

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO LAGARTEJA AND ROBERTO LAGARTEJA, ACCUSED-APPELLANTS.

G.R. No. 127095. June 22, 1998

Ponente: MELO, J.

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MELO, J.:

The brothers Lito Lagarteja and Roberto Lagarteja were separately charged with Murder, and two counts each of Frustrated Murder, under four Informations, reading as follows:

Criminal Case No. 88-61750

That on or about the 13th day of March, 1988, in the City of Manila, Philippines, the said accused conspiring and confederating with one other whose true name, identity and whereabouts are still unknown and helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one Generoso Tipora Y Romero by then and there stabbing him on the chest with a fanknife, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death thereafter.

Contrary to law.

Criminal Case No. 88-63473

That on or about March 13, 1988, in the city of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of FERDINAND CARCELLAR Y VILLAR by then and there stabbing him at the armpit and left arm with a fan knife, thereby inflicting upon him stab wounds which were necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of cause independent of the will of the herein accused, that is, by the timely and able medical assistance rendered to said FERDINAND CARCELLAR Y VILLA which prevented his death.

Contrary to law.

Criminal Case No. 88-63474

That on or about March 13, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of ROBERTO EMNAS Y TUMAWAG by then and there stabbing him on the chest with a fan knife, thereby inflicting mortal, thus performing all the acts of execution which would have produced the crime of murder, as a consequence, but nevertheless did not produce it by reasons of cause independent of the will of the herein accused, that is, by the timely and able medical assistance rendered to said ROBERTO EMNAS Y TUMAWAG which prevented his death.

Contrary to law.

Criminal Case No. 8863954

That on or about March 13, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating with Lito Lagarteja y Cabutin who was already charged for the same offense in the Regional Trial Court of Manila and docketed as Crim. Case No. 88-61750 and helping one another, did then and there, wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation attack, assault and use personal violence upon one Generoso Tipora y Romero by then and there stabbing him on the chest with a fanknife, thereby inflicting upon the latter mortal wound which was the direct and immddiate cause of his death thereafter.

Contrary to law.

(pp. 116-118, Rollo)

On motion, the four cases were consolidated, and pleas of not guilty having been entered, a joint trial on the merits ensued, following which, a judgment of conviction was rendered, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Lito Lagarteja, in Criminal Case No. 88-61750, and Roberto Lagarteja, in Criminal Case No. 88-639954, GUILTY of the crime of Murder, and hereby sentences them to suffer an imprisonment of from TEN (10) YEARS and ONE (1) DAY of Prision Mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of Reclusion Temporal, as maximum, and to indemnify the heirs of Generoso Tipora in the sum of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

Likewise the Court finds both accused, Lito Lagarteja and Roberto Lagarteja, in Criminal Cases Nos. 88-73473 and 88-63474, GUILTY of two (2) counts of Frustated Murder, and hereby sentences them to suffer an imprisonment of EIGHT (8) YEARS and ONE (1) DAY to TEN (10) YEARS for each count, and to indemnify the victims, Roberto Imnas and Ferdinand Carcellar, the amount of Thirty Thousand (P30,000.00) Pesos each, without subsidiary imprisonment in case of insolvency.

With Costs

SO ORDERED.

(pp. 16-17, Rollo)

The prosecution's version of the episode is based on the testimony of its witnesses, namely, Elisa Jumatiao, Emily Tipora, Ferdinand Carcellar, Roberto Imnas, Dr. Prospero Cabaluna, Dr. Cesar Paloma, Pfc. Benjamin Nuguid, and Patrolman Manuel Lao. The Office of the Solicitor General summarized the events as follows:

Around 6:45 p.m. on March 13, 1988, Elisa Jumatyao was along Quezon St., Tondo Manila buying food from Aling Nene's Store when she spotted appellants Lito Lagarteja and Roberto Lagarteja, each holding a fan knife, approaching (TSN, November 10, 1988, pp. 4-5). Suddenly, she saw Lito Lagarteja stab Ferdinand Carcellar who was standing by the door of the store of Roberto Emnas, about five (5) meters from her (TSN, January 19, 1988, pp. 3-4, TSN, April 7, 1989, p. 6). Roberto Lagarteja waited nearby as a back-up.

Then, appellants walked towards a group consisting of Generoso Tipora, Gregorio Tipora and a certain Manny, who were conversing, after which Lito Lagarteja stabbed Generoso Tipora, hitting the latter on the chest at a spot near the heart. Roberto Lagarteja again acted as a back-up (TSN, November 10, 1990, pp. 7-8). Whereupon, appellants proceeded to Magsaysay Street, which runs parallel to Quezon Street. Along the way, they encountered Roberto Emnas who was stabbed by Lito Lagarteja on the chest (TSN, August 11, 1989, p. 7). As Roberto Emnas ran away calling for help, he encountered Pat. Manuel Lao. Roberto Emnas pointed at both appellants who were running away. Pat. Lao gave chase and shot and hit him. (TSN, October 20, 1989,

pp. 7-10).

Generoso Tipora and Roberto Imnas were taken to the Mary Johnston Hospital (TSN, January 19, 1989, p. 11) while Ferdinand Carcellar and Lito Lagarteja were taken to the Tondo General Hospital (TSN, November 10, 1990, p. 9, November 10, 1990, pp. 6-7). Generoso Tipora died upon arrival at the Mary Johnston Hospital (Exhibit "B"). Pat. Manuel Lao suffered a stab wound on his left arm but was not hospitalized (TSN, October 20, 1989, p. 7)

(pp. 79-81, Rollo)

Dr. Prospero A. Cabanayan of the National Bureau of Investigation, Medico Legal Division issued the following Postmortem Report on Generoso Tipora:

Pallor, lips and nailbeds

Stab wound, chest, left side, anterior aspect, level of 2nd intercostal space, 8.0 cm., from anterior median line, oriented upward and literally, fusiform, 1.7 cm. long edges, clean cut, upper extremities, sharp, lower extremity contused lateral border, levelled directed backward, downward and medially, penetrating thoracic cavity, left, grazing lung, upper lobe, anterior surface to middle mediastinum, perforating pericardium, heart, left ventricular wall, interventricular, septum, with an appropriate depth of 12.0 cm.

Hemopiracardium, approximately 320 c.c.

Hemothorax, left, approximately 1,600 c.c.

Brain and other visceral organs, pale

Stomach, full of undigested rice and other food particles.

Cause of death – Hemorrhage, severe, secondary to stab wound.

(pp. 120-121, Rollo)

Dr. Cesar J. Paloma examined and attended to the wounds of victims Ferdinand Carcellar and Roberto Imnas.

The version of the events presented by the accused, on the other hand, is to the effect that at about 5 o'clock on the afternoon of March 13, 1988, Roberto, a pedicab driver, happened to pass by the house of Roberto Imnas and saw Ferdinand Carcellar talking to his gangmates, at which time, he did not notice any unusual incident. Later, at around 6:45 o'clock that evening, unknown to Roberto, his brother Lito, motivated by revenge, stabbed Ferdinand Carcellar while the latter was at the door of the house of Imnas, because Carcellar had earlier created trouble at the dancing hall while high on drugs. Afterwards, Lito went home and talked with his gangmates in front of their house located at 90-A Quezon Street, Bo. Magsaysay, Tondo, Manila. At the time of the stabbing of Carcellar, Roberto was not with his brother, Lito Lagarteja (p. 36 Rollo).

In the meantime, Roberto Lagarteja was on his way home on his pedicab and upon arriving at Quezon Street, he noted people scampering in all directions shouting that somebody had been stabbed. Pat. Manuel Lao, passing by the front of the house of Roberto Imnas, was informed that it was Lito who stabbed Carcellar, so Pat. Lao proceeded to the house, he was asked to surrender by the policeman. When there was no response, Pat. Lao started firing the house. Upon seeing Lito outside their house, Roberto called to his brother to go inside, but Lito did not take heed. Instead, Lito stabbed Pat. Lao, hitting him on the arm, for fear that Pat. Lao would hit his brother Roberto (pp. 36-37, Ibid.)

Both Roberto and Lito confided that they had no quarrel with Generoso Tipora, or with Roberto Imnas, and prosecution witness Elisa Jumatiao (p. 37, Ibid.)

Moreover, Lito claimed that he could not have stabbed Roberto Imnas from behind, because Imnas is much taller

and bigger than him. Likewise, defense witness Leonila Tepace asserted that Generoso Tipora was stabbed by Lito's companion in the course of the commotion and that Roberto was not there at all (p. 37, Ibid.)

The trial court's judgement of conviction is based on the testimony of prosecution witnesses who were given complete credence. Prosecution witness Elisa Jumatiao's identification of the two brothers in the killing of Generoso Tipora and in the stabbing of Roberto Imnas and Ferdinand Carcillar was found by the trial court to be more credible because this witness was not shown to have any improper motive for testifying against accused-appellants (p. 14, Ibid.).

Victims Ferdinand Carcillar and Roberto Imnas corroborated each other's testimony when they both pinpointed accused-appellant Lito Lagarteja as the perpetrator of the crime (p.15, Ibid.)

During the trial, although no evidence was adduced directly showing Roberto as having actively participated in the fatal stabbing of Generoso Tipora and the wounding of Roberto Imnas and Ferdinand Carcillar, the trial court asserted that he and his brother, Lito, displayed unity of purpose and design in causing death and injuries to the victims. The presence of Roberto at the crime scene with his brother, Lito, was amply proven, thus, establishing the element of conspiracy. Roberto's defense of alibi was found unavailing as against the positive identification by the prosecution witnesses who did not display bad faith or any illicit intention in testifying against the accused, and whose accounts are believable, natural, and cohesive and mutually corroborative (p. 16, Ibid.).

Aggrieved by the trial court's decision, the brothers appealed to the Court of Appeals, anchoring their plea for reversal upon the following assigned errors:

I THE LOWER COURT ERRED IN FINDING ACCUSED ROBERTO LAGARTEJA GUILTY OF THE CRIME OF MURDER ON ACCOUNT OF THE DEATH OF GENEROSO TIPORA AND OF FRUSTRATED MURDER, ON TWO COUNTS, ON ACCOUNT OF THE DEATH OF GENEROSO TIPORA AND OF FRUSTRATED MURDER, ON TWO COUNTS, ON ACCOUNT OF THE STABBING OF FERDINAND CARCILLAR AND ROBERTO IMNAS.

II THE LOWER COURT ERRED IN FINDING ACCUSED LITO LAGARTEJA GUILTY OF THE CRIME OF MURDER ON ACCOUNT OF THE DEATH OF GENEROSO TIPORA, OF FRUSTRATED MURDER, ON TWO COUNTS, FOR THE STABBING OF ROBERTO IMNAS AND FERDINAND CARCILLAR.

III THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS ELISA JUMATIAO.

IV THE LOWER COURT ERRED IN NOT GIVING FULL CREDENCE TO THE DEFENSES OF THE ACCUSED.

(pp. 122-123, Rollo)

Finding the appeal to be partially impressed with merit, the Court of Appeals disposed:

WHEREFORE:

ROBERTO LAGARTEJA is hereby ACQUITTED of the charges against him in Criminal Cases Nos. 88-63954 and 88-63473 on the ground of failure of the prosecution to prove his guilt beyond reasonable doubt;

LITO LAGARTEJA, in Criminal Case No. 88-63473, is sentenced to suffer the penalty of FOUR MONTHS and ONE DAY (4 MONTHS AND 1 DAY) of arresto mayor as minimum, to FOUR YEARS (4 years) of prision correccional, as maximum, there being no mitigating or aggravating circumstances and after applying the Indeterminate Sentence Law.

LITO LAGARTEJA, in Criminal Case No. 88-63474, is sentenced to suffer the penalty of thirty days and one

day (30 days and 1 day) of arresto mayor as minimum to two years and six months (2 years and 6 months) of prision correccional as maximum, after applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances;

FINALLY, the Court of Appeals RESPECTFULLY ELEVATES to the Honorable Supreme Court, the judgment in Criminal Case No. 88-61750 where the Court of Appeals respectfully recommends the affirmance of the appealed judgment, and that the appellant LITO LAGARTEJA be made to suffer the penalty of reclusion perpetua plus payment of civil indemnity in the amount of P50,000.00 to the heirs of the victim.

Cost against the appellant Lito Lagarteja.

SO ORDERED.

(p. 130, Rollo)

The Court of Appeals rejected the trial court's finding of conspiracy as the underlying principle behind Roberto Lagarteja's conviction for Murder and Frustrated Murder on two counts. The appellate court maintained that the prosecution failed to prove the existence of conspiracy beyond reasonable doubt, hence, Roberto's acquittal is thus final.

Likewise, the Court of Appeals' decision in Criminal Case No. 88-63473 and 88-63474 need not be looked into, the same having become final and executory (p. 138, Rollo).

Nonetheless, the Court of Appeals seeks the affirmance of this Court anent its disposition in Criminal Case No. 88-61750 in which it affirmed the trial court's conviction of accused-appellant Lito Lagarteja of the crime of Murder with respect to the death of Generoso Tipora for which Lito was sentenced to suffer the penalty of reclusion perpetua, plus payment of civil indemnity in the amount of P50,000.00 (p 130, rollo).

We find no reason to disagree.

All that accused-appellant Lito Lagarteja offers by way of defense is denial, which plea has been viewed with disfavor by the courts due to the facility with which it can be concocted (People vs. Dancio, 253 SCRA 146 [1996]). Verily, Lito's denial is a feeble one which cannot stand against the positive testimony of the eyewitnesses of the crime (People vs. Flores, (252 SCRA 31 [1996])).

The positive identification of Lito Lagarteja as the perpetrator of the crime by prosecution witness Elisa Jumatiao must be given full faith and credit. Positive identification prevails over denials (People vs. Abrenica, 252 SCRA 54 [1996]). While admittedly, Elisa Jumatiao is the neighbor of Generoso Tipora since she was a child, this fact alone should not be considered as corrosive of her testimony. No ill motives whatsoever have been attributed to her as to why she should falsely testify against accused-appellant Lito and implicate him in the crime. We quote in this regard the pertinent testimony of Jumatiao, thusly:

Q Now, after Lito Lagarteja stabbed Ferdinand Carcillar, what happened next?

A Then they walked towards Generoso Tipora.

Q And what was Generoso Tipora doing when the two accused were walking towards them?

A They were three having a talk at the corner of Camias St. and Quezon St.

Q And who this third person, who was in company of Generoso Tipora?

A Gregorio. They were talking to Gregorio and Manny whose family name I do not know, and to Generoso Tipora.

Q They were three including Generoso?

A Yes, sir.

FISCAL

Q Now, when they were talking to each other, what happened thereafter?

A The two brothers (witness pointing to the two accused passed in the middle of the three persons and suddenly stabbed them.

Q Who were stabbed when the two accused passed these three persons you mentioned?

A Generoso Tipora and Roberto Imnas were stabbed.

COURT

A The question is, who was stabbed when they passed?

A Generoso Tipora only.

FISCAL

Q Who actually stabbed Generoso Tipora when the two accused reached them?

A Lito Lagarteja, sir.

Q And where was Generoso Tipora stabbed?

A He was stabbed at the heart.

Q How many times did Lito Lagarteja stab Generoso Ripora?

WITNESS

A Only once.

Q Now, when Lito Lagarteja was stabbing Generoso Tipora, what was Roberto Lagarteja doing at that time?

A He was a back-up of Lito Lagarteja.

Q And what happened after Lito Lagarteja stabbed Generoso Tipora?

A Then the two accused turned around and proceeded towards Magsaysay St.

(pp. 6-7, tsn, November 10, 1990)

The foregoing testimony clearly shows that prosecution witness Elisa Jumatiao positively identified accused appellant Lito Lagarteja as the culprit. In the same manner, the court a quo accurately held that the killing of Generoso Tipora was unquestionably committed with treachery. There is treachery where the evidence shows that the mode of attack was consciously and deliberately adopted by the accused, such that the victim who would have no inkling of the danger to his life prior to the attack (People vs. Juan, 254 SCRA 478 [1996]). Tipora was completely unaware of the murderous design of accused-appellant Lito Lagarteja. Tipora was talking to Gregorio and Manny at the corner of Camias and Quezon Streets, when he was suddenly, without warning stabbed by Lito. While it may be true that a sudden and unexpected attack is not always treacherous, in the case at bar, however, there was treachery because this type of assault was deliberately adopted by Lito. As Gregorio was conversing with his friends, accused-appellant Lito Lagarteja sneaked into the midst and suddenly stabbed Gregorio in the chest. The victim was afforded no opportunity to put up any defense whatsoever, while the assailant was exposed

to no risk at all, and that form of attack, evidently, was consciously adopted by him. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on his part (People vs. Vallador, 257 SCRA 515 [1996]). Although the victim and his assailant were face to face at the time the stabbing was made, where it appears that the attack was not preceded by a dispute and offended party was unable to prepare for defense, treachery should be taken into account. (U.S. vs. Cornejo, 28 Phil 457,461).

As to accused-appellant Lito Lagarteja's civil liability, the trial court correctly awarded P50,000.00 as indemnity for death in accordance with current jurisprudence.

WHEREFORE, conformably with the recommendation of the Court of Appeals, accused-appellant Lito Lagarteja is hereby found guilty of Murder and is correspondingly sentenced to suffer the penalty of reclusion perpetua and is ordered to indemnify the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and Martinez, JJ., concur.

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