

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO M. JUDAVAR, DEFENDANT-APPELLANT.

*G.R. No. 135521. April 11, 2002*

Ponente: PUNO, J.

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### PUNO, J.:

This case is on automatic review of the decision dated August 21, 1998 of the Regional Trial Court, Branch 34, Iriga City in Criminal Case No. IR-3802 which sentenced accused-appellant Francisco M. Judavar to death for the crime of murder.

In an Information dated May 31, 1995, accused-appellant was charged with murder for the death of Arnel Dato committed as follows:

“That on or about the 15[th] day of February 1995 at about 2:30 in the morning in Caranday, Baao, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to kill, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Arnel C. Dato from behind, while the latter was standing and witnessing the dance being held at the Caranday Public Market, thereby inflicting upon the said victim mortal wounds, which directly caused his death, to the latter’s damage and prejudice in such amount as may be proven in court.

All acts contrary to law.”[1]

Accused-appellant was arraigned and pleaded not guilty to the charge. At the trial, the prosecution presented six (6) witnesses, namely: (1) Dr. Ruperto Alfelor, (2) Roberto Robosa, (3) Nardito Dato, (4) Margie Malazarte, (5) Francisco Cabalquinto, and (6) Nonito Dato. Their testimonies established the following facts: In the evening of February 14, 1995, a public dance in celebration of Valentine’s Day was sponsored by the Senior Citizens of Caranday and held at the market site of Carandang, Baao, Camarines Sur. Sweethearts Arnel Dato and Margie Malazarte attended the dance and enjoyed the evening together. At about 2:00 in the early morning of February 15, Margie momentarily left Arnel. As he waited for his sweetheart, Arnel stood on one side of the hall and watched the people dancing on the floor. Accused-appellant appeared and approached Arnel from behind. Suddenly, accused-appellant swung his right hand and, with a ten-inch knife, stabbed Arnel, hitting his right chest. Arnel fell to the ground bleeding. Margie Malazarte ran to him, crying and shouting out accused-appellant’s name as the attacker of her beloved. Appellant fled clutching the knife in his hand. People scampered in different directions. Francisco Cabalquinto, a barangay tanod, saw the stabbing and ran toward the victim. As he approached Arnel, Francisco was stabbed in the back twice by Brigido Bustarda, a friend of accused-appellant. Francisco was about to be stabbed again by Brigido and a certain Nicolas Saniel when Nardito Dato, the chief barangay tanod, who was dancing with his wife when he saw the stabbing, sprayed tear gas on the assailants. Nardito Dato then chased accused-appellant but was unable to catch him. He later reported the incident to the police.[2]

Margie Malazarte and Arnel’s relatives brought Arnel to the hospital but he was declared dead. Dr. Ruperto

Alfelor, Municipal Health Officer of Baao found:

“ABDOMEN

- Stabbed [sic] wound at the right hypochondrium 2 cm away from the right lateral plane of epigastrium.

Cause of Death: HEMORRHAGIC SHOCK secondary to stabbed [sic] wound.”[3]

It was alleged that the killing of Arnel Dato was motivated by jealousy. Two years earlier, in 1993, the victim and accused-appellant were rivals for the love of Margie, their high school classmate. Margie accepted Arnel because he was kind and thoughtful, very much unlike appellant who was easy-go-lucky and “cruel.”[4] This incurred appellant’s ire. On September 24, 1994, the sweethearts attended a novena at the barangay chapel in del Pilar, Baao when appellant appeared and punched Arnel. Margie pulled her boyfriend away and tried to pacify appellant. Fuming mad, appellant warned Arnel that if he would not part from Margie, he would kill him.[5] The following month, on October 12, 1994, at the barangay fiesta, Margie and Arnel went to a dance and saw appellant at the entrance of the dance hall. Appellant approached Arnel and, suddenly, appellant punched and tried to stab his rival. Margie screamed at appellant, telling him not to hurt her beloved. Appellant fled.[6] Finally, four months later, on that fateful Valentine ball, appellant killed Arnel.

The victim’s body was brought down from the mountains of Caranday and his wake was held for fifteen days in his uncle’s house in San Vicente in the same municipality. The deceased’s father, Nonito, spent P70,000.00 for the wake and funeral of his son.[7] His son’s death was a big loss to the family. The deceased, who was eighteen years of age, was very kind and of great help to his father in their farm. He wanted to finish his studies and was a high school graduating student at the time of his demise.[8]

As a result of the victim’s death, the Chief of Police of Baao charged accused-appellant with the crime of murder. On March 10, 1995, a warrant for appellant’s arrest was issued by the Judge of the Municipal Trial Court of Baao, Camarines Sur.[9] No bail was recommended. The warrant of arrest, however, could not be served since appellant could not be located in the municipality. There was information that he was in Taguig, Metro Manila. On March 13, 1996, two sets of alias warrants of arrest were issued—one for Taguig, Metro Manila and the other for Camarines Sur.[10] On August 9, 1997, accused-appellant was arrested in Iriga City, Camarines Sur.

For his defense, accused-appellant presented two (2) witnesses: Juansus Botor and himself. According to appellant, in the evening of February 14, 1995, he, Juansus Botor and three of his friends were at the dance hall in Caranday. At 2:00 in the morning of the following day, they noticed a commotion. Sensing some trouble, appellant and his friends decided to leave the hall at once. As they were leaving, Juansus Botor saw a man clutching an icepick. The man swung his right hand and, with the icepick, stabbed the person in front of him. Juansus did not recognize the man because he, appellant and their friends left hurriedly. It was only later that they learned that the victim was Arnel Dato. Accused-appellant denied having courted Margie Malazarte but admitted they were high school classmates. He claims he had no personal grudge against Margie and the Dato family.

In a decision dated August 21, 1998, the trial court found accused-appellant guilty as charged. The court sentenced appellant to death and pay the victim’s heirs civil indemnity of P50,000.00, moral damages of P20,000.00 and actual damages of P60,358.30 and the costs, viz:

“WHEREFORE, in view of the foregoing considerations, this court finds the accused FRANCISCO JUDAVAR, GUILTY beyond reasonable doubt of the crime of Murder, and hereby sentences him to suffer the maximum penalty of DEATH. He is likewise directed to indemnify the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) for the victim’s death, Twenty Thousand Pesos (P20,000.00) as moral damages, Sixty Thousand Three Hundred Fifty Eight Pesos 30/100 (P60,358.30) as actual damages, and to pay the costs of the suit. Let the record of this case be forwarded to the Supreme Court for automatic review.”[11]

On December 2, 1998, appellant filed before this court a motion for new trial.[12] The Solicitor General filed his Comment[13] to which appellant replied.[14]

In a Resolution dated July 6, 1999, we denied the motion for new trial for lack of merit.[15]

In this appeal, accused-appellant assigns the following errors:

“I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER AND IMPOSING THE PENALTY OF DEATH.

II. THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF ARNEL DATO WAS ATTENDED WITH TREACHERY AND EVIDENT PREMEDITATION.

III. THE TRIAL COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY THE HEIRS OF THE DECEASED P50,000.00 AS INDEMNITY, P20,000.00 AS MORAL DAMAGES, P60,358.30 AS ACTUAL DAMAGES AND THE COST OF THIS SUIT.”[16]

Accused-appellant claims that the killing of Arnel Dato was not murder but death in a tumultuous affray. He alleges that before the victim’s death, several people were creating trouble at the dance hall and, in the course of the commotion, the victim was stabbed to death by an unidentified person.

Reviewing the evidence, the killing of Arnel Dato was not made in the course of a tumultuous affray. Three witnesses, namely, Roberto Robosa, Nardito Dato and Francisco Cabalquinto testified that they saw accused-appellant approach Arnel Dato from behind and, with his right hand, swing a ten-inch knife into Arnel, hitting the latter’s right chest. When this occurred, Roberto Robosa was five meters away from the victim;[17] Nardito Dato was ten meters away[18] while Francisco Cabalquinto was more than a meter from Arnel.[19] The dance hall was lit by fluorescent lamps and the area where appellant stood was lit by light from the electric post.[20] The three witnesses directly saw and positively identified accused-appellant as the victim’s assailant. Their testimonies are credible, candid, straightforward and free from any material or significant inconsistency. The fact that Nardito Dato and Francisco Cabalquinto were uncles of the deceased[21] does not ipso facto render their testimonies biased.[22] There is no evidence of ill-motive on their part to testify falsely against appellant.[23] Moreover, their testimonies are corroborated by Roberto Robosa who is not a relative of the victim.

The evidence is clear that the victim’s death was not caused in the heat of a tumultuous and rambunctious melee. It was the stabbing that caused the commotion.[24] When Arnel fell to the ground, people scampered in different directions. The situation grew worse when Francisco Cabalquinto was also stabbed.[25] The commotion subsided only after the chief barangay tanod, Nardito Dato, and his men were able to pacify the crowd.

Dr. Ruperto Alfelor, the municipal health officer who conducted the post-mortem examination on the victim’s body, testified that the direction of the stab wound was upward, from the lower ribs towards the liver.[26] He theorized that if the victim was struck from behind, the wound was most probably caused by a right-handed person.[27] Appellant takes issue that he is left-handed and claims that it was impossible for him to have stabbed the victim because the fatal blow could have only been delivered by a right-handed person. At a demonstration before the trial court, appellant, with his left hand, caught a ball pen thrown at him and, with the same hand, wrote his name three times on a sheet of paper.[28] Appellant claims he was able to establish his left-handedness and it became the duty of the prosecution to rebut this presumption. Since the prosecution failed to do so, the presumption stands.[29]

The fact that appellant is left-handed does not rule out the possibility that he is also right-handed. If indeed he is left-handed, he should have presented proof that he could not perform manual work with his right hand or that he has lost the use of his right hand. It is common knowledge that some people are ambidextrous, meaning, that they

are capable of using both hands with equal ease.[30] Margie Malazarte knew appellant as a right-handed person.[31] And even assuming that appellant had suddenly lost the use of his right hand after the stabbing, he was directly and positively seen to have struck the victim with a knife, hitting him on the right chest, thereby causing his death. Regardless of whether appellant is left-handed or right-handed, what is important is that he was positively identified as the victim's assailant by no less than three credible witnesses.

Appellant's flight after the stabbing incident and his unexplained absence from Caranday indicates that he had a hand in the killing of Arnel Dato.[32] Since Grade I, appellant continuously resided in Caranday[33] and studied there.[34] Surprisingly, after the stabbing, he could no longer be found in Caranday and the warrant of arrest could not be served on him in Baao. He was allegedly spotted in Metro Manila but was eventually located in Iriga City. He was arrested in August 1997, more than two (2) years after that fateful Valentine celebration in 1995.

The trial court found that the death of Arnel Dato was attended by both treachery and evident premeditation. We agree that there was treachery. Arnel was standing by his lonesome, watching the dancers on the floor, when appellant came upon him from behind, and without any warning, stabbed him. There was no opportunity for the victim to defend himself or retaliate against his attacker. The suddenness and unexpectedness of the attack ensured Arnel's death without any risk to accused-appellant. The presence of this aggravating circumstance qualified the killing of the victim to murder.

As to whether there was evident premeditation, it is necessary that the evidence shows: (a) the time when the offender determined or conceived to commit the crime; (b) an overt act of the offender manifestly indicating that he clung to his determination; and (c) a sufficient lapse of time between the determination and execution to allow the offender to reflect upon the consequences of his act.[35] The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[36] Evident premeditation must be clearly proven, established beyond reasonable doubt and must be based on external facts which are evident, not merely suspected, and which indicate deliberate planning.[37]

Margie Malazarte's testimony that, on at least two occasions before her boyfriend's death, appellant punched and threatened to kill him, is not sufficient to establish evident premeditation. These two instances do not necessarily indicate that his death was coolly thought of and reflected upon by appellant and that he deliberately prepared in advance the means to execute such plan. The physical and verbal assault on Arnel may have been made in a blind fit of jealousy by a spurned lover against a rival who won the hand of the fair maiden. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation are insufficient.[38]

The civil indemnity of P50,000.00 for the death of the victim is in keeping with existing jurisprudence.[39] For the award of moral damages, Nonito Dato, Arnel's father, testified that his son's death was a great loss to the family because Arnel was of great help to him on the farm. With respect to actual damages, the record shows that only four (4) of the nine (9) receipts submitted by Nonito Dato are official while the rest are mere scraps of paper. Of the four receipts, P17,500 was spent for the funeral services[40] and P22,433.30 for food and drink at the victim's wake.[41] Actual damages therefore totalled P39,933.30, not P60,358.30 as awarded by the trial court.

As a final point, appellant "beseeches" the court to take a second look and reconsider his motion for new trial filed earlier on the ground of newly-discovered evidence.[42] This newly-discovered evidence consists of additional testimony by appellant himself and the proposed testimonies of three new witnesses, namely, Roberto Judavar, Mario Tampoco and Amado Oraye. Their purported testimonies will show that it was not him but one Nicolas Sanieel who stabbed the victim. Appellant did not reveal this fact earlier because Nicolas was his best friend and he hoped that other witnesses would step forward and identify Nicolas as the real culprit.[43] Appellant

was, however, unable to produce other witnesses at his trial because he was a detention prisoner.[44]

In their affidavits attached to the motion for new trial, Mario Tampoco and Amado Oraye explained that they were unable to come forward because they learned of appellant's involvement in Arnel's death only after his conviction.[45] Roberto Judavar, on the other hand, mistakenly believed that even without his testimony, appellant would be acquitted. Roberto thought that appellant, who supposedly saw Nicolas stab Arnel, would tell the truth instead of acting the martyr for his friend, Nicolas.[46]

A motion for new trial based on newly-discovered evidence may be granted if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that it would probably change the judgment if admitted.[47]

The evidence sought to be admitted by accused-appellant do not qualify as newly-discovered. First, the alleged fact that Nicolas Sanial killed Arnel Dato was not discovered by appellant after the trial. Appellant supposedly knew the identity of the real culprit because he claims that he saw the stabbing of the victim by Sanial. Second, the reason that he was a detention prisoner is not sufficient for appellant's failure to locate possible witnesses for him. There is no evidence, much less any allegation, that during his detention appellant was deprived of legal counsel and the assistance of relatives and friends to prepare his defense. There is also nothing in the records to show that appellant invoked the power of the court to summon unwilling witnesses, to no avail. Third, the proposed testimonies of appellant and his witnesses are merely cumulative and corroborative, echoing appellant's defense at the trial that it was another person, not him, who stabbed Arnel.

Since the crime of murder is punished by reclusion perpetua to death,[48] and there is no evident premeditation as a generic aggravating circumstance, the penalty to be imposed on accused-appellant is reclusion perpetua.

IN VIEW WHEREOF, the decision of the trial court is affirmed insofar as accused-appellant Francisco M. Judavar is found guilty of murder for the death of Arnel Dato. The decision is modified insofar as the death sentence is reduced to reclusion perpetua. Except for the award of actual damages which is hereby reduced to P39,933.30, the award of civil indemnity, moral damages and costs are affirmed.

### **SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Records, p. 1.

[2] Exhibit "C" Records, p. 97.

[3] Exhibit "A," Records, p. 6.

[4] TSN of November 19, 1997, pp. 4-5, 11, 21; Decision on trial court, p. 3, Rollo, p. 31.

[5] TSN of November 19, 1997, pp. 5-6.

[6] TSN of November 19, 1997, pp. 7-8.

[7] Exhibits "F," "F-1" to "F-8," Records, pp. 100-108.

[8] TSN of January 7, 1998, pp. 10-11.

- [9] Records, p. 17.
- [10] Records, pp. 33-35.
- [11] Decision, p. 7, Rollo, p. 35.
- [12] Rollo, pp. 25-28.
- [13] Rollo, pp. 65-73.
- [14] Rollo, pp. 76-79.
- [15] Rollo, p. 80.
- [16] Accused-Appellant's Brief, p. 3, Rollo, p. 106.
- [17] TSN of October 16, 1997, pp. 8, 13.
- [18] TSN of October 23, 1997, p. 9.
- [19] TSN of December 10, 1997, pp. 15, 8.
- [20] TSN of October 23, 1997, p. 16.
- [21] Nardito Dato and Nonito Dato, Arnel's father, are brothers while Francisco Cabalquinto is a brother of Arnel's mother—TSN of October 23, 1997, p. 5 and TSN of December 10, 1997, p. 13.
- [22] *People v. Guillermo*, 302 SCRA 257, 271 [1999]; *People v. Mendoza*, 301 SCRA 66, 79 [1999].
- [23] *Id.*
- [24] TSN of October 16, 1997, pp. 13, 16; TSN of October 23, 1997, p. 16; TSN of December 10, 1997, p. 17.
- [25] TSN of October 23, 1997, p. 16. The stabbing of Cabalquinto became subject of another criminal case for "Direct Assault Upon an Agent of a Person in Authority" (Records, p. 21). This case was settled amicably (TSN of December 10, 1997, pp. 11-12).
- [26] TSN of October 15, 1997, pp. 5-6.
- [27] *Id.*, p. 6.
- [28] TSN of May 25, 1998, p. 5.
- [29] Reply, pp. 9-10, Rollo, pp. 168-169.
- [30] "Ambidextrous," Webster's Third New International Dictionary of the English Language, Unabridged [1993].
- [31] TSN of November 19, 1997, p. 14.
- [32] *People v. Villaruel*, 261 SCRA 386, 397 [1996]; *People v. Lopez*, 246 SCRA 95, 105 [1995].
- [33] TSN of December 10, 1997, p. 7.
- [34] TSN of March 25, 1998, pp. 9-10.
- [35] *People v. Guillermo*, *supra* at 273; *People v. Timblor*, 285 SCRA 64, 78 [1998]; *People v. Sumalpong*, 284 SCRA 464, 490 [1998].

- [36] *People v. Bibat*, 290 SCRA 27, 40 [1998].
- [37] *People v. Pena*, 291 SCRA 606, 616 [1998]; *People v. Caisip*, 290 SCRA 451, 460 [1998].
- [38] *People v. Chua*, 297 SCRA 229, 242 [1998]; *People v. Caisip*, *supra*.
- [39] *People v. Timblor*, *supra* at 80.
- [40] Exhibit “F-3,” Records, p. 103.
- [41] Exhibits “F,” “F-1,” “F-2,” Records, pp. 100-102.
- [42] Appellant’s Brief, p. 18, Rollo, p. 121.
- [43] Affidavit of Accused-appellant, Annex “E” to Notice of Appearance with Motion for New Trial, Rollo, p. 41.
- [44] Notice of Appearance with Motion for New Trial, pp. 3-5, Rollo, pp. 27-28.
- [45] Affidavits of Mario Tampoco and Amado Oraye, Annexes “C” and “D” to Notice of Appearance with Motion for New Trial, Rollo, pp. 39-40.
- [46] Affidavit of Roberto Judavar, Annex “B” to Notice of Appearance with Motion for New Trial, Rollo, p. 37.
- [47] Rule 121, Section 2 (b), 1985 Rules on Criminal Procedure; also Rule 121, Section 2 (b), Revised Rules of Criminal Procedure; *People v. Tirona*, 300 SCRA 431, 440 [1998].
- [48] Article 248, Revised Penal Code.

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