

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALEJANDRO GO-OD (DECEASED) NESTOR GO-OD, SANCCHO GO-OD,  
RUFO GO-OD AND EMPE GO-OD, ACCUSED, NESTOR GO-OD,  
ACCUSED-APPELLANT.**

*G.R. No. 134505. May 09, 2000*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

Accused-appellant Nestor Go-od appeals the decision[1] of the Regional Trial Court of Cataingan, Masbate (Branch 49), finding him guilty of murder and sentencing him as follows:

ACCORDINGLY, the Court finds the accused NESTOR GO-OD guilty beyond reasonable doubt of the crime of MURDER and hereby imposes upon him the penalty of RECLUSION PERPETUA, with all the accessory penalties under the code, and shall indemnify the legal heirs the amount of P396,000 as loss of net earnings, P50,000 for the death of Aladino Ygot, P30,000 as moral damages and P20,000 as exemplary damages.[2]

In an information[3] dated August 9, 1991, accused-appellant Nestor Go-od, together with his father Alejandro, his cousins Sancho and Empe, and his younger brother Rufo, all surnamed Go-od, were charged with murder committed as follows:

"That on or about the 8th day of May, 1991 at about 5:30 o'clock in the afternoon, at the boundary of Barangays Osmeña and Cadulawan, Municipality of Cataingan, province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, conspiring together, confederating with and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab and hack Aladino Ygot y Monsalud, hitting the latter in the different parts of his body which caused his instantaneous death.

CONTRARY TO LAW."

Assisted by counsel, only Nestor and Alejandro Go-od were arraigned on October 9, 1991[4], wherein both entered a plea of not guilty. Trial thus ensued as to them. The other accused, namely, Sancho, Empe and Rufo Go-od all remained at large. Alejandro died before judgment on May 6, 1997 while in detention at the Matiporon Provincial Jail in Milagros, Masbate.[5]

The trial court summarized the evidence for the prosecution as follows:

"At more or less five-thirty o'clock in the afternoon of May 8, 1991, at Cadulawan, Cataingan, Masbate, accused Alejandro Go-od, Nestor Go-od, Sancho Go-od, Rufo Go-od and Empe Go-od ganged up on Aladino Ygot near Leoncia Suson's house while the latter was looking for his goat. All the accused after coming out from the banana plants attacked at once and simultaneously hacked Aladino Ygot with their bolos many times hitting him on different parts of the body until he had fallen on the ground. The victim was also struck by a spear at the back by Alejandro Go-od. Admittedly, the victim had suspected the accused of having stolen the goat. While protecting himself from the rapid onslaught of the five accused the victim was able to get hold of a

bolo which in the process wounded Nestor Go-od. The incident was reported to the barangay captain immediately. Very near from the scene of the crime Anecia Monsalud and Gaudioso Suson had seen actually the killing (tsn, pp. 2-15, March 5, 1992; tsn, pp. 2-12, April 8, 1992). The victim died on the spot suffering fifteen hack wounds (Exh. "B", Post Mortem Examination Report) on the body, viz:

Findings:

1. Wound, stab 1.0 in. long, penetrating the eyeball left.
2. Wound, stab, 1.0 in. long, penetrating the eyeball, right.
3. Wound, incised, 3.0 in. long, scalp deep, frontal region.
4. Wound, lacerated, oral region.
5. Wound, stab, 3.0 in. long, located at the anterior right chest, penetrating the thoracic cavity with a depth of approximately 7.0 inches.
6. Wound, stab, 4.0 in. long, located at the left hypochondriac region, penetrating the abdominal cavity with a depth of approximately 10.0 inches. (intestinal herniation noted).
7. Wound, incised, 5.0 in. long, located at the left cubital region, muscle-deep.
8. Wound, incised, 5.0 in. long, palmar region, left.
9. Wound, incised, 4.0 in. long, palmar region, right.
10. Wound, incised, 3.0 in. long, occipital region, scalp deep.
11. Wound, stab, 4.0 in. long, scapular region, right.
12. Wound, incised, 4.0 in. long, elbow, left muscle deep.
13. Wound, stab, 4.0 in. long, lumbar region, right, muscle deep.
14. Wound, stab, 3.0 in. long, lumbar region, left, muscle deep.
15. Wound, stab, 3.0 in. long, posterior aspect, knee joint left.

As to the cause of death, the death certificate (Exh. "C") reads:

**"HEMORRHAGE SECONDARY TO WOUNDS, STAB, MULTIPLE." [6]**

To rebut the prosecution's strong and positive evidence, accused-appellant interposed denial and non-participation as his defense. The trial court summarized the evidence for the defense as follows:

"On May 8, 1991, at about five thirty o'clock in the afternoon, accused Nestor Go-od was at barangay Osmeña, Cataingan, Masbate. At that time Aladino Ygot and Anecia Monsalud were in his house. They were looking for a goat. He told them that he had not seen a goat in his place. They left afterwards but returned immediately and asked to have his cigarette lighted. While giving the piece of lighted wood, Aladino Ygot stabbed him hitting his right chest below the right nipple (Exh. "1"). Whereupon, Nestor Go-od ran away and fell on the ground. Then Aladino Ygot pursued him. When he was about to be stabbed again, his father Alejandro Go-od helped and parried Aladino's hand. Thereupon, he lost his consciousness. He was immediately brought to the hospital for treatment. He was confined for two weeks. He knew that Aladino Ygot was killed by his father. He denied the presence and participation in the killing of his co-accused Sancho Go-od, Rufo Go-od and Empe Go-od (tsn, pp. 3-8, March 15, 1995). He however admitted that the victim had suspected him of being the one who slaughtered the goat (tsn, p. 10, March 15, 1995).[7]

In meting out the judgment of conviction, the trial court relied chiefly on the positive identification of two eyewitnesses to the incident, Anecia Monsalud and Gaudioso Suson. The trial court found the testimony of Anecia Monsalud as positive and straightforward and that of Gaudioso Suson as free from any impropriety or falsehood. It likewise gave bearing to the findings in the post mortem examination report, which indicate, from the nature and number of wounds on the victim's body, that different sharp instruments were wielded by more than one person in inflicting the reported injuries.

After careful study and weighing of the evidence, the trial court found the existence of conspiracy among the assailants. According to the trial court, their method of attacking the victim was synchronized indicating a common criminal design.[8] The trial court declared further that the killing was characterized by "treachery with abuse of superior strength" because "the accused had consciously adopted a mode of attack by ganging up on the victim followed by simultaneous and merciless hacking until the victim who was not in a position to defend himself fell and lie(sic) dead on the ground." [9] It did not appreciate evident premeditation which was also alleged in the information.

In his appeal, accused-appellant contends:

THE LOWER COURT ERRED IN NOT CONSIDERING THE TESTIMONY OF PROSECUTION WITNESSES THAT ALADINO, THE VICTIM IN THE CASE AT BAR, FATALLY WOUNDED ACCUSED-APPELLANT NESTOR GO-OD WITH A BOLO AND THAT NESTOR GO-OD WAS EVEN HOSPITALIZED FOR TWO (2) WEEKS BECAUSE OF THE SAID WOUND, THUS, THE LATTER DID NOT INFLICT ANY INJURY TO ALADINO YGOT WHICH LED TO HIS (ALADINO) DEATH.[10]

Based on the record and evidence at hand, we find that the guilt of accused-appellant has been established beyond reasonable doubt in consequence of the fact that he has been positively identified by prosecution witnesses Anecia Monsalod and Gaudioso Sison. The bare denial and defense of non-participation of accused-appellant is not sufficient to overcome the positive identification by prosecution witnesses.[11]

Accused-appellant capitalizes on the testimonies of prosecution witnesses Anecia Monsalod and Gaudioso Suson that the victim was able to wrestle the bolo from one of the accused and fatally wounded him thus disabling him from further participating in the assault. The testimony of Anecia Monsalod on this point is as follows:

Q: How long did you stay in the place of the incident when these people were hacking Aladino Ygot?

A: About ten (10) minutes because the hacking incident took place in a very short time.

Q: And Aladino Ygot did not do anything to defend himself when these people were attacking him?

A: He defended himself by using his hands as shields. In fact he was able to grab one of the bolos and was able to stab and hit Nestor Go-od. But the bolo he used in stabbing was thrown away because he was again hit on his hand.[12]

As for Gaudioso Suson, he testified as follows:

Q: You said Alejandro Go-od hacked Aladino Ygot several times. How about Nestor Go-od, how many times did he hack Aladino Ygot?

A: What I saw is that the five (5) of them ganged up Aladino Ygot simultaneously.

Q: I am asking you now with respect to Nestor Go-od because you were insisting that you were there. How many times did he hack Aladino Ygot?

A: Nestor Go-od after hacking Aladino Ygot was not able to continue hacking because his bolo was wrestled by Aladino Ygot and in fact Nestor Go-od was wounded.

Q: Will you please tell this Honorable Court at what juncture was it when Aladino Ygot was able to wrestle the bolo of Nestor Go-od; was it the first time when Nestor Go-od was hacking him or for several times already that he hacked Aladino Ygot?

A: Aladino Ygot was able to wrestle the bolo from Nestor Go-od after Nestor Go-od was able to hack Aladino Ygot.[13]

In relation to the foregoing, accused-appellant draws our attention to the testimony of Dr. Judy Lee, Chief of Hospital, Catangian National District Hospital, that based on the medical record, the two (2) centimeter (cm.) stab wound below the right nipple which penetrated the thoracic cavity and punctured the lung of accused-appellant would have been fatal were it not for the timely medical attention which the latter received.[14] Accused-appellant would have us conclude that after being fatally wounded by Aladino Ygot he had no participation anymore in the killing of the latter.

The argument of accused-appellant is clearly flawed because conspiracy was proven as clearly as the crime itself. Conspiracy was shown to exist when the accused-appellant together with his companions ganged up on the victim, hacking and stabbing him to death. Witness Anecia Monsalod narrated in detail thus:

ATTY. ROMAGOS:

Q: Madam Witness could you still remember where you were in the afternoon of May 8, 1991 at around 5:30 o'clock?

A: Yes, sir.

Q: Where were you on that particular time and date?

A: At Cadulawan, Cataingan, Masbate.

Q: While you were there, were you able to notice of any unusual incident?

A: Yes, sir.

Q: Will you please tell this Honorable Court what was that unusual incident?

A: Aladino Ygot was ganged up by Alejandro Go-od, Nestor Go-od, Pepe Go-od, Rufo Go-od and Sancho Go-od, Jr.

Q: How did these Alejandro Go-od, Nestor Go-od, Pepe Go-od, Sancho Go-od and Rufo Go-od gang-up Aladino Ygot?

WITNESS:

A: They hacked him.

ATTY. ROMAGOS:

Q: Of these five (5) persons you mentioned who hacked Aladino Ygot?

A: Alejandro Go-od and Nestor Go-od.

Q: What kind of weapon was used in hacking Aladino Ygot?

A: Bolos.

Q: How long was it?

A: Something like this.

INTERPRETER:

Witness demonstrating a length of about two (2) feet.

ATTY. ROMAGOS:

Q: Was Aladino Ygot hit by that hacking?

A: He was immediately hit on the right side of the level of his abdomen because Alejandro Go-od was left handed.

Q: How about Nestor Go-od?

A: Nestor Go-od hacked Aladino Ygot hitting Aladino on both forearms.

Q: What kind of weapon was used by Nestor Go-od in hacking Aladino Ygot?

A: Also a bolo.

Q: How long?

A: The same, two (2) feet in length.

Q: What did Pepe do because you said that he was one of those who ganged up Aladino Ygot?

A: Pepe Go-od stabbed Aladino Ygot with a Batangas knife.

Q: What part of his body was hit?

A: Pepe Go-od stabbed Aladino Ygot many times hitting his abdomen, face, and his forearms.

Q: How about this Sancho Go-od, what was the extent of his participation on this incident?

A: Sancho Go-od, Jr. also used a bolo in hacking Aladino Ygot.

ATTY. ROMAGOS:

Q: Have you seen what part of the body of Aladino Ygot was hit during that hacking of Sancho Go-od, Jr.?

A: I saw that Aladino Ygot was hit on the right temple and on the left thigh immediately above the knee.

Q: How long was that bolo used by Sancho Go-od, Jr. in hacking Aladino Ygot?

A: Also of the same length, two (2) feet.

Q: How about Rufo Go-od, what was the extent of his participation on this incident?

A: Also by hacking, using a bolo, hitting Aladino Ygot on the upper portion of his head because Aladino Ygot had already fallen to the ground.

Q: How long was that bolo used by Rufo Go-od in hacking Aladino Ygot?

A: Also of the same length, two (2) feet."[15]

Gaudioso Suson corroborated the testimony of Anecia Monsalod. He testified that at around half past 5 o'clock in the afternoon of May 8, 1991, he was atop a coconut tree gathering tuba when he saw Nestor, Alejandro, Sancho, Pepe and Rufo gang up on Aladino Ygot and hack him.[16] He saw the five accused armed with bolos and a spear. He said that he was at a distance of about fifty (50) meters from where the incident occurred and that he knew all the accused since they are his nephews.[17]

The acts of accused-appellant and his companions as narrated by Anecia Monsalod and Gaudioso Suson manifestly disclose their joint purpose and design, concerted action and community of interest. The malefactors' actions of helping or assisting each other in simultaneously stabbing or inflicting wounds on the victim are clear and indubitable proofs of a concerted effort to bring about the death of the victim, thus they are equally liable for the crime.[18]

The fact that the victim, in the course of the assault against him, was able to stab accused-appellant and disabled him does not exculpate the latter from criminal responsibility. The prosecution established that the death of the victim occurred after the concerted hacking and stabbing perpetrated by accused-appellant and his companions. Whether or not it was specifically accused-appellant who inflicted the fatal wound is of no moment inasmuch as once conspiracy has been established, it is unnecessary to pinpoint who among the accused inflicted the fatal blow.[19] All the conspirators are liable as co-principals regardless of the extent and character of their participation, because the act of one is the act of all.[20] Hence, the acts of accused-appellant's companions were also his.

The qualifying aggravating circumstance of treachery which was alleged in the information was correctly relied upon by the trial court to elevate the killing to murder. However, the trial court erred in appreciating abuse of superior strength in addition to treachery. It is well-settled that where treachery qualifies the crime to murder, it absorbs abuse of superior strength and the latter cannot be appreciated even as a generic aggravating circumstance.[21] The aggravating circumstance of abuse of superior strength, manifested by the presence of five armed assailants against an unarmed victim, cannot be appreciated independently because it is considered absorbed in *alevosia*. [22] Incidentally, evident premeditation can not be considered for lack of evidence that accused-appellant preconceived the crime.[23]

Treachery clearly attended the commission of the crime. There is treachery when the offender commits any of the crimes against the 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.[24] The treacherous manner in which the accused perpetrated the crime was shown by the sudden, deliberate and unexpected attack upon the unsuspecting Aladino Ygot. The five accused hid behind the cover of the banana plants, then suddenly and unexpectedly jumped on Aladino Ygot who was unarmed and totally caught by surprise. Armed with bolos, spears and a knife, the accused hacked him in different parts of his body.

The fact that the victim was able to grab one of the bolos after he had already been hit and used the same to stab one of his assailants does not negate the presence of treachery in the commission of the crime. The characteristic and unmistakable manifestation of treachery is the deliberate and unexpected attack on the victim without any warning and without giving him the opportunity to defend himself or repel the initial assault. For treachery to be appreciated, it must be present at the inception of the attack, and if absent and the attack is continued, even if present at a subsequent stage it is not to be considered.[25] It indubitably appears from the testimonies of the prosecution witnesses that Aladino Ygot stabbed Nestor Go-od after he himself had already been wounded by the attack which as we have already mentioned was so sudden and unexpected that it did not give Aladino Ygot an opportunity to offer an effective defense nor to repel the initial attack.

The murder was committed prior to the effectivity of R. A. 7659 on December 31, 1993.[26] The applicable provision is Art. 248 of the Revised Penal Code which penalizes murder with reclusion temporal in its maximum period to death. The trial court correctly sentenced him to reclusion perpetua, the medium period of the impossible penalty.[27]

As regards the civil liability, the amount of P50,000.00 for civil indemnity is upheld as it conforms with

prevailing jurisprudence.[28] Actual damages cannot be awarded since the records show that the prosecution failed to substantiate the bare testimony of the widow, Paulino Ygot, with other corroborative evidence. The Court can only grant such amount for expenses if they are supported by receipts.[29] Moral damages in the amount of P30,000.00 awarded by the trial court is reasonable considering the pain[30] suffered by the victim's widow. Moral damages, which include mental anguish, serious anxiety and wounded feelings, may be recovered in criminal offenses resulting in the victim's death.[31] However, the award of exemplary damages should be deleted. Exemplary damage is awarded in criminal offenses when the crime was committed with one or more aggravating circumstances.[32] There is none in this case.

Finally, we must also modify the award for loss of earning capacity. Paulina Ygot, wife of the deceased Aladino Ygot testified that the latter was thirty-one (31) years old at the time of his death on May 8, 1991 and earning P4,000.00 per month as a security guard employed with the Defender's Security Agency.[33] Loss of earning capacity is computed based on the following formula:[34]

Net  
Earning  
Capacity  
(X) = life expectancy  
[2/3 (80-age at  
death)] x Gross  
Annual  
Income  
(GAI) - Living expenses  
(50% of GAI)

X = 2 (80-31)  
3 x 48,000.00 - 24,000.00

X = 33 x 24,000.00

Net Earning Capacity = P 792,000.00

WHEREFORE the decision appealed from is hereby MODIFIED, and accused-appellant Nestor Go-od is found guilty of MURDER and sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the heirs of the victim the amount of P50, 000.00 as indemnity for death in accordance with current jurisprudence; P30,000.00 as moral damages.; and P 792,000.00 for loss of earning capacity.

**SO ORDERED.**

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

Purisima, J., abroad - no part.

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[1] Penned by Judge Henry B. Basilla, dated April 15, 1998.

[2] Original Records (OR), p. 221.

[3] OR, p. 1.

[4] OR, p. 19.

[5] OR, pp. 202-203.

[6] OR, pp. 216-217.

[7] OR, pp. 217-218.

- [8] OR, p. 220.
- [9] OR, p. 221.
- [10] Rollo, p. 29.
- [11] *People vs. Nazareno*, 260 SCRA 256 (1996)
- [12] TSN dated March 5, 1992, p. 8.
- [13] TSN dated April 8, 1992, pp. 129-130.
- [14] TSN dated January 14, 1998, pp. 5-6.
- [15] TSN dated March 5, 1992, pp. 3-5.
- [16] TSN dated April 8, 1992, p. 3.
- [17] *Ibid.*, p. 4.
- [18] *People vs. Baniel*, 275 SCRA 472 (1997)
- [19] *People vs. Obello*, 284 SCRA 79 (1998)
- [20] *People vs. Narvasa*, 298 SCRA 637 (1998)
- [21] *People vs. Sancholes*, 271 SCRA 527 (1997)
- [22] *People vs. Datun*, 272 SCRA 380 (1997)
- [23] *People vs. Apelado and Bacani*, G.R. No. 114937, October 11, 1999.
- [24] Revised Penal Code, Article 14, paragraph 16.
- [25] *People vs. Badon*, G.R. No. 126143, June 10, 1999.
- [26] *People vs. Godoy*, 250 SCRA 676 (1995)
- [27] *People vs. Andales*, G. R. No. 130637, August 19, 1999.
- [28] *People vs. Robles*, G.R. No. 124300, March 25, 1999; *People vs. Piamonte*, G.R. No. 91999, February 25, 1999.
- [29] *People vs. Gutierrez, Jr.*, G.R. No. 116281, February 8, 1999.
- [30] TSN dated April 21, 1992, p. 5.
- [31] *People vs. Gonzales*, G.R. No. 130507, July 28, 1999.
- [32] *People vs. Apelado, et al.*, G.R. No. 114937 (October 11, 1999)
- [33] TSN dated April 21, 1992, pp. 4-5.
- [34] *People vs. Verde*, G.R. No. 119077, February 10, 1999.

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