

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO LOPEZ Y MARCELLA @ OPRING, ACCUSED-APPELLANT.**

G.R. No. 136861. November 15, 2000

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PER CURIAM:

Before us on automatic review is the decision dated November 12, 1998 of Branch 42, of the Regional Trial Court of the First Judicial Region stationed in Dagupan City, in its Criminal Case No. 98-02265-D, finding accused-appellant Bonifacio Lopez guilty of murder complexed with abortion and sentencing him to suffer the supreme penalty of death.

Accused-appellant's conviction for said crime arose from an Information reading as follows:

That on or about the 19th day of July, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, BONIFACIO LOPEZ y MARCELLA @ Opring, being then armed with a bladed weapon, with treachery, abuse of superior strength and with intent to kill one GERARDA ABDULLAH @ Gina, full term pregnant, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by stabbing her several times, hitting her on the stomach, thereby causing her death, shortly thereafter due to "Hypovolemic shock, Hemorrhage massive. Secondary to multiple stab wound, penetrating, multiple organ perforation (Lung, Liver, Small Intestine, Pregnant Uterus, Fetal death, full term, female, secondary to stab wound right parietal area with brain tissue, damage", thus resulting also to the death of the fetus, as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, Rural Health Physician, this City, to the damage and prejudice of the legal heirs of said deceased, GERARDA ABDULLAH @ Gina, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine Currency, and other consequential damages.

Contrary to Article 248 in relation to Article 256 of the Revised Penal Code.

(p. 6, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty. Trial ensued thereafter.

On April 23, 1996, the trial court, the Honorable Luis M. Fontanilla presiding, rendered the decision now under review, disposing:

WHEREFORE, premises considered, accused BONIFACIO LOPEZ is hereby found guilty beyond reasonable doubt of the crime of Murder complexed with Abortion. Thus, he is hereby sentenced to suffer the extreme penalty of DEATH. He is further ordered to indemnify the heirs of the victim in the amount of P50,000.00 and also to pay to the said heirs P25,000.00 as actual and compensatory damages, and another P50,000.00 as moral damages for the pains suffered by the mother of the victim, if not her children. The accused is also ordered to pay costs.

(p. 26, Rollo.)

The case for the prosecution is woven mainly on the testimony of Librada Ramirez, mother of the victim, and John Frank Ramirez, brother of the victim. Librada testified that on July 19, 1998, at around 2:30 o'clock in the

afternoon, she heard a commotion inside their house. Alarmed, she rushed towards their house and there she saw accused-appellant attacking his son John Frank, who was already bleeding, with a knife. After seeing blood already oozing from her son's neck, Librada went near accused-appellant to calm him down but instead, the latter sneered and poked his knife at her. Accused-appellant grabbed her head by the hair and pulled and pushed violently from one side to another, while John Frank continued to wrestle with accused-appellant for the possession of the knife. When finally Librada was able to free herself from accused-appellant's hold, her son told her to escape and seek help. Librada ran away from the scene and sought the help of their policeman neighbor whose house was about 10 to 15 meters away.

We pick up the story now from John Frank who narrated that with the help of a neighbor he was able to pull accused-appellant outside of their house and locked him out by closing the front and the back doors. Not long after, he saw accused-appellant jumping off the fence and barging inside the bathroom where John Frank's pregnant sister Gina was taking a bath. John Frank stood on top of their sink and peeped through the bathroom window to see what was happening. There he saw accused-appellant violently stabbing Gina who fell on her back to the ground. Gina somehow managed to get up, forcing her way out by tearing down a GI sheet which served as part of the enclosure of the bathroom.

Librada recalled that when she returned she saw Gina running out from the bathroom. Accused-appellant was about to leave when he saw Gina being lifted into a parked jeep. Accused-appellant rushed towards Gina, dragged her out of the jeep, kicked her, and again mercilessly stabbed her and he thence fled. Thereafter, Gina was brought to the Pangasinan Provincial Hospital where she expired.

John Frank's and Librada's account of what happened to Gina while being lifted inside the jeep finds support in Esteven Basi's story, a mere passerby who witnessed that accused-appellant was kicking and stabbing a pregnant woman he later found out to be Gina.

The autopsy report issued by Dr. Benjamin Bautista, Rural Health Physician of Dagupan City who conducted an autopsy on the cadaver of Gina, is to the following effect:

EXTERNAL FINDINGS

Cadaver is in Rigor Mortis and pregnant, full term, lacerated wound, 8 cm. Left anterior M/3rd Linear Abrasion, 3 cm. Left medial M/3rd Forearm.

Linear Abrasion, 4 cm. Left, lateral M/3rd Forearm.

Stab wound, 3 cm. Left, mid axillary line, level 3rd ICS penetrating and perforating, 8 cm. Deep downward direction, one end shar.

Stab wound, 3 cm. Left, mid clavicular line, level 6 cm. Below the xiphoid process, penetrating and perforating, very deep downward direction, prelapse mesentery, one end sharp.

Stab wound, 3 cm. Left anerior axillary line, level 4 cm above the umcilicus, penetrating and perforating, very deep downward direction, prelapse mesentory, one end sharp.

Confluent skin abrasion left leg anterior M/3rd

Lacerated wound 4 cm. Right, thigh, lateral D/3rd

Stab wound, 3 cm. right, anterior axillary line, level 2nd ICS, penetrating and perforating, one end sharp, downward direction, 11 cm. deep.

Stab wound, 5 cm. left, para vertebra, level thorasic lumbar, one end sharp, 3 cm. deep, non-penetrating.

Stab wound, 3 cm. right mid scapular line, buttocks, level sacral 2-3, penetrating and perforating, one end sharp, slightly upward direction, 12 cm. deep.

Stab wound, 3 cm. right, sygematic lateral, straight direction, 5 cm. deep, one end sharp.

INTERNAL FINDINGS

Intrathorasic Hemorrhage, moderate

Penetrating and perforating, right lung middle lobe and left lung lower lobe

Intra abdominal hemorrhage, massive

Penetrating and perforating, liver, middle lobe

Small intestine, and multiple perforation

Pregnant uterus with prelapse umbilical cord

(pp. 18-19, Rollo.)

Accused-appellant testified in his behalf, and presented his daughter Josephine Lopez Almonte to corroborate his story.

Accused-appellant's version of the incident dates back to May 25, 1998 when his daughter Marilyn was missing. Four days later, he saw the victim Gerarda "Gina" Abdullah, Librada (his own sister), and her other daughters Vicky and Emily quarrelling with his wife. He heard Gina tell his wife that their daughter was a flirt.

On June 3, 1998, accused-appellant's daughter Marilyn returned home. He noticed that she appeared pale and was always suffering from dizziness, such that on one occasion, due to said dizziness, she fell down the stairs. This occurrence aroused his suspicion and so he inspected Marilyn's personal belongings. He found a letter prepared by Marilyn for one Jeffrey stating the he had her baby aborted. Accused-appellant confronted his daughter and according to him she confessed that it was Librada who maneuvered the abortion.

On July 19, 1998, that fateful afternoon, accused-appellant recounted that he was in his house having lunch with his children and some friends. Thereafter, he went to the house of his sister Librada and asked her about the abortion incident. Librada answered back by calling him a devil. Upon hearing the altercation, John Frank took a knife from the kitchen and stabbed him in the abdomen. Gina then gave assistance by covering his face with a towel while Librada held his left hand. He and John Frank fought for possession of the knife. Feeling already dizzy because of his wound in his abdomen, he was not aware if any one was injured in the course of the scuffle. When he was able to get out of the house, he decided to report the incident to a certain retired captain by the name of Rosendo Maramba whom he was, however, unable to locate. Nonetheless, when the police officers arrived, he gave himself up and surrendered.

Accused-appellant did not present any medical certificate to prove his claim of having been stabbed by John Frank. Likewise, he was unable to present any other witness to corroborate his narration, except his own daughter, Josephine Lopez Almonte. Her testimony was limited to what allegedly occurred on that afternoon of July 19, 1998 which substantially was the same as that of accused-appellant.

Giving full faith and credence to the eye witness accounts of Librada, John Frank, and Esteven Basi, the trial court, in its November 12, 1998 decision, found accused-appellant guilty of murder with abortion and imposed on him the penalty of death.

Hence, the instant review and appeal wherein accused-appellant argues that the trial court erred: (a) in the

application of Article 63 of the Revised Penal Code; (b) in imposing the penalty of death; and (c) in convicting him of the crime of murder since the case was not attended by any of the qualifying circumstances.

Accused-appellant's contentions lack merit.

Treachery is considered present when there is the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate and the method of execution was deliberately or consciously adopted (*People vs. Bernas*, G.R. Nos. 76416 and 94372, July 5, 1999). The essence of treachery is a swift and unexpected attack on a victim without the slightest provocation on his part (*People vs. Lito Lagarteja and Roberto Lagarteja*, G.R. No. 127095, June 22, 1998). In this case, victim Gina was taking a bath when accused-appellant suddenly forced himself into the flimsy structure which served as a bathroom and without warning repeatedly stabbed Gina. As Gina fell on the ground, accused-appellant continued his attack. Even when Gina was already forcing herself out of the bathroom, accused-appellant ruthlessly assaulted her from behind.

Even as the wounded Gina was able to free herself from the hands of accused-appellant and as she was being lifted into the jeepney to be brought to the hospital, accused-appellant caught up with her, dragged her out, kicked her while helpless on the ground, and without pity stabbed the already beaten up 9-month pregnant woman.

An attack upon an unconscious victim who could not have put up any defense whatsoever is treacherous (*People vs. Flores*, 252 SCRA 31 [1996]). Gina, almost dead on the ground and considering her physical condition at that time, was totally unprepared and had no weapon to resist the attack. The stabbing, thus, could not but be considered treacherous. The lower Court, therefore, correctly concluded that there was treachery which qualified the killing to murder.

Accused-appellant pleads for consideration of the mitigating circumstance of vindication of a grave offense committed by the victim against his daughter.

The Court, however, finds no basis from the record to justify the appreciation of such mitigating circumstance. Notably, accused-appellant claims that his daughter, on May 25, 1998, was missing. Four days thereafter, he saw Gina and her companions quarrelling with accused-appellant's wife, and he heard Gina say that his daughter was a flirt. Even if this be true, considering that the stabbing incident took place on July 19, 1998 or almost 2 months thereafter, the mitigating circumstance of immediate vindication of a grave offense cannot be considered in favor of accused-appellant because he had sufficient time to recover his serenity (*People vs. Santos*, 255 SCRA 309 [1996]). The supposed vindication did not immediately or proximately follow the alleged insulting and provocative remarks. Almost two months had lapsed. Aside from the fact that the provocation should immediately precede the commission of the offense, it should also be proportionate to the damage caused by the act and adequate to stir one to its commission (*People vs. Luayon*, 260 SCRA 739 [1996]). The remark attributed to Gina that accused-appellant's daughter is a flirt does not warrant and justify accused-appellant's act of slaying the victim. Indeed, accused-appellant does not accuse Gina of committing the alleged abortion; this he imputes to Gina's mother Librada. Further, accused-appellant even had knowledge that the victim was pregnant, thusly:

Q

Do you know that your niece was pregnant when she was stabbed unconsciously by you as you claimed?

A

Yes sir.

Q

You know that she was pregnant because her stomach was already bulging?

A

Yes sir.

(tsn, Oct. 6, 1998, p. 12.)

However, such tender physical condition of Gina did not deter accused-appellant from taking his vengeful act, snuffing out the lives of both Gina and the baby inside her womb.

Accused-appellant further asserts that Esteven Basi's testimony is unreliable since he did not execute any statement in connection with the investigation. He merely presented himself later to Librada so he could testify in the trial.

It bears reiterating that the initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigation due to fear of reprisal are common and have been judicially declared insufficient factors to affect credibility (*People vs. Lising*, 285 SCRA 595 [1998]; *People vs. Matubis*, 288 SCRA 210 [1998]; *People vs. Israel*, 231 SCRA 155 [1994]). The natural reluctance of a witness to get involved in a criminal case and to provide information to the authorities is a matter of judicial notice (*People vs. Villanueva*, 284 SCRA 501 [1998]; *People vs. Cario*, 288 SCRA 404 [1998]). Thus, hesitation of a witness to relate the felony he witnessed and to identify the author thereof is not a ground to discard his testimony.

Frank and consistent manner of testifying bears the mark of a credible witness (*People vs. Medina*, 292 SCRA 436 [1998]). Esteven was a mere passerby and there is nothing to indicate that he was actuated by improper motives to testify against accused-appellant, and where there is no evidence that the witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated (*People vs. Alfeche*, 294 SCRA 352 [1998]). Withal, Esteven's testimony must be given full weight.

Lastly,, accused-appellant argues that the trial court gravely erred in the application of Article 63 of the Revised Penal Code, specifically the rule when an indivisible penalty is prescribed.

It must be emphasized that accused-appellant was charged with the complex crime of murder with abortion, not of two independent charges of murder and unintentional abortion. In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law. The stabbing and killing of the victim which caused likewise the death of the fetus arose from the single criminal intent of killing the victim, as shown by accuse-appellant's pursuit of the victim after she was able to escape (*People vs. Alacar*, 211 SCRA 580 [1992]).

Article 248 of the Revised Penal Code, as amended by Republic Act 7659, provides:

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:

1. 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.

xxx xxx xxx

In a complex crime, the penalty for the more or the most serious crime shall be imposed, the same to be applied in its maximum period. As between murder and unintentional abortion, murder is the more serious crime and the penalty therefore is reclusion perpetua to death. Death being the maximum or the greater penalty must then be imposed, and since this is an indivisible penalty, the presence of mitigating or aggravating circumstances is

inconsequential.

In sum, the Court cannot give due weight to testimony which were not borne out by the testimonial evidence of Dr. Benjamin Bautista and his autopsy report (People vs. Hilario, 284 SCRA 344 [1998]). The identical testimony of accused-appellant and his daughter Josephine that Librada was holding accused-appellant's hand while the latter wrestled with John Frank's for the possession of the knife, and that Gina assisted by covering accused-appellant's face with a towel, and in the process, must have been accidentally stabbed several times causing her and her baby's death, is incredible, and thus, unbelievable. While there is no hard and fast rule to determine the truthfulness of one's testimony, that which conforms, however, to the quotidian knowledge, observation, and experience of man is often deemed to be reliable (People vs. Niño, 290 SCRA 155 [1998]). For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances (Cosep vs. People, 290 SCRA 378 [1998]).

Withal, it is beyond dispute that accused-appellant committed the act complained of and should be made answerable therefore. The Court is more inclined to believe the testimony of Librada, John Frank, and Esteven who is an impartial and disinterested witness, than the contrary and unsubstantiated testimony of accused-appellant and that of his daughter. The gruesome wounds sustained by the victim belie the exculpatory pretension of accused-appellant and confirm the theory of the prosecution that accused-appellant purposely and vigorously attacked Gina in order to kill her.

It must, however, be noted that modification of the damages awarded by the trial court to the heirs of the victim is in order in the sense that because no documentary evidence was presented as proof, the amount of P25,000.00 as actual and compensatory damages should be deleted.

Although four Justices of the Court continue to maintain their adherence to the separate opinions expressed in People vs. Echegaray (267 SCRA 682 [1997]) that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty, they nonetheless abide by the ruling of the majority and assent that the death penalty should herein accordingly be imposed.

WHEREFORE, the decision of the trial court finding accused-appellant Bonifacio Lopez guilty of Murder with Abortion and sentencing him to suffer the severest penalty of death, and ordering him to pay the heirs of Gerarda "Gina" Ramirez Abdullah as civil indemnity the amount of P50,000.00 is AFFIRMED. We also hold that the heirs of the victim are entitled to moral damages of P50,000.00 for their mental anguish and pains suffered based on testimonial evidence during the trial (People vs. Aguilar, 292 SCRA 349 [1998]). The award of actual damages is DELETED for lack of factual basis.

In accordance with Section 25 of Republic Act No.7659, amending Article 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power. No special pronouncement is made as to costs.

SO ORDERED.

Davide, C.J. (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, JJ., concur.
Mendoza, J., on leave.

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