

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR GIVERA Y GAROTE, ACCUSED-APPELLANT.

G.R. No. 132159. January 18, 2001

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132159/>

MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 102, Quezon City finding accused-appellant Cesar Givera y Garote guilty of murder of Eusebio Gardon y Arrivas and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs of the suit.

The information in this case, dated April 10, 1995, charged as follows:

That on or about the 2nd day of May, 1993, in Quezon City, Philippines, the said accused [CESAR GIVERA], conspiring together, confederating with EPEFANIO GAYON y GERALDE[2] and ARTURO GAYON y GERALDE, and mutually helping one another who were charged with the same offense at the Regional Trial Court of Quezon City, Branch 104, and docketed as Criminal Case No. Q-93-44315, did, then and there, willfully, unlawfully and feloniously, with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack, assault, and employ personal violence upon the person of EUSEBIO GARDON y ARRIVAS, by then and there stabbing him with a knife hitting him on the different parts of his body, and striking him with a piece of stone on the head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of EUSEBIO GARDON y ARRIVAS.

CONTRARY TO LAW.[3]

Accused-appellant pleaded not guilty during his arraignment on April 10, 1996, whereupon he was tried.

Accused-appellant's companions, namely Epifanio Gayon, Arturo Gayon, and Maximo Givera, were separately prosecuted and found guilty of murder by the Regional Trial Court, Branch 104, Quezon City in a decision, dated June 6, 1994, in Crim. Case No. Q-93-44315. The three were sentenced to suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law, to indemnify the heirs of the deceased the sum of P100,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs of the suit. On appeal to this Court, the decision of the trial court was affirmed with modification. The dispositive portion of the decision reads:

WHEREFORE, the judgment appealed from is MODIFIED. We instead find accused-appellants EPIFANIO GAYON, ARTURO GAYON and MAXIMO GIVERA guilty beyond reasonable doubt of MURDER committed with grave abuse of superior strength and imposes upon each of them the penalty of reclusion perpetua with the accessory penalties provided by law, and ordering them to indemnify the heirs of the deceased Eusebio Gardon in the amount of P100,000.00. Costs against accused-appellants.[4]

For the prosecution, the victim's daughter Milagros Gardon and his niece Melinda Delfin were presented as

witnesses. On the other hand, only accused-appellant testified in his defense.

The incident took place at about 4 p.m. on May 2, 1993 at Purok IV, Area 5, Laura St., Old Balara, in Diliman, Quezon City.

Milagros Gardon testified on direct examination:[5]

Q: Particularly about 4:00 p.m., were you at your residence at that time?

A: Yes, sir.

Q: And what were you doing there at that time?

A: I was in the house because I was watching my father, sir.

Q: What was your father doing at that time?

A: I let him go to sleep because he was a little bit drunk, and I was watching him so that he will not go outside.

Q: Why do you say you were watching him so that he would not anymore go out?

A: Because he was warned by [accused-appellant Cesar Givera] that if he goes outside, he will kill my father.

Q: At that time and place while you were watching your father, what else happened if any?

....

A: [O]ur house was being stoned.

Q: Who was stoning your house? Could you tell us who was throwing stones to your house?

....

COURT:

She mentioned that because her father was not coming out of the house, the accused started stoning the house.

Q: Who was stoning your house?

A: Cesar Givera, sir.

Q: Was he alone at that time?

A:

They were in a group, sir, but he was the only one stoning the house. And the other one, who was already arrested, by the name of Onying went inside the house.

Q:

You said a while ago that there was somebody with Cesar who went to your house, could you recall that somebody?

A: Onying [Epifanio Gayon], sir.

Q: You said he was already "nakakulong"?

A: Yes, sir.

Q: Now, what happened after this person Cesar and the other one Onying went inside the house?

A:

Onying asked my father to go out of the house while Cesar was stoning the house. Onying led my father out of the house, and when they were already outside, Cesar was waiting for them. Then Cesar scampered away and my father followed him. Cesar caused my father to run after him until they reached the place where there was another person, and that person stabbed my father.

Q:

So how many persons in all have you seen?

A: They were four in all, sir.

....

Q: What did these 4 persons do when her father was with them if any?

....

A:

Cesar was stoning the house. Then Onying got my father from the house. Turing [Arturo Gayon] told the other one to stab my father while the one who stabbed my father was waiting under the bridge.

....

Q: What happened to your father after you said he was stabbed or mauled?

A: After he was stabbed, the person who stabbed him ran away, sir.

On cross-examination, Milagros Gardon said:[6]

Q: Who else were with you at that time?

A: My brother and sister, sir.

Q: They were Laura Gardon and Leonardo Gardon, correct?

A: Yes, sir.

Q:

And your father inside the house because he was already resting after having been from a drinking spree, correct?

A: Yes, sir.

....

Q: And you were watching TV at that time, correct?

A: Yes, sir.

Q: And then suddenly you heard stones being thrown on the roof of your house, is that correct?

A: Yes, sir.

....

Q: This Onying [Epifanio Gayon] suddenly entered your house, correct?

A: Yes, sir.

Q: He was alone when he entered your house, correct?

A: Yes, sir.

Q: How did he effect his entrance in your house?

A: He went inside directly, sir.

....

Q: At that time were you in a position so as to see him actually effect his entrance through the front door?

A: Yes, sir.

Q: Why? Where were you at that time?

A: I was in the sala, sir.

Q: You were in the sala right next to your father, is that correct?

A: Yes, sir.

Q:

And likewise with your two other companions Laura and Leonardo, they were situated right near to your father, correct?

A: Yes, sir.

....

Q: Now, when this Onying entered the house, did he call out the name of your father if you can remember?

A: Yes, sir.

Q: And your father, did he give any response thereto?

A: Yes, sir.

Q: What was his response if any?

A: He asked Onying if he need anything. And Onying asked him to go out with him.

....

Q: And your father stood up and joined Onying in going out of the house?

A: Yes, sir.

....

Q: Then you together with your two other companions got back to watching the television show is that correct?

A: No, sir.

Q: But you stayed inside the house, you and your two other companions?

A: No, sir.

Q: Now, thereafter you heard stones thrown again towards your house, is that correct?

A: Yes, sir.

Q: But just the same, you did not peep out through any opening of your house for safety?

A: We were already outside when they were stoning the house. We followed him outside.

....

Q: Was Onying also hit by any of those stones?

A: No, sir. Only my father and my sister.

Q: What is the name of that sister of yours who was also hit?

A: Laura Gardon, sir.

....

Q: And where was Laura hit?

A: At her left shoulder, sir.

Q: And how many stones if you know hit Laura?

A: Only one, sir, because while they were stoning they were running away.

Q: Who were these people running away?

A: Onying and Cesar, sir.

Q: Are you saying that Onying also stoned your father?

A: No, sir.

Q: Because he was right next by your father at that time, that is why he was not at all stoning your father, correct?

A: He was boxing him.

....

Q: You saw Cesar Givera actually stoning towards the direction of your father, is that what you mean?

A: Yes, sir.

....

Q: And your father followed Cesar Givera, is that what you mean?

A: Yes, sir.

Q: Likewise, with Onying, he followed Cesar Givera?

A: Yes, sir.

Q: And they ran quite a distance, correct?

A: Yes, sir.

Q: And then you lost sight of them yes or no?

A: No, sir.

Q: But you stayed in the house, correct?

A: No, sir. I was outside the house. When the incident happened, I was already outside the house.

Q:

But because you did not state that you also followed your father as he ran after Cesar, does that mean that you just stayed in front of your house?

A:

We stopped because we already saw the place where my father was stabbed, that is why we did not follow them.

Q: How far did they get, using as reference the front door of your house? How far did they get as they ran away?

A: About fifteen meters away, sir.

Q: Did they not turn corners?

A: It is straight, sir. They only made a turn after the stabbing incident, sir.

Q:

They turned a corner after your father was stabbed?

A: Yes, sir, because they ran away, sir.

Q: Only one of the accused stabbed your father, correct?

A: Yes, sir.

Q:

And who was this?

A: Bingo Givera [Maximo Givera], sir.

Q: Did you actually see him stab your father?

A: Yes, sir.

On re-direct examination, Milagros said:[7]

Q:

Madam witness, you said a while ago that you saw while your father was stabbed, and the name of that person is Onying who stabbed your father?

A: Maximo Givera, sir.

....

Q: Now, when you saw Maximo Givera stab your father, where was Cesar at that time?

....

A:

He was also at the same place, sir.

Q:

And the other 3 accused Arturo Gayon and Efipanio Gayon, could you tell us where they were when Maximo was stabbing your father?

A: They were also at that place, sir.

Melinda Delfin, niece of the victim, corroborated the testimony of Milagros Gardon. She said:[8]

Q:

At about 4:00 p.m. of May 4, 1993, could you tell us where you were at that time?

A: Yes, sir, I was about to reach the house of Eusebio Gardon.

Q: What was your purpose in going there?

A: Eusebio Gardon called me up because he has just come from Bicol and he will give me rice.

Q:

You said you were about to arrive at the residence of Eusebio Gardon at 4:00 p.m. on May 4, 1993, what did you notice or observe when you were about to arrived at that place of his residence?

A: I saw "Onying" [Epifanio Gayon] with his hand on the shoulder of Eusebio Gardon going out of their yard.

(Nakita ko si Onying akbay akbay si Eusebio Gardon palabas sa bakuran nila.)

....

Q: What else did you notice?

A: When I came out of the gate I saw Cesar Givera boxed Eusebio Gardon.

(Paglabas ko ng bakuran nakita ko si Cesar na sinalubong ng suntok si Eusebio Gardon.)

....

Q: What else did you see aside from the fact that you saw Cesar Givera boxing Eusebio Gardon?

A:

Cesar boxed him and also Onying boxed him, they both helped each other in boxing Eusebio Gardon, and then they back to the house of Eusebio Gardon and my uncle followed them. Not quite far, Bingo [Maximo Givera] and Turing [Arturo Gayon] were there.

....

Q: And what happened when you said this Bingo was there?

A:

Onying and Cesar gave fistic blows to Eusebio Gardon and he was also stabbed by Bingo, and they were also kicking Eusebio Gardon.

Q: Eusebio Gardon was boxed by Onying and Cesar Givera?

A: Yes, sir.

Q: And stabbed by?

A: Bingo, sir.

Q: Actually, how many persons were there when [Eusebio] Gardon was stabbed and being boxed?

A: I saw four of them, sir.

Q: Would you made these four (4)?

A: Turing, Bingo, Cesar and Onying.

....

Q:

And what happened to Eusebio Gardon, whom you said was boxed, mauled and then stabbed?

A: He was lying down under the bridge for about thirty (30) minutes, and then his children arrived.

....

Q:

You said earlier that you saw Cesar Givera and Epifanio Givera threw stones towards the victim's house, is that true?

PROSECUTOR CONCHA:

Excuse me, Your Honor, the witness said she saw that fellow by the name of Onying and Cesar boxing - - ?

WITNESS:

"Suntok, bato at sipa."

ATTY. MASCALAS:

Q: Where did you see them doing these acts on Eusebio?

A: Outside the premises, sir.

Q:

Whose premises?

A: The premises of Eusebio Gardon, sir.

Q: Did you not say earlier that Onying came out with Eusebio Gardon from the latter's house?

A: I saw Onying, "akbay-akbay niya.."

Q: You even saw Onying embracing Eusebio Gardon, correct?

A: Yes, sir.

....

Q: Were there stones being hurled to Onying and Eusebio?

A: Yes, sir.

Q: Did you see who were throwing those stones?

A: It was Cesar, sir.

....

Q: Did you see if Gardon was hit by any of these stones?

A:

Yes, sir.

Q: And you also saw Onying hit by stones, correct?

A: No, sir.

....

Q: Who boxed your uncle?

A: Cesar, sir.

Q:

Are you saying that Cesar while throwing stones to your uncle was so close to him that he was able to box him?

A: Because they were advancing towards my uncle and Onying. They were going towards them.

....

Q: And when they were able to come near, how near did Cesar get to your uncle?

A: Maybe three to four meters, sir.

Q: That was when Cesar boxed your uncle?

A: Not yet, sir.

Q: When did Cesar box your uncle?

A: When they come near to my uncle.

....

Q: And then Cesar Givera ran away and your uncle gave chase?

A: Yes, sir.

Q:

And upon reaching the bridge which is about fifteen (15) meters away from the victim's house, you saw Bingo stabbed your uncle?

A: Yes, sir.

Q:

There were only -- You said that there were only four (4) persons in that place where your uncle was stabbed and those persons do not include Milagros Gardon?

A: No, sir.

Q: Because Milagros Gardon was still in their house?

A: She was already outside their house.

Q: She was outside their house -- although outside their house she was still inside the premises of their lot?

A: She was still inside, but she saw the incident.

Q: And that premises of the victim was about 15 meters away from the bridge where the alleged incident took place?

A: Yes, sir.

Q: Were you also with Milagros Gardon at the time that stabbing was done?

A: We were not together but I was approaching their house.

....

Q: So you were also about 15 meters away from the bridge where the alleged incident took place?

A: Yes, sir.

Q: And that is your distance when you were claiming that you saw this incident?

A: It was just a little less.

(Makalampas lang ng konti).

....

Q: It was Turing Gayon [Arturo Gayon] whom you heard shout: "Sige, todasin na yan!"

A: Yes, sir.

Q: And it was Bingo [Maximo Givera] whom you saw stabbed your uncle?

A: Yes, sir.

....

Q: You said that it was Bingo who stabbed the victim Eusebio Gardon. You said that you saw it?

A: Yes, sir.

Q: What was Cesar Givera doing when the victim was stabbed by Bingo?

A: They were kicking and boxing my uncle.

Q: Givera was doing that? I was asking you about Cesar Givera?

A: He was boxing and kicking my uncle.

Q: Who, Eusebio Gardon, the victim?

A: Yes, sir.

To prove the fact and cause of death of Eusebio Gardon, the prosecution presented in evidence the testimony[9] of medico-legal officer, P/Maj. Florante Baltazar, given in Criminal Case No. Q-93-44315. The testimony shows that the victim sustained one fatal stab wound possibly caused by a single bladed weapon.[10] In addition, he sustained abrasions in his lower chin, possibly hitting a rough surface, as well as an incised wound caused by a bladed weapon, on his posterior middle left arm.[11] The stab wound appears to be fatal because it pierced the

pericardium and left ventricle of the heart, which could be the immediate effect of hemorrhage, shock and eventual death of the victim.[12] A death certificate[13] evidencing the death of the victim was presented by the prosecution.

Accused-appellant testified in his behalf. He was a resident of Laura St., Old Balara, Quezon City at the time of the incident. He denied any involvement in the killing of the victim who was his relative by affinity.[14]

Accused-appellant claimed that at the time of the incident on May 2, 1993, at around 4:00 p.m., he was having a drink in his cousin's house, some 30 meters away from the victim's house. On the other hand, Maximo Givera and Arturo Gayon were in the victim's house also having drinks. Accused-appellant said he was fetched by his cousin, Recto Gardon, because Maximo and the victim Eusebio Gardon were having an altercation. He went to pacify the protagonists and then led the victim to his house. Without his knowledge, however, Eusebio went back and again engaged Maximo in a fist fight, as a result of which the victim Eusebio was knocked down. Accused-appellant said he was going to help the victim get up, but he saw the victim's son, Ronilo Gardon, coming with a bolo. He, therefore, ran away and left the victim behind. He added, that he did not see if his three companions did anything more than box the victim.[15] Accused-appellant said he learned that the victim had died only two days after the incident.[16]

Accused-appellant was arrested on May 4, 1996 at the East Avenue Medical Center. He stated that the children of the victim implicated him in the killing of Eusebio Gardon only because he was present when the incident happened.[17]

On August 29, 1997, the trial court rendered its decision finding accused-appellant guilty of murder. The dispositive portion of its decision reads:[18]

WHEREFORE, judgment is hereby rendered finding the accused Cesar Givera guilty beyond reasonable doubt of the crime of murder as charged.

The accused is hereby sentenced to reclusion perpetua, with the accessory penalties of the law, and to indemnify the heirs of the deceased in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Hence, this appeal. Accused-appellant's sole assignment of error is that-

DUE TO THE PRESENCE OF REASONABLE DOUBT, THE COURT A QUO HAS COMMITTED AN ERROR IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED

The appeal has no merit.

First. The prosecution presented evidence which shows beyond reasonable doubt that accused-appellant and his companions (Epifanio Gayon, Arturo Gayon, and Maximo Givera), all of whom were convicted of murder in another case, were responsible for the killing of Eusebio Gardon on May 2, 1993. Milagros Gardon's testimony, an excerpt from which is quoted at the beginning of this opinion, is spontaneous, detailed, and consistent. The defense tried to discredit through cross examination, but, as shown earlier, the defense only succeeded in enabling her to give further details of her testimony in chief. There are apparent lapses in the testimony of Milagros, as when she testified that she knew at the very beginning that it was accused-appellant who was stoning their house when in fact, as she admitted, she only knew this because the victim said so. Moreover, it may be doubted whether the victim's other daughter, Laura, was hit by the stones hurled by accused-appellant as she came out of their house, since the door of the house was so narrow that only one person at a time could pass through it.

Nonetheless, a close reading of the records will show that indeed it was accused-appellant who was stoning the house because when the witness followed the victim outside, she saw accused-appellant throwing stones at their house. She then saw accused-appellant hitting the victim with stones. In the process, Laura was also hit.

In any event, these discrepancies are minor and insignificant and do not detract from the substance of her testimony. This Court has time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.[19]

Thus, according to Milagros Gardon, accused-appellant taunted the victim and challenged him to come out of the house. After succeeding in drawing the victim out of his house, accused-appellant and his companions ganged up on him, kicking and pummeling him and finally stabbing him.

Milagros' testimony belies accused-appellant's claim that he was merely trying to pacify the victim and Maximo Givera and that he ran away because the victim's son, armed with a bolo, charged at him (accused-appellant). There was no reason for the victim's son to want to attack accused-appellant, if the latter was merely trying to help the victim.

Nor is it probable that accused-appellant did not see what his companions did to the victim aside from giving him fist blows and kicks, because according to accused-appellant, he ran away shortly after they had attacked the victim. As accused-appellant said he saw the assailants run away, this could only be after they had been done with their victim.

The defense also tries to discredit the testimony of the other prosecution witness, Melinda Delfin. It is contended that, contrary to her claim, she was not really present at the incident. For this purpose, it is pointed out that she failed to give a sworn statement regarding said incident to the police.

The contention has no merit. As Melinda explained, she did not give a statement to the police because she was told they would call on her later for her statement. Melinda testified:[20]

Q:

The police did not get your statement because you did not tell them that you were an eyewitness and if it is true, correct?

A:

No, sir.

Q:

You were only asked by your relatives - - You testified in this case in the sala of Judge Asuncion after the children of the victim asked you to? Correct?

A:

They did not tell me. I voluntarily testified, sir, because I saw the incident.

Q:

What do you mean by saying that you voluntarily testified? Did you just come to court and asked the court to take you as witness in this case?

A:

No, sir, because in the police station the police told me that they will not take my statement. They will just "ihahabol na lang ako."

Q:

Did you not inquire from them why your statement will not longer be taken and what do you mean by that "ihahabol na lang ikaw"?

A:

I did not ask because I do not know anything about that. That was the first time that incident happened to my life.

It is noteworthy that both Milagros Gardon and Melinda Delfin knew accused-appellant and the other assailants, and that in fact some of them are related to the witnesses. Accused-appellant has not shown that these witnesses were motivated by ill will against him. As correctly observed by the trial court:[21]

[T]he court has no reason to doubt the testimonies of the prosecution witnesses.

In the first place, accused Cesar Givera has not shown any motive on the part of the prosecution witnesses to testify as they did against said accused.

Second, accused Cesar Givera and the other accused in this case are all residing within the vicinity where the crime was committed, and are even related by affinity to the deceased. There is, therefore, no reason to doubt their identification by the prosecution witnesses."

All things considered, we think the trial court correctly dismissed accused-appellant's claim and gave credence to the testimonies of the prosecution witnesses. From the fact that the victim died and that accused-appellant and his companions were the last persons seen with the victim before he died, it can be concluded that they are responsible for the victim's death.

Second. The allegations of conspiracy in the information have been established. The victim was at home sleeping after coming from a drinking session, when the accused-appellant and his companions stoned his house to force him to come out. When they failed, one of them, Epifanio (Onying) Gayon, went inside the victim's house and told him to come out. Disoriented because he was drunk, the victim went with Onying. Once the victim was outside, accused-appellant pelted him with stones, while Onying started raining fistic blows on him. Then Onying and accused-appellant ran away to lure him to go toward the bridge where the other two, Arturo Gayon and Maximo Givera, were waiting. When the victim reached the place, he was attacked by the gang. He was kicked and boxed by Onying and when Arturo shouted "Sige todayan na yan!," Maximo stabbed the victim.

The evidence thus clearly and convincingly shows a coordinated action by the group in the execution of the crime. In conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. The act of each conspirator in furtherance of the common purpose is in contemplation of law the act of all. Consonant with this legal principle, accused-appellant is guilty of the crime of murder as if he himself dealt the deathblow that sent the victim to his grave.[22]

Third. However, evident premeditation cannot be appreciated in this case. Where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be appreciated.[23] But in an implied conspiracy, such as in this case, evident premeditation cannot be appreciated in the absence of proof as to how and when the plan to kill the

victim was hatched or what time elapsed before it was carried out, so that it cannot be determined if the accused had "sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences." There should be a showing that the accused had the opportunity for reflection and persisted in effectuating his criminal design which the prosecution failed to establish in the case at bar.[24]

Nor can the qualifying circumstance of treachery be taken into account. The trial court held:[25]

. . . [T]reachery will also be deduced from the evidence on record. The deceased was unarmed when he was stabbed by on Maximo Givera and boxed and kicked by accused Cesar Givera and two other accused.

. . . From the evidence adduced, accused Givera and Epifanio Gayon taunted and provoked the deceased by throwing stones at him and then lured him to run after them towards the bridge where the other accused were lying in wait ready to pounce on the deceased without risk to themselves as the deceased was then defenseless."

Treachery is the deliberate and unexpected attack on the victim, without any warning and without giving him an opportunity to defend himself or repel the initial assault. For treachery to be appreciated, it must be shown to be present at the inception of the attack, otherwise, even if present at a subsequent stage, it cannot be considered.[26] In the instant case, the victim cannot be said to have been totally oblivious of the impending attack by all the group of accused-appellant. He thus had every opportunity to escape from the attack. In fact, his daughter Milagros testified that prior to the stoning incident, the victim had been threatened with harm by accused-appellant the moment he went out of his house, which is why she stayed beside her father to make sure he did not go out of the house. Indeed, the victim had been forewarned of the danger posed by accused-appellant and his group.

Moreover, by coming out of his house and running after two of the assailants, the victim showed that he was prepared for the attack by accused-appellant and his gang and could have been hardly surprised when he was actually attacked. Treachery must be proven by convincing evidence. The fact that the victim may have been surprised because he had not expected that he would be outnumbered when he saw two other attackers waiting for him under the bridge is not sufficient to show that the victim was completely unaware of the attack that might come from his assailants.[27]

However, the presence of the qualifying circumstance of abuse of superiority was correctly appreciated in this case. The victim was unarmed and was clearly outnumbered by the four assailants, with one of them armed with a knife.[28]

Fourth. Accused-appellant claims that his arrest at the East Avenue Medical Center on May 4, 1996 was made without a warrant. This is not true. He was arrested by virtue of a warrant issued by the court on April 27, 1995. However, as the records show, the warrant of arrest was returned unserved by the arresting officer on June 7, 1995 as accused-appellant could not be found. He was finally found only on May 4, 1996. Now, no alias warrant of arrest is needed to make the arrest. Unless specifically provided in the warrant, the same remains enforceable until it is executed, recalled or quashed. The ten-day period provided in Rule 113, §4 is only a directive to the officer executing the warrant to make a return to the court.[29]

At any rate, accused-appellant must be deemed to have waived his right to object thereto because he failed to move for the quashal of the information before the trial court, entered a plea of not guilty and participated in the trial.[30] As this Court has held, any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived.[31]

On the matter of the admissibility of the testimony of the medico-legal taken in the first case, involving the three other accused for the death of the same victim, offered in evidence in the case at bar, this Court must declare the same inadmissible. As correctly contended by the defense, because they did not have the opportunity to cross-examine Dr. Baltazar, his testimony cannot be used in evidence against accused-appellant. Indeed, where the opposing party failed to cross-examine a witness, this Court in several cases held:[32]

Oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party. But when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.

Still and all, the fact and cause of death of the victim had been sufficiently proved by the accounts of the two eyewitnesses, corroborated by the offer in evidence of the death certificate of the victim.

Fifth. The award of damages by the trial court in favor of the victim should be modified. Aside from the award of P50,000.00 as indemnity, the heirs of Eusebio Gardon are entitled to an award of P50,000.00 as moral damages irrespective of proof thereof.[33]

WHEREFORE, the decision of the Regional Trial Court, Branch 102, Quezon City finding accused-appellant Cesar Givera y Garote guilty of murder of Eusebio Gardon y Arrivas and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law is **AFFIRMED** with the **MODIFICATION** that, in addition to the amount of P50,000.00 to be paid as indemnity, accused-appellant is hereby ordered to pay to the heirs of Eusebio Gardon amount of P50,000.00 as moral damages, plus the costs of the suit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Perlita J. Tria Tirona.

[2] Also referred in the Records as Efipanio Gayon.

[3] Rollo, p. 9.

[4] *People v. Gayon*, 269 SCRA 589 (1997).

[5] TSN, pp. 4-9, 11, Aug. 9, 1996.

[6] TSN, pp. 12-16, 18-20, 22-24, Aug. 9, 1996.

[7] TSN (Milagros Gardon), pp. 26-27, Aug. 9, 1996.

[8] TSN (Melinda Delfin), pp. 5-9, 14-15, 18-19, 21-24, Aug. 12, 1996.

[9] RTC Records, pp. 107-126; Exh. E.

[10] RTC Records, pp. 117-118.

[11] *Id.*, pp. 113, 115, 120-121.

[12] *Id.*, p. 119.

[13] Exh. B.

- [14] TSN (Cesar Givera), p. 4, Oct. 17, 1996.
- [15] Id., pp. 5-9; TSN (Cesar Givera), pp. 3-7, 9, Oct. 22, 1996.
- [16] TSN (Cesar Givera), p. 10, Oct. 17, 1996.
- [17] Id., pp. 11-13.
- [18] Rollo, p. 23.
- [19] *People v. Barera*, 262 SCRA 63 (1996); See *People v. Claveria*, 221 SCRA 34 (1993).
- [20] TSN, pp. 13-14, Aug. 12, 1996.
- [21] Rollo, p. 66.
- [22] *People v. Alib*, G.R. No. 130944, Jan. 18, 2000.
- [23] *People v. Cornejo*, 28 Phil. 475 (1914); *People v. Larion*, 2 Phil. 476 (1903); *People v. Maquiraya*, 14 Phil. 243 (1909); *People v. Camias*, L-4617, May 29, 1953; *People v. Timbang and Mallari*, 74 Phil. 295 (1943).
- [24] *People v. Custodio*, 97 Phil. 698 (1955) *People v. Mendoza and Sinuag*, 91 Phil. 58 (1952); *People v. Yturiaga*, 86 Phil. 534 (1950); *People v. Lazada*, 70 Phil. 525 (1940); *People v. Upao Moro*, 101 Phil. 1226 (1957); *People v. Sakam*, 61 Phil., 27 (1934); *People v. Peralta*, 25 SCRA 759 (1968); *People v. Pareja*, 30 SCRA 693 (1969).
- [25] Rollo, p. 67.
- [26] *People v. Magallanes*, 275 SCRA 222 (1997).
- [27] See *People v. Ramiscal*, 49 Phil 103 (1926).
- [28] See *People v. Magnayon*, 122 SCRA 23 (1983).

[29] 2 F. D. REGALADO, REMEDIAL LAW COMPENDIUM 335 (2000).

- [30] *People v. Galleno*, 291 SCRA 761 (1998).
- [31] *People v. Cabiles*, 284 SCRA 199 (1998).
- [32] *Bachrach Motor Co, Inc. v. CIR*, 86 SCRA 27, 32 (1978). See also *Ortigas, Jr. v. Lufthansa German Airlines*, 64 SCRA 610 (1975).
- [33] *People v. Tolentino*, 308 SCRA 485 (1999) citing *People v. Prades*, 293 SCRA 411 (1998).

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.