

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUGENIO GASPER Y ESPERANZA ALIAS "OHEN";
JOELITO GASPER Y LAGANHON ALIAS "JOELIE"; AND
ALBERTO AHITO (AT LARGE), ACCUSED-AP...**

G.R. No. 103303. August 05, 1993

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-103303/>

PADILLA, J.:

Accused-appellants Eugenio Gasper alias "Ohen" and Joelito Gasper alias "Joelie" were charged with the crime of Murder before the Regional Trial Court of Cadiz City, Branch 60, docketed as Criminal Case No. 565-C. In a decision* dated 25 October 1991, the trial court found them guilty, as charged, and each of them was sentenced to suffer the penalty of reclusion perpetua and to indemnify jointly and severally the heirs of Amado Olano, Jr. in the amount of P30,000.00.

The facts are as follows:

Amado Olano, Jr. alias "Leloy" (hereinafter referred to as Olano) and Reynaldo Carpio were both residents of Bacolod City. They agreed to meet in the afternoon of 18 November 1987 at sitio Campo Santiago in Sagay, Negros Occidental, to haul and transport the charcoal bought by Olano from Siwahon II, at Bgy. V.F. Gustilo in Cadiz City.

At about 1:00 o'clock in the afternoon of 18 November 1987, Reynaldo Carpio arrived at their designated meeting place. Carpio waited for an hour for Olano. But when the latter failed to arrive, Carpio decided to proceed by foot to Siwahon II which is about three (3) kilometers from sitio Campo Santiago, leaving his cargo truck parked in a coffee shop at sitio Campo Santiago.

On his way to Siwahon II at about 2:45 o'clock in the afternoon and at a distance of about twenty-five (25) meters away, Carpio saw Olano outside the house of Alberto Ahito. Olano was engaged in a heated conversation with Eugenio Gasper, Joelito Gasper, Alberto Ahito and three (3) other unidentified persons who were armed. Seeing that Olano and the group of accused-appellants were engaged in a heated discussion, Carpio did not proceed towards them but instead he stayed where he was.

While they were arguing, Eugenio Gasper hit Olano on the head and body with a three (3) feet long 2x2 piece of wood. When Olano fell, with his face to the ground, Joelito Gasper immediately grabbed a piece of stone of about one (1) foot in diameter and bashed it on the back of Olano's head.[1]

For fear of getting involved, Carpio who witnessed the mauling of Olano immediately retreated and returned to Campo Santiago where his truck was parked.

On 22 December 1987 at about 2:00 o'clock in the afternoon, a dead body in a state of decomposition was found by the police authorities at Sitio Siwahon II, Bgy. V. F. Gustilo, Cadiz City. Joselito Olano identified the dead

body as that of his brother Amado Olano, Jr.

On 7 January 1988, Dr. Ricardo H. Jaboneta, an NBI medico legal officer of Region VI (Iloilo City), performed an autopsy of the skeletal remains of the body of Amado Olano, Jr. Four (4) fractures were found on the remains. They are as follows:

"Depressed fracture: right occipital, right sphenoid, right zygomatic and right ethmoid bones with fragments missing; there was also a linear extension to left sphenoid, petrious and left temporal bones; there is also a petrious and left temporal bones, oval in shape, 1.7 x 3.2 cms., scapula, infra-spinous region; another fracture in the infra-spinous region with distal end and there was also another fracture, ramus of the mandible, both sides with distal fragments missing; that there were four (4) fractures found on the remains of Amado Olano, Jr. and they could have been caused by a blunt instrument; they are found on the left shoulder back and right shoulder back and right scapula and on the left and right mandible; that the most possible cause of the death of the victim is the depressed fracture on the skull and the force must be strong enough to cause this kind of a fracture." [2]

On 13 January 1988, Carpio was investigated by T/Sgt. Jeny Andrade of the Office Investigation Section, Headquarters of the 334th PC Company in Sagay, Negros Occidental in connection with the killing of Olano, Carpio related under oath the incident he witnessed involving the mauling of Olano by the accused-appellants on 18 November 1987, which resulted in the death of the latter.

An information dated 22 February 1988 was filed by the City Fiscal's Office, Cadiz City, Negros Occidental before the Regional Trial Court of Cadiz City, Branch 60, charging accused-appellants with the crime of Murder, as follows:

"The undersigned City Fiscal hereby accuses Eugenio Gasper @ "Ohen" y Esperanza, Joelito Gasper @ "Joelie" y Laganhon and Alberto Ahito of the crime of "Murder", committed as follows:

That at about 3:00 o'clock in the afternoon of November 18, 1987, at Siwahon II, Brgy. V.F. Gustilo, Cadiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and help-ing one another, without any justifiable cause or motive, being then armed with a stone and a piece of wood, with intent to kill, and by means of treachery and with evident premeditation, did then and there, wilfully, unlawfully and feloniously, assault, attack and strike with a stone and a piece of wood one, Amado Olano, Jr. @ "Leloy", thereby inflicting upon the latter "compatible with massive intracranial hemorrhage with multiple skull fracture" which were the direct and immediate cause of his death to the damage and prejudice of the heirs of the said victim in the following amount to wit:

1. P 12,000.00 - as indemnity for the death of the victim.
2. P 10,000.00 - as moral damage for mental anguish or such amount to be fixed by law.
3. P144,000.00 - as indemnity for loss of earning capacity or such amount to be fixed by the court.

Act contrary to law." [3]

Upon arraignment, both accused-appellants Eugenio Gasper and Joelito Gasper entered pleas of not guilty, while the other accused, Alberto Ahito has remained at large. [4] During the trial, the prosecution presented three (3) witnesses, namely: Reynaldo Carpio, the eyewitness, Dr. Ricardo H. Jaboneta, the NBI medico legal officer and Erlinda Son, the sister of Olano.

After the prosecution rested its case on 7 July 1989, the defense counsel filed a Demurrer to Evidence, contending that the prosecution failed to prove the existence of the elements of the crime of murder and the existence of any circumstance of treachery and/or evident premeditation which would qualify the crime to murder. [5] In an order

dated 19 July 1989, the trial court denied the Demurrer to Evidence filed by the accused-appellants.[6]

Accused-appellants appealed the denial by the trial court of their Demurrer to Evidence to the Court of Appeals. In a decision[7] dated 9 November 1990, the appellate court dismissed said appeal and remanded the case to the trial court for further proceedings.

Instead of presenting evidence, on 5 September 1991, accused-appellants filed a motion to dismiss the criminal case against them on the ground that the evidence of the prosecution was insufficient to prove their guilt beyond reasonable doubt and submitted the case for decision.[8]

On 25 October 1991, the trial court rendered the aforesaid decision[9] based on the evidence presented, convicting accused-appellants for the murder of Olano. Hence, this appeal.

In assailing the decision of the trial court, accused-appellants have raised the following issues: credibility of the witnesses for the prosecution; identity of the human skeletal remains found by the police authorities on 22 December 1987 at Siwahon II; lack of substantial proof to establish the guilt of accused-appellants beyond reasonable doubt for the crime charged; lack of proof of the existence of treachery or evident premeditation to qualify the crime to murder.

The testimony of the victim's sister, Erlinda Son, established the motive of accused-appellants in killing Olano. The witness testified that their family owned the land planted by the accused-appellants with peanuts; accused-appellants had refused to give Olano a share in the produce of the land; accused-appellants bore a grudge against Olano.[10]

The testimony of Dr. Ricardo H. Jaboneta, the NBI medico legal officer who examined the skeletal remains of the victim established the physical injuries suffered by the victim which caused his death. Dr. Jaboneta testified that the body of the victim suffered four (4) fractures found at the back of the head or skull, shoulder, jaw and cheekbones; and that the most possible cause of the death of the victim was the depressed fracture on the skull caused by a strong force.[11]

The testimony of Reynaldo Carpio, the only eyewitness to the incident, established the manner, means and method used by the accused-appellants in killing Olano. Carpio related that on 18 November 1987 on his way towards Siwahon II, from a distance of twenty-five (25) meters, he saw Olano engaged in a heated conversation with Eugenio Gasper, Joelito Gasper, Alberto Ahito and three (3) unidentified men. While they were arguing, Eugenio Gasper hit Olano on the head and body with a 2x2 piece of wood of about three (3) feet long. When Olano fell on his face to the ground, Joelito Gasper bashed the back of the head of the victim with a stone.[12]

In the matter of credibility of witnesses, this Court has set the guiding rules. They are as follows: (1) the appellate court will not disturb the factual findings of the lower court, unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it had the opportunity to examine their demeanor as they testified on the witness stand, and (3) a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.[13]

After carefully reviewing the records of the case, we find the testimony of the witnesses for the prosecution to be straightforward and consistent. There is no basis to overturn the findings of the trial court as to the veracity of the testimonies of said witnesses.

The testimonies of Reynaldo Carpio that Olano was hit by Eugenio Gasper on the head and body with a 2x2 piece

of wood and thereafter hit with a stone on the head by Joelito Gasper, coincide with the finding of the medico legal officer as to the fractures found on the skull, shoulder, cheekbone and jaw of the victim.

The fact that Carpio retreated when he saw his friend, Olano, being mauled and assaulted, without extending him any help and his failure to immediately report the incident to the police authorities was explained by him as due to the fact that he did not want to get involved in the investigation. It is a matter of common observation and knowledge that the reaction or behavior of persons when confronted with a shocking incident varies.[14] Eyewitnesses are commonly reluctant to get involved in criminal investigations. If these witnesses do not come forward immediately, the fact of delay should not, by itself, be considered as seriously affecting their credibility. Credibility should be assessed independently on the basis of the substance of the testimony offered and the surrounding circumstances.[15]

Carpio properly identified accused-appellants as the assailants of Olano. Although Carpio was about twenty-five (25) meters away from the scene of the crime, the incident occurred in broad daylight. The accused-appellants were known to the witness who had met them at least three (3) times when he came for a visit to Campo Santiago. Hence, it was not impossible for him to be able to identify the accused-appellants even at a distance of twenty-five (25) meters.

As to the second issue raised by accused-appellants, the identity of the skeletal remains found by the police authorities at Siwahon II on 22 December 1987 was duly established as belonging to Olano. Aside from the fact that the remains of Olano were identified by his own brother Joelito Olano, the osteology report of Dr. Jaboneta which is determinative of the injuries suffered by the victim as well as the testimony of Reynaldo Carpio abundantly establish the identity of the skeletal remains of Olano and the fact of his death.

However, while the prosecution was able to prove that Olano was killed by accused-appellants, it failed to show that treachery or evident premeditation intervened in the commission of the offense as to qualify the killing to murder.

The attack by accused-appellants upon the person of the victim was preceded by a heated argument. Alevosia or treachery to be appreciated must spark an attack that is deliberate and unexpected. Treachery is not present where the victim, before being attacked, had a heated argument with one of the assailants that must have placed him (victim) on his guard, especially when the victim was standing face to face with his assailants so much so that the initial assault was not sudden or unforeseen.[16]

Neither is evident premeditation present in the case at bar. The elements of evident premeditation are: (1) proof of time when the accused decided to commit the crime; (2) proof of an overt act showing that the accused had clung to his determination to commit the crime; and (3) the lapse of time between the decision and the execution of the crime, sufficient to allow the accused to reflect upon the consequences of his act.[17] Evident premeditation cannot be appreciated in the case at bar considering that there is no evidence of predetermination on the part of accused-appellants to attack Olano, as they appear to have acted almost at the spur of the moment in the course of a heated argument which ensued between them prior to the incident.

However, it is apparent from the evidence presented that accused-appellants took advantage of their superior strength to ensure that their victim would not be able to defend himself from their attack, which characterizes the crime as Murder. Olano was unarmed when he was attacked by Eugenio Gasper with a 2x2 piece of wood hitting him on the head and body. When the victim fell to the ground, Joelito Gasper took advantage of the situation and bashed Olano's head with a stone. Accused-appellants purposely used excessive force in their attack on the unarmed Olano so that the latter would not have the opportunity of defending himself. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a

situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[18]

The information alleged that accused-appellants conspired, confederated and helped one another in killing Olano. Murder is committed where the killing is qualified by abuse of superior strength and it is alleged in the information that the accused committed the offense by "conspiring, confederating and helping one another," with both accused being armed as against the victim who was unarmed.[19]

WHEREFORE, the judgment of the trial court finding the accused-appellants guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code and sentencing each of them to suffer the penalty of reclusion perpetua is hereby AFFIRMED with the modification that the death indemnity to be jointly and severally paid by accused-appellants is increased from P30,000.00 to P50,000.00 in accordance with prevailing jurisprudence.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

* Penned by Judge Adelino H. Ledesma

[1] TSN of the 13 March 1989 hearing, Testimony of Reynaldo Carpio, pp. 3-6

[2] Rollo, pp. 39-40

[3] Signed by Fiscal Pedro Delfin, Records p. 1

[4] Records, p. 11

[5] Ibid, pp. 82-86

[6] Ibid, p. 88

[7] Ibid, pp. 107-110

[8] Ibid, pp. 121-128

[9] Rollo, pp. 38-42

[10] TSN of the 27 June 1989 hearing, Testimony of Erlinda Son, pp. 7-9

[11] TSN of the 23 August 1988 hearing, Testimony of Dr. Jaboneta, pp. 8-11

[12] TSN of 13 March 1989 hearing, Testimony of Reynaldo Carpio, pp. 5-6

[13] People v. Clores, G.R. No. 82362, 26 April 1990, 184 SCRA 638

[14] People v. Arroyo, G.R. No. 9958, 13 September 1991, 201 SCRA 616

[15] People v. Gonzales, G.R. No. 96928, 16 June 1992, 210 SCRA 44

[16] People v. Macalino, G.R. No. 79387, 31 August 1989, 177 SCRA 185

[17] People v. Clamor, G.R. No. 83708, 1 July 1991, 198 SCRA 641

[18] People v. Cabiling, G.R. No. 38091, 17 December 1976, 74 SCRA 285; People v. Bigas, G.R. No. 94534, 20 July 1992, 211 SCRA 631

[19] People v. Arroyo, supra

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.