charge of illegal possession of firearm, whether simple or aggravated.

WHEREFORE, in G.R. No. 84332 the decision of the Regional Trial Court of Caloocan is AFFIRMED with the MODIFICATION that the indemnity to the heirs of Efren Arceo is increased to Fifty Thousand Pesos (P50,000.00), while in G.R. No. 84333 its decision is REVERSED and accused-appellant is ACQUITTED of the charge of illegal possession of firearm under P.D. No. 1866.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] In some parts of the records she is referred to as "Prescilla."

[2] Spot Report, Exh. A in retaken testimony, Records, p. 112; Initial Investigation Report, Exh. B in retaken testimony, Records, p. 113.

[3] TSN, p. 30, Nov. 4, 1985.

[4] Id., p. 32.

[5] Id., p. 33.

[6] The transcript of stenographic notes of May 30, 1985, p. 10 actually says "fix the house if not you will find out what happened" (sic) while the trial court's decision (Rollo, p. 10) says "Face me and you will find out what will happen."

[7] TSN, pp. 15-16, May 30, 1985.

[8] TSN, pp. 8-10, Dec. 14, 1992.

[9] Autopsy Report, Exh. C, Original Records, p. 62.

[10] TSN, p. 7, May 15, 1985.

[11] Exh. F, Original Records, pp. 70-71.

[12] Trial Court Decision, p. 5, Rollo, p. 12.

[13] TSN, pp. 15-16, 21-22, May 30, 1985.

[14] TSN, pp. 5-6, Nov. 4, 1985.

[15] Id., pp. 6-7.

[16] Trial Court Decision per Judge (later Justice) Segundino G. Chua, Rollo, p. 15.

[17] CONST., Art. III, § 19 (1).

[18] Rollo, p. 16.

[19] Appellant's Brief, p. 1, Rollo, p. 48.

[20] TSN, pp. 16, 21-22, May 30, 1985.

[21] Id., pp. 23-25.

[22] *People v. Murray*, 105 Phil. 591 (1959).

[23] *People v. Macatangay*, 107 Phil. 188 (1960).

[24] Exh. F, Original Records, p. 70; TSN, p. 29, Nov. 4, 1985.

[25] "So-called because derived from *Miranda v. Arizona*, 384 U.S. 436, 161 L. Ed. 2d. 694 (1966).

[26] *People v. Bandula*, 232 SCRA 566 (1994); *People v. De Guzman*, 224 SCRA 93 (1993).

[27] TSN, p. 5, Nov. 4, 1985.

[28] *People v. De la Cruz*, 229 SCRA 745 (1994); *People v. Dalanon*, 237 SCRA 607 (1993).

[29] TSN, p. 7, May 15, 1985.

[30] *People v. Dequina*, 60 Phil. 279 (1934).

[31] *People v. Lee*, 204 SCRA 900 (1992); *People v. Sakam*, 61 Phil. 27 (1934).

[32] CONST., Art. III, § 14(2). *People v. Barte*, 230 SCRA 401 (1994); *People v. Fernandez*, 239 SCRA 174 (1994).

[33] Original Record, p. 1.

[34] Original Records, p. 126.

[35] 222 SCRA 557 (1993).

[36] *Id.*, at 578.

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