

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO MUERONG Y FAJARDO, ACCUSED-APPELLANT.

G.R. No. 132318. July 06, 2001

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132318/>

DE LEON, JR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court, Third Judicial Region, Branch 63, Tarlac, Tarlac finding accused-appellant Fernando Muerong y Fajardo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information dated May 7, 1996 charging accused-appellant with the crime of murder which reads:

That on or about the 13[th] day of January 1996 at around 8:30 o' clock in the evening at Brgy. Tangcarang, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill Rudy Pascua, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack and stab the victim (Rudy Pascua) with the use of a kitchen knife hitting the latter on the forehead and right side of the chest that caused his death while on his way to the hospital.

CONTRARY TO LAW.[2]

When arraigned on September 6, 1996, accused-appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The evidence of the prosecution established that at 4:00 o'clock in the afternoon of January 13, 1996, Ricardo Madriaga, Sergio Cadiente, Florante Facun and Rudy Pascua were drinking gin (Ginebra San Miguel "bilog") at the store of Ella Bautista beside the house of Pablo Agustin in Barangay Tangcarang, Gerona, Tarlac, where a wedding celebration was taking place. Accused-appellant Fernando Muerong arrived when it was already dark and the group of Rudy Pascua had consumed one bottle of gin. Appellant joined the group. The group was using only one glass for drinking the liquor and the glass was being passed around. When it was appellant's turn, he drank from the glass and then poured the remaining liquor on the head of Rudy Pascua. Appellant did this twice. Rudy Pascua did not do anything. Thereafter, some persons brought appellant home which was about one hundred (100) meters away from the place where the group of Pascua continued drinking. After about an hour, appellant returned, without anyone noticing him approaching, and suddenly stabbed Rudy Pascua from behind with a stainless knife, hitting the latter on his left chest. Appellant was taken to the municipal building. Rudy Pascua was brought to the hospital in Camiling, Tarlac but he was dead on arrival.[3] Rudy Pascua died of "hemorrhagic shock due to stab wound as shown in his death certificate." [4]

Accused-appellant Fernando Muerong, fifty (50) years old, a carpenter, admitted having stabbed Rudy Pascua. Appellant testified that at about 8:00 o'clock in the evening of January 13, 1996, he went to the wedding party then being held at the place of Pablo Agustin. Ricardo Madriaga called him to join his group as they were drinking gin. They gave him two (2) shots of gin. Appellant consumed the first shot, but had some leftover of the

second shot. Madriaga told him to consume all the gin, but he refused as he had already taken some gin before he left home. Ricardo Madriaga and Sergio Cadiente then boxed him. Romulo Vanzuela, Elpidio Raceres and Kagawad Aceres led him away from the place and brought him to his house which was about thirty (30) meters away. When he was thus boxed and led away, his blood rose to his head. He wanted to take revenge on the persons who mauled him and so he returned to the place where the group of Rudy Pascua was still drinking. Only Rudy Pascua confronted him, and he stabbed Rudy because he thought Rudy was the one who boxed him. He used a kitchen knife in stabbing Rudy Pascua, after which he just stayed there and raised his hands until they took away his knife. He surrendered to Romulo Vanzuela, Elpidio Raceres and Barangay Captain Amorsolo Raceres who took him to the municipal building in Gerona, Tarlac. When he surrendered to the said barangay official, he also surrendered his weapon and the same was turned over to the policemen at the municipal building.[5]

Rebuttal witness Cesario Ramos testified that he knew the appellant because they live in the same barangay. In the evening of January 13, 1996, Ramos attended the wedding celebration of his niece at Tangarang. He saw the appellant there, at around 8:00 o'clock in the evening, drinking liquor. He stated that Rudy Pascua did not meet appellant when the latter returned. Rudy Pascua was then on the table with his head bent when appellant who was behind Rudy Pascua stabbed him, and thereafter the appellant left.[6]

On July 28, 1997, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused guilty of murder and is hereby sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided for by law, and to indemnify the heirs of Rudy Pascua in the sum of fifty thousand pesos (P50,000.00) and to pay the costs.

SO ORDERED.[7]

Appellant ascribes to the court a quo the following errors:

I

THE COURT ERRED IN RULING THAT THE KILLING WAS ATTENDED BY ALEVOSIA.

II

THE COURT ERRED IN RULING THAT THERE WAS AN EVIDENT PREMEDITATION ON THE PART OF ACCUSED-APPELLANT IN KILLING THE VICTIM RUDY PASCUA.[8]

Appellant admitted that he killed the victim, Rudy Pascua, but he argued that the killing was not attended by treachery because the victim was forewarned of an impending attack as the incident of the throwing of gin on the victim preceded the stabbing incident. Moreover, there is absence of evident premeditation on his part. Therefore, he should not be held liable for murder, but only for homicide.

Appellant's argument is devoid of merit.

It should be pointed out that the court a quo did not make any finding that appellant killed the victim with evident premeditation although the same was alleged in the Information. Evident premeditation cannot be considered against appellant as the prosecution failed to prove the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[9]

However, the court a quo correctly held that the killing was committed with treachery. There is treachery when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution

thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[10] Treachery requires the concurrence of two (2) conditions: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[11] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[12]

We are not persuaded by appellant's contention that the killing was not attended by treachery since the victim, Rudy Pascua, was allegedly forewarned of an impending attack after he (appellant) poured the remaining gin in his glass on the head of Pascua. As the Solicitor General observed, no one in the group, especially Pascua, retaliated against appellant. Instead, appellant was just sent home. The group of Pascua never expected appellant to return to stab Pascua. Nevertheless, even if a victim may have been warned of a possible danger to his person, what is decisive in treachery is that the attack was executed in such a manner as to make it impossible for the victim to defend himself or to retaliate.[13]

Against the uncorroborated testimony of the appellant, the court a quo correctly gave credence to the version of the prosecution as to how the stabbing incident took place. The absence of evidence of improper motive on the part of the prosecution witnesses to testify against appellant strongly tends to sustain the conclusion that no such improper motive exists and that their testimonies are worthy of full faith and credit.[14] Prosecution witnesses Ricardo Madriaga and Sergio Cadiente testified that when appellant returned an hour after he poured gin on the head of Rudy Pascua, not one of them noticed him approaching.[15] Pascua was seated between Madriaga and Cadiente.[16] Madriaga and Cadiente just saw appellant suddenly stabbed Pascua from behind.[17] Appellant first held the hair of Pascua from behind with his left hand and then stabbed him with his right hand.[18] It has been held a number of times that treachery exists when a defenseless victim was shot or stabbed from behind and this shows that the appellant had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken.[19] As the attack in the instant case was sudden, unexpected and initiated from behind rendering the victim, Pascua, no opportunity to defend himself, treachery was present, thus qualifying the crime to murder under Article 248 of the Revised Penal Code:

Art. 248. Murder - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

xxxx xxxx xxxx

The court a quo, however, incorrectly ruled that appellant is entitled to the mitigating circumstance of intoxication. For intoxication to be a mitigating circumstance, the following conditions must be present: (1) the same is not habitual or is not subsequent to a plan of the commission of a felony; otherwise, it is aggravating if it is habitual and intentional; and (2) the consumption of alcoholic drinks was in such quantity as to blur the accused's reason and deprive him of a certain degree of control.[20] Appellant testified that he drank a glass of gin before he went to the wedding reception.[21] He drank two (2) more glasses of gin, leaving a little leftover of the second shot when he joined the group of Rudy Pascua, so that he had consumed about three (3) glasses of gin before he stabbed Pascua. However, it was not sufficiently established that the quantity of gin which appellant drank caused his reason to be obfuscated and deprived him of a certain degree of control when he stabbed the victim considering that although he was sent home after pouring gin on the head of Rudy Pascua with no

provocation from the latter, he still returned after an hour and treacherously stabbed Pascua from behind, causing the latter's death.

The penalty for murder is reclusion perpetua to death.[22] The trial court correctly imposed the lesser penalty of reclusion perpetua in accordance with Article 63 (2) of the Revised Penal Code since no mitigating or aggravating circumstances attended the commission of the crime. Appellant was also correctly ordered to pay civil indemnity of Fifty Thousand Pesos (P50,000.00) to the heirs of the victim. However, the heirs of the victim are also entitled to moral damages in the amount of Fifty Thousand Pesos (P50,000.00) without need for proof of the basis thereof.[23]

WHEREFORE, the assailed Decision of the Regional Trial Court of Tarlac, Branch 63, Tarlac, Tarlac finding accused-appellant Fernando Muerong guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law and ordering him to pay civil indemnity to the heirs of the victim, Rudy Pascua, in the amount of Fifty Thousand Pesos (P50,000.00) is hereby AFFIRMED with the modification that accused-appellant is further ordered to pay the heirs of the victim moral damages in the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., official leave.

[1] Penned by Judge Arsenio P. Adriano, Rollo, pp. 13-16.

[2] Records, p. 1.

[3] TSN, January 24, 1997, pp. 3-11; TSN, April 21, 1997, pp. 5-10, 13-22, 28-38, 43-44; TSN, May 9, 1997, pp. 5-8, 15.

[4] Exhibit "B", Records, p. 50.

[5] TSN, June 6, 1997, pp. 5-15.

[6] TSN, June 20, 1997, pp. 4-8.

[7] Rollo, p. 16.

[8] Rollo, p. 27.

[9] People v. Magno, et al., 322 SCRA 494, 515 (2000); People v. Cando, et al., G.R. No. 128114, October 25, 2000.

[10] Article 14 (16), Revised Penal Code.

[11] People v. Barona, 323 SCRA 239, 244-245 (2000); People v. Serzo, Jr., 274 SCRA 553, 569 (1997).

[12] People v. Magno, 322 SCRA 494, 515 (2000).

[13] People v. Ronato, et al., 316 SCRA 433, 442 (1999); People v. Javier, 269 SCRA 181, 196 (1997); People v. Panganiban, 241 SCRA 91, 101 (1995).

[14] People v. Ravenes, 284 SCRA 634, 641 (1998).

[15] TSN, April 21, 1997, pp. 18-19, 37-38, 41, 45.

[16] TSN, April 21, 1997, pp. 18, 38-39.

[17] TSN, April 21, 1997, pp. 18, 19, 21, 43-44.

[18] TSN, May 9, 1997, pp. 5, 9.

[19] *People v. Macuha, et al.*, 310 SCRA 14, 24 (1999); *People v. Apolonia*, 235 SCRA 124, 134 (1994); *People v. Villalobos*, 209 SCRA 304, 318 (1992).

[20] *People v. Aquino*, 322 SCRA 769, 776-777 (2000).

[21] TSN, June 6, 1997, p. 25.

[22] Article 248, Revised Penal Code, as amended by Republic Act No. 7659.

[23] *People v. Ybañez*, G.R. No. 136257, February 14, 2001; *People v. Delamar*, G.R. No. 136102, January 31, 2001.

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.