

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO LADIT, EDDIE JARIOLNE, SAMUEL LADIT, RAFAEL
TINGCANG, JAIME DE LA PEÑA, GERRY LADIT, RUDY FLORES,
AGRIPINO SABUE...**

G.R. No. 127571. May 11, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated September 9, 1996, of the Regional Trial Court of Lanao del Norte, Branch 4, Iligan City, finding accused-appellant Cito Jariolne guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim, Arturo Tagaylo, Jr., in the amount of P50,000.00.

The facts of the case are as follows:

In an information, dated January 5, 1996, accused-appellant, together with ten others [Bonifacio Ladit, Eddie Jariolne, Samuel Ladit, Rafael Tingcang, Jaime de la Peña, Gerry Ladit, Rudy Flores, Agripino Sabuero, Bienvenido Balsamo, and Alfredo Balsamo], was charged with the killing of Arturo Tagaylo, Jr. on November 7, 1995. The information alleged:

That on or about November 7, 1995, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court the said accused, conspiring and confederating together and mutually helping each other, armed with deadly weapons, to wit: homemade shotguns gauge 12 and hunting knives, by means of treachery and evident premeditation, and with intent to kill, did then and there wilfully, unlawfully, and feloniously attack, assault, shot, and wound one Arturo Tagaylo, Jr., thereby inflicting upon him the following physical injuries, to wit:

- cardiorespiratory arrest
 - craniocerebral injury fracture left temporal parietal area
 - gunshot wound, multiple, head and body
- and as a result thereof the said Arturo Tagaylo, Jr. died.

Contrary to and in violation of Article 248 of the Revised Penal Code, with the aggravating circumstances of treachery and evident premeditation.[2]

Only accused-appellant was brought to trial as the rest of the accused had evaded arrest.

After accused-appellant's arraignment on April 15, 1996 where he pleaded "not guilty,"[3] trial commenced.

The prosecution presented an eyewitness, Jerry Kaponay,[4] a farmer who was formerly a resident of Linanot, Kabaksanan,[5] Iligan City where the killing took place on November 7, 1995. He testified that at 5:30 in the morning of that day, while he was pasturing his carabao at his farm, he saw a group of armed men chasing Gerry[6] Tagaylo. He recognized Bonifacio and Samuel Ladit, Rafael Tingcang,[7] Jaime de la Peña, and

accused-appellant Cito Jariolne as among them. He did not recognize the others "because they are not from our place."

Jerry Kaponay testified that as the group was not able to catch Gerry Tagaylo, they turned back and went to the house of Gerry's brother, Arturo Tagaylo, Jr., the victim in this case. Some of them fired warning shots causing the victim to jump out of his house and start running away.

Jerry Kaponay then saw some of the men, including accused-appellant, shoot the victim, who was already by then some five meters away from the men, causing him to fall down. Rafael Tingcang approached the fallen victim and stabbed him with a hunting knife.

Scared by what he witnessed while hiding behind a coconut tree some 16 meters away, Kaponay left the vicinity. That same day, however, he gave a statement of what he witnessed to the police (Exh. 1).[8] He later left Linanot for fear that Arturo Tagaylo, Jr.'s killers would be after him.[9]

The victim's mother, Modesta Balsamo Tagaylo, also testified. She said that the killing had its origin in a dispute over a 24-hectare property originally owned by her paternal grandfather which was now owned in common by his descendants. Modesta testified that the accused Alfredo and Bienvenido Balsamo are the children of her uncle Ricardo Balsamo, while the accused Agripino Sabuero and accused-appellant are Ricardo Balsamo's sons-in-law. Accused Bonifacio Ladit, Samuel Ladit, and Gerry Ladit, on the other hand, are the children of Modesta's aunt, Segundina Balsamo Ladit. Modesta testified that in the morning of November 7, 1995, she was in her house at Linanot when her daughter-in-law, the wife of Gerry Tagaylo, woke her up and said "Ma, armed men were chasing [G]erry." She peeped outside her window and saw this to be true. Among the men, she was able to recognize the abovenamed cousins and cousins-in-law of hers, including accused-appellant. Alarmed, she and her husband hurried out of their house and sought refuge in the house of the barangay captain of Kabaksanan. There she saw her son Gerry who had arrived earlier. Hours later, she learned from the barangay captain and his men who returned from the crime scene that her son Arturo had been killed. According to Modesta, the land dispute had already claimed the lives of 20 people in their clan, including three of her children.[10]

Dr. Leonardo Labanon of the City Health Office of Iligan City issued the victim's death certificate (Exh. A).[11] The same listed "Cardiorespiratory Arrest" as the immediate cause of death, "Craniocerebral Injury fracture, left (temporal parietal area)" as the antecedent cause, and "Gunshot wound, multiple, head and body" as the underlying cause. Dr. Labanon said that he could not determine what caliber of firearm/s caused the gunshot wounds.[12]

Dr. Labanon also executed a necropsy report (Exh. B)[13] showing that the victim suffered three gunshot wounds "entrance at the back." There were no exit wounds. The wound at the left temple area where "the bone is already destroyed . . . can be caused also by a bullet," according to Dr. Labanon. He also found a three-inch incised wound and a 1.5 cm. stab wound with a two-inch depth sustained by the victim.

As the sole witness on his behalf, accused-appellant interposed the defense of denial and alibi.[14] He denied involvement in the land dispute of the Balsamos, claiming that the same concerns only the heirs of Lorenzo Balsamo and the heirs of Apolonio Balsamo.[15]

Accused-appellant claimed that from 2:00 to 7:00 a.m. of November 7, 1995, he was on duty at the Citizen's Armed Forces Geographical Unit (CAFGU) camp at Mainit, Iligan City, which is more than 14 kilometers from Linanot where the victim was killed. He said that to reach Linanot from Mainit, one needs "[m]ore than three hours fast walking" as there is no other means of transportation.

He denied knowing the prosecution's eyewitness, Jerry Kaponay, and professed ignorance as to why the latter

would testify against him. He admitted though possessing a Garand rifle which was issued him in relation to his duties as a member of the CAFGU.

On September 9, 1996, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, the accused Cito Jariolne is hereby sentenced to suffer the penalty of reclusion perpetua, and to indemnify the heirs of the deceased, Arturo Tagaylo, Jr. the sum of Fifty Thousand (P50,000.00) Pesos.

It held that accused-appellant's defense of alibi could not prevail over his positive identification as among the victim's assailants. The trial court also expressed dismay over the failure of the local police to apprehend the other accused.

Accused-appellant assigns the following errors as having been committed by the trial court:

I. THE COURT A QUO ERRED IN FINDING THAT ACCUSED-APPELLANT CONSPIRED WITH HIS CO-ACCUSED IN KILLING [THE] VICTIM.

II. THE COURT A QUO ERRED IN ORDERING ACCUSED-APPELLANT TO INDEMNIFY THE HEIRS OF VICTIM THE SUM OF FIFTY THOUSAND PESOS.[16]

Basically, accused-appellant attacks the credibility of the prosecution's eyewitness Jerry Kaponay, pointing out that in the latter's sworn statement (Exh. 1), he did not name accused-appellant as among the armed men who attacked the victim. Said statement reads in pertinent part:

07. Q - State how the incident transpired?

A - On or about 5:30 o'clock in the morning of Nov. 17, 1995, It [e]thered my carabao near my farm at Purok 9, Linanot, Bunawan, Iligan City. While at my farm which is about 40 meters away from the house of Arturo Tagaylo, Jr. and the house of Gerry Tagaylo which is more or less 60 meters away from my nipa hut or payag, I saw a group of armed men led by Bonifacio Ladit, Samuel Ladit, Rafael Tingcang, Jaime dela Peña and two more others surrounded the house of Gerry Tagaylo but Gerry Tagaylo who was outside his house at that time managed to run for safety. He was pursued by the armed group but the group lost their track because of thickly [sic] and grassy terrain. The same group of suspects surrounded the house of Arturo Tagaylo, Jr. and suspects whom I identified as Bonifacio Ladit, Samuel Ladit, Rafael Tingcang, Jaime dela Peña and two others jointly shot and killed the victim Arturo Tagaylo, Jr. using a home made shot gauge 12 and a hunting knife. After successfully killing the victim, the suspects proceeded to the house of Arturo Tagaylo, Sr. where they were joined by 12 more unidentified men already posted thereat. After which I went directly to my house to avoid involvement in said feud. An [sic] hours later the responding Policemen led by SPOII CLASE AND PO3 ENTERINA arrived but the suspects already eluded arrest.[17]

The contention has no merit. Affidavits taken ex parte are generally incomplete and inaccurate, sometimes because of suggestion and at other times because of want of suggestion and inquiries. For this reason, they are considered inferior to testimony given in open court.[18] In his testimony, Jerry Kaponay pointed to accused-appellant as one of those who shot Arturo Tagaylo, Jr.[19] and claimed that he did mention accused-appellant's name but the police investigator may not have heard him because there were many people around who were very noisy and who distracted the police investigator by touching him. Another factor that may have contributed to the communication gap was that the investigation was first conducted in the local dialect, and it was only afterwards, as the statement was being typed, that the police investigator translated the same to English. Furthermore, there was no opportunity for Jerry Kaponay to add to what the police investigator had put down as, according to him, the statement was not read to him after it was prepared, and he was merely asked to sign the same.[20]

Indeed, there is no reason for Jerry Kaponay and Modesta Tagaylo to falsely implicate accused-appellant. As observed by the trial court:

The Court observing the demeanor and testimonies of the prosecution witnesses finds them credible. The witness Modesta Tagaylo while testifying and recalling the death of her sons was crying softly, perhaps because of the tragedy that had repeatedly befallen on her sons. There appears to be no other motive in her testifying against the accused, a relative, other than to seek justice.

Jerry Kaponay on the other hand, appears to have no motive at all to perjure himself. He is not a relative of any of the feuding parties and he just happened to be at the scene of the crime, an unfortunate event for him, for according to him he has to abandon his farm in Linanot because the other accused are hunting him.[21]

As the trial court had the opportunity to observe the witnesses' testimonies firsthand, its findings regarding their credibility are entitled to great weight and respect.[22]

That the prosecution did not establish with certainty that it was from accused-appellant's Garand rifle that the victim sustained his mortal wounds does not work to exculpate him. There was conspiracy in this case. Accused-appellant and his companions acted in concert, showing that they had the same purpose or common design and that they were united in its execution.[23] Consequently, the act of one could be deemed the act of all.

In contrast to the prosecution witnesses, the Court finds accused-appellant to have dissembled by trying to dissociate himself from the Balsamos' land dispute and making it appear that he did not, as a result, have a grudge against the Tagaylos. He claimed that the Tagaylos had agreed to let his wife and the descendants of Lorenzo Balsamo take possession of the 24-hectare property but that the Tagaylos reneged on their promise. Accused-appellant further claimed that the sons of Modesta Tagaylo "even went to the military and reported that my son and the sons of Lorenzo were members of the NPA" and because of this, his son was killed by the military.[24] There was thus a strong motive for accused-appellant to get back at the two Tagaylo brothers, Arturo, Jr. and Gerry. In any case, the positive identification of accused-appellant by Jerry Kaponay makes it unnecessary to inquire into the motive for the killing of Arturo.[25]

We consider now the modifying circumstances affecting accused-appellant's criminal liability. The information alleges the attendance of the qualifying circumstances of treachery and evident premeditation. The Court, however, finds neither present in this case.

With respect to the qualifying circumstance of treachery, the following elements must be proven: (1) the employment of means of execution that gives the person attacked no opportunity to defend or to retaliate, and (2) the deliberate or conscious adoption of the means of execution.

The prosecution failed to prove these elements. To begin with, the prosecution's eyewitness Jerry Kaponay himself testified that warning shots were fired by accused-appellant and his companions,[26] thus alerting Arturo Tagaylo, Jr. to the impending danger. The victim in fact was able to jump out and run away, although eventually, he was shot and stabbed. As held in *People v. Flores*:[27]

The mere fact that the victim was shot at the back while attempting to run away from his assailant would not per se qualify the crime to murder. . . . Clearly then, with the first gunshot, the victim has been placed on guard and has, in fact, attempted to flee. There could thus be no treachery since, prior to the attack, the victim has been forewarned of the danger to his life and has even attempted, albeit unsuccessfully, to escape. Moreover, there was absolutely no evidence to show that accused-appellant consciously and deliberately employed a specific form of attack which would specially and directly ensure its commission without [sic] impunity.

In *Flores*, the victim and his companion were passing a bed factory when the accused, a security guard, apparently

drunk, emerged and fired at them. The victim and his companion ran but the accused gave chase. At a distance of fifteen (15) meters from the victim, the accused fired at him, hitting him at the back. The Court held that the foregoing circumstances did not constitute treachery.

In *People v. Germina*,^[28] there was a heated argument between the victim's relatives and the accused when the victim arrived. Upon seeing the latter, the accused drew his gun, whereupon the victim and his relatives scampered away. The victim, however, stumbled and fell face down. As a result, the accused caught up with him and then fired at him, resulting in a mortal wound at the back of his neck. The Court did not find treachery present.

Nor is evident premeditation present in this case. For the same to be considered, the following requisites must be proved: (1) the time when the accused determined to commit the crime, (2) an act manifestly indicating that the accused had clung to his determination, and (3) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act. In this case though, the prosecution did not present any evidence as to when the plan to kill was made or how accused-appellant planned the killing of the victim or how much time passed before said plan was carried out.^[29]

However, we find the presence of the generic aggravating circumstance of abuse of superior strength, considering that the group of accused-appellant enjoyed a clear superiority not only in number but also in arms. By simultaneously firing at the unarmed victim when he tried to flee from them, accused-appellant and his companions evinced an intent to take advantage of their superiority in number and firepower.^[30]

Absent the qualifying circumstances of treachery and evident premeditation, the crime should be considered homicide. Under Art. 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. Since there is present the aggravating circumstance of abuse of superior strength, the maximum period of reclusion temporal should be imposed as the maximum of the penalty. Under the Indeterminate Sentence Law, the minimum of the penalty should be within the range of prision mayor, which is the penalty next lower in degree to reclusion temporal.

In addition to the P50,000.00 death indemnity awarded by the trial court, moral damages in the amount of P50,000.00 should be granted to the heirs of the victim.^[31]

WHEREFORE, the decision appealed from is **AFFIRMED** with the **MODIFICATION** that accused-appellant is found guilty of **HOMICIDE** only and sentenced to an indeterminate penalty of twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, with the accessory penalties provided by law, and to pay to the heirs of the victim moral damages in the amount of P50,000.00 in addition to indemnity of P50,000.00 and the costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.

De Leon, Jr., J., on leave.

[1] Per Judge Felipe G. Javier, Jr.

[2] Records, p. 1.

[3] Certificate of arraignment; *id.*, p. 27.

[4] Also spelled "Caponay" in various parts of the Records.

[5] Also spelled "Cabacsanan" in various parts of the Records.

- [6] Also spelled "Jerry" in various parts of the Records.
- [7] Also spelled "Tinkang" and "Tengkang" in various parts of the Records.
- [8] Records, p. 8.
- [9] TSN, pp. 2-12, Aug. 1, 1996.
- [10] TSN, pp. 2-11, Aug. 2, 1996.
- [11] Also Exh. 2 for the defense. Records, p. 12.
- [12] TSN, pp. 2-4, Aug. 20, 1996.
- [13] Records, p. 17.
- [14] TSN, pp. 3-10, Aug. 22, 1996.
- [15] Apolonio Balsamo is Modesta Tagaylo's father. Apolonio Balsamo's siblings are Lorenzo Balsamo, Ricardo Balsamo (accused-appellant's father-in-law), Estabana Balsamo, and Segundina Balsamo. (TSN (Modesta Tagaylo), p. 4, Aug. 2, 1996)
- [16] Appellants Brief, p. 1; Rollo, p. 46.
- [17] Records, p. 8.
- [18] E.g., *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999)
- [19] TSN, p. 5, Aug. 1, 1996.
- [20] *Id.*, pp. 7, 10-11.
- [21] Decision, p. 5; Rollo, p. 20.
- [22] E.g., *People v. Verde*, 302 SCRA 690 (1999)
- [23] See *People v. Durado*, G.R. No. 121669, Dec. 23, 1999.
- [24] TSN, pp. 7-8, Aug. 22, 1996.
- [25] *People v. Bahenting*, 303 SCRA 558 (1999)
- [26] TSN, p. 8, Aug. 1, 1996.
- [27] 237 SCRA 653, 660 (1994). (Emphasis in the original)
- [28] 290 SCRA 146 (1998)
- [29] E.g., *People v. Naag*, G.R. No. 123860, Jan. 20, 2000; *People v. Patawaran*, 274 SCRA 130 (1997)
- [30] *People v. Felix*, 297 SCRA 12 (1998)
- [31] E.g., *People v. Robles*, 305 SCRA 273 (1999)

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