

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO LUMINTIGAR Y DATILES, ACCUSED-APPELLANT.

*G.R. No. 132557. January 15, 2002*

Ponente: YNARES-SANTIAGO, J.

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### YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Valenzuela, Branch 171, convicting accused-appellant of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the sum of P50,000.00 as death indemnity and P39,000.00 as funeral and burial expenses, and the costs of suit.

The information against accused-appellant states:

That on or about the 5th day of October, 1996 in Valenzuela, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, abuse of superior strength, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously stab one FRANCISCO CABRAL y ROQUE, hitting the latter on the different parts of his body, thereby inflicting upon the latter serious physical injuries which caused his death.

Contrary to law.[2]

Upon arraignment on November 20, 1996, accused-appellant, assisted by counsel de oficio, pleaded not guilty.[3] Thereafter, trial ensued.

The facts from the eyewitness account of Leonardo Jocson are as follows: At around 7:30 in the evening of October 5, 1996, Leonardo Jocson was having a drinking spree with the victim, Francisco Cabral, and accused-appellant, Rolando Lumintigar, together with Edgardo Taay and Popoy de los Reyes, at a store along the street pavement in Pasolo, Valenzuela, Metro Manila. In the course thereof, the victim and accused-appellant had a heated argument regarding their share in the payment of the beer they consumed. Thereafter, accused-appellant left. [4]

At about 8:45 p.m. of the same night, accused-appellant returned and approached the victim. Suddenly, accused-appellant stabbed the victim three times with an eight-inch chisel hitting him below the left armpit, on the right side of the stomach, and below the right breast. Prosecution eyewitness Leonardo Jocson was only two (2) arms length away from both of them.[5]

Accused-appellant dropped the chisel and immediately fled. He was able to board a tricycle but the townspeople chased him. Leonardo Jocson, on the other hand, carried the victim onto a tricycle and brought him to the Valenzuela District Hospital where he was pronounced dead on arrival.[6]

Meanwhile, police officers Rajan Apolinar Miranda and Arthur Qui?ones who were on their way to the police station, chanced upon the tricycle boarded by the victim and Leonardo Jocson. They learned about the stabbing incident from the townspeople who chased accused-appellant. The two police officers, thus, went after

accused-appellant. Fortunately, the tricycle carrying accused-appellant fell on a canal on G. Lazaro Street, Valenzuela, enabling the police officers to catch up and apprehend him. When the people chasing accused-appellant arrived, they identified him as the person who stabbed the victim. Thereafter, accused-appellant was brought to the police headquarters for investigation.[7]

Dr. Benito Caballero, the medico-legal officer who conducted the autopsy of the victim, testified that the latter sustained five stab wounds and one lacerated wound. Among these, the stab wound located on the left breast was fatal.[8]

Accused-appellant, however, had a different version of the events. Testifying as the lone witness for the defense, he declared that on October 5, 1996, while he was having a drinking spree with the victim and his companions, he had a heated argument with the victim regarding their share in the expenses for the beer they consumed. According to him, the victim hit him with a bottle on the head. He failed, however, to formally offer the medical certificate in support thereof. He denied having stabbed the victim and claimed that he did not retaliate and instead retreated to the corner of Pasolo and Dalandanan streets in Valenzuela, where he rode a tricycle en route to the police station to report the incident. On his way however, the police officers apprehended him.[9]

On January 20, 1998, the trial court found the version of the prosecution credible and rendered judgment as follows:

WHEREFORE, finding the accused Rolando Lumintigar y Datiles Guilty beyond reasonable doubt of the offense charged he is hereby sentence[d] to RECLUSION PERPETUA and to pay the costs of suit.

Said accused is hereby ordered to pay the heirs of the deceased the amount of P39,000.00 [for] the expenses for the funeral, burial and wake of the victim and another sum of P50,000.00 for death indemnity.

SO ORDERED.[10]

Accused-appellant appealed to this Court contending that:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO ERRED IN APPRECIATING TREACHERY AS A QUALIFYING CIRCUMSTANCE IN THE CASE AT BAR.[11]

Accused-appellant, through the Public Attorney's Office, argues that the testimony of Leonardo Jocson who was apparently drunk and disoriented at the time of the alleged stabbing incident is insufficient to prove his guilt beyond reasonable doubt. Moreover, he claimed that the failure of Leonardo Jocson to come to the succor of the victim while the latter was being stabbed militates against the veracity of his testimony. In addition, he pointed out that the prosecution should have presented the alleged murder weapon as well as other witnesses to achieve the quantum of proof necessary to prove his indictment beyond any scintilla of doubt.

The contentions are devoid of merit. There is nothing in the records which would show that prosecution eyewitness Leonardo Jocson was drunk and disoriented at the time of the stabbing incident. On the contrary, accused-appellant appears to be coherent when he witnessed the event. In fact, he had the presence of mind to rush the victim to the hospital.

The fact that Leonardo Jocson failed to help the victim while the latter was being stabbed is of no consequence.

There is no standard form of human behavioral response when one is confronted with a frightful, strange and startling experience. Behavioral Psychology teaches that different people react to similar situations dissimilarly.[12]

Likewise, there is no truth to the allegation of accused-appellant that the murder weapon was not presented by the prosecution. The formal offer of exhibits of the prosecution reveals that the chisel was in fact offered as Exhibit “B.”[13]

Furthermore, and more importantly, Leonardo Jocson's testimony which is candid, straightforward and corroborated by physical evidence, is sufficient to convict accused- appellant. As consistently held by this Court, the positive and credible testimony of a lone witness, as in the present case, is enough to support a conviction in a charge of murder.[14] The pertinent portion of Leonardo Jocson's testimony reads:

Q.

What was that untoward incident that you witnessed?

A.

Rolando and Francisco Cabral was (sic) having an oral argument.

Q.

What happened next after these persons have (sic) an oral argument?

A.

Lando left and returned back.

Q.

Now, when this Rolando returned back what happened?

A.

Rolando approached Francisco Cabral and immediately stabbed Francisco Cabral.

Q.

How many times did this Rolando Lumintigar stabbed Francisco Cabral?

A.

Three (3) times, sir.

Q.

Now, how far were you from Francisco Cabral when he was stabbed by Rolando Lumintigar?

A.

Two (2) arms length.

Q.

And what about from Rolando Lumintigar how far were you?

A.

Also two (2) arms length, sir.

Q.

Now this incident took place at 8:45 P.M., will you kindly tell this Court or describe to the Court the lighting condition of the place? Was it bright or what?

A.

It was lighted, sir, and we were in the store.

x x x x x x x x.[15]

Q.

Were you able to see the injury sustained by Cabral?

A.

Yes, sir.

Witness pointing at his left side of the body, three (3) inches below the armpit. One at the right side of the body between the stomach and the side and another one, it is on the same side but immediately below the right breast.

x x x x x x x x[16]

Then, too, the records disclose nothing that would indicate any motive on the part of the prosecution witness to testify falsely against accused-appellant. Indeed, the trial judge who had the best vantage point in observing the demeanor and in listening to the testimony of the witnesses did not err in giving full faith and credence to his testimony.

In convicting accused-appellant of the crime of murder, the trial court appreciated the qualifying circumstance of treachery. Time and again the Court has stated that treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing itself.[17] The elements of treachery are: 1) the employment

of means, methods or forms of execution that affords the person attacked no opportunity to defend himself or to retaliate; and 2) that said means, method or forms of execution were deliberately and consciously adopted.[18]

Interpreting the first element, the Court in *People v. Briones*,<sup>[19]</sup> citing *People v. Gasper*<sup>[20]</sup> and *People v. Gupo*,<sup>[21]</sup> held that there is no treachery where the attack was preceded by a quarrel and a heated discussion. In the case at bar, the heated argument between the accused and the victim sufficiently forewarned the latter of a possible danger to his life. As to the second element, there is no ample evidence that would show that accused-appellant deliberately or consciously adopted the means or method in stabbing the victim. Hence, treachery cannot be appreciated to qualify the killing to murder.

Absent the qualifying circumstance of treachery, accused-appellant could only be convicted of Homicide punishable by reclusion temporal under Article 249 of the Revised Penal Code. There being no modifying circumstance attendant in the present case, the penalty should be imposed in its medium period.<sup>[22]</sup> Applying the Indeterminate Sentence Law, accused-appellant is entitled to an indeterminate penalty, the minimum of which shall be within the range of the penalty next lower in degree, i.e., prision mayor, and the maximum of which shall be within the range of reclusion temporal in its medium period.

Finally, as to the civil liability, the amount of P39,000.00 representing burial, funeral and wake expenses, which was stipulated by the parties, is deemed reasonable. The death indemnity in the amount of P50,000.00 is sustained.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Valenzuela, Branch 171, is **AFFIRMED** with **MODIFICATION**. As modified, accused-appellant Rolando Lumintigar y Datiles is found guilty beyond reasonable doubt of the crime of Homicide and is sentenced to suffer the penalty of eight (8) 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 pay the heirs of the deceased the amounts of P50,000.00 as death indemnity and P39,000.00 as funeral, burial, and wake expenses. Costs against accused-appellant.

### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan and Pardo, JJ., concur.

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[1] Penned by Judge Adriano R. Osorio.

[2] Rollo, p. 7.

[3] Records, p. 11.

[4] TSN, January 8, 1997, pp. 4-5; and January 14, 1997, p. 6.

[5] *Ibid.*, pp. 6-9.

[6] *Ibid.*, pp. 8-10; and January 14, 1997, p. 7.

[7] TSN, February 14, 1997, pp. 4-11.

[8] TSN, September 23, 1997, pp. 7-10.

[9] TSN, October 21, 1997, pp. 2-4 and 7-16.

[10] Rollo, pp. 21-22.

[11] Rollo, p. 50.

[12] *People v. Francisco*, G.R. Nos. 135201-02, March 15, 2001.

[13] Records, p. 59.

[14] *People v. Mira*, 341 SCRA 631, 640 [2000].

[15] TSN, January 8, 1997, pp. 5-6.

[16] *Ibid.* p. 9.

[17] *People v. Peña*, 291 SCRA 606, 615 [1998]; citing *People v. Silvestre*, 244 SCRA 479 [1995].

[18] *People v. Galapin*, 293 SCRA 474, 493 [1998], citing *People v. dela Cruz*, 207 SCRA 632 [1992]; *People v. Garcia*, 209 SCRA 164 [1992]; and *People v. Ybeas*, 213 SCRA 793 [1992].

**[19] 344 SCRA 149, 156 [2000].**

**[20] 225 SCRA 189 [1993].**

**[21] 190 SCRA 7 [1990].**

[22] Revised Penal Code, Article 64 (1).

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