# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FORTUNATO SIOC, JR. AND PABLO GONZALES @ LOLOY, ACCUSED-APPELLANT.

*G.R. No. 66508. November 24, 1999*

Ponente: PURISIMA, J.

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**PURISIMA, J.:**

At bar is an appeal by accused-appellant Fortunato Sioc, Jr. from the Decision[1] dated November 21, 1983 of Branch XV, of the Regional Trial Court, Palo, Leyte, convicting him of murder and sentencing him to suffer the penalty of reclusion perpetua.

Accused Pablo Gonzales, who pleaded guilty to and was convicted of the lesser offense of homicide, chose to withdraw his appeal. Thus, with respect to him the judgment became final and executory on July 23, 1987.[2]

The appealed Decision disposed thus:

> "WHEREFORE, by his on (sic) confession of guilty to the lesses (sic) offense of Homicide, the Court finds the accused, Pablo Gonzales alias `Loloy', Guilty beyond reasonable doubt of this crime and as the Court cannot take into account his plea of guilty in his favor for the reason that the accused is actually charged with the crime of Murder and he entered the plea of guilty to the lesser offense of Homicide without the Information being amended, he is only entitled to the mitigating circumstance of voluntary surrender, and he is hereby sentenced to suffer an indeterminate prison term of not less than EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor as Minimum, to not more than TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as Maximum, to indemnify the heirs of Exequiel Cinco of one-half (1/2) of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay one-half (1/2) of the costs; judgment is also rendered finding the accused Fortunato Sioc, Jr. GUILTY beyond reasonable douby (sic) of Murder as charged in the Information and hereby sentences said accused to Reclusion Perpetua, to indemnify the heirs of Exequiel Cinco the sum of one-half (1/2) of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay one-half (1/2) of the costs.
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> It appearing that the accused Pablo Gonzales has been detained since May 14, 1983, when he surrendered to the police authorities of Dagami, Leyte, and the accused Fortunato Sioc, Jr. has been detained since June 16, 1983, when he was arrested by the authorities of Dagami, Leyte, they should be credited with full time of their preventive imprisonment if the record shows that they have signed an agreement to abide by the same ruled (sic) and regulations imposed upon convicted prisoners; otherwise, they should be credited with 4/5 only os (sic) such preventive custody.
>
> SO ORDERED."[3]

Filed on August 23, 1983, the Information indicting accused-appellant of the crime of murder; alleges:

> "That on or about the 13th day of May, 1983, in the Municipality of Burauen, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together,

with intent to kill, with superior strength and with treachery, did then and there willfully, unlawfully and feloniously, attack, assault, stab and wound one Exequiel Cinco with the use of short bolos locally known as `pisao' which the accused had provided themselves for the purpose, thereby inflicting upon the said Exequel (sic) Cinco wounds on the different parts of his body which wounds caused his death shortly thereafter.

Contrary to Law."[4]

On September 19, 1983, upon arraignment thereunder, with the assistance of counsel, accused-appellant Fortunato Sioc, Jr. pleaded not guilty to the crime charged.[5]

The prosecution established the facts sued upon, as follows:

"x x x on May 13, 1983 Barbara Arguinde was expecting her younger brother Exequiel Cinco to have supper in her house because it was the eve of the Barangay fiesta of Barangay Balatson. At about 2:00 o'clock early morning of May 14, 1983, Barbara Aguindo went to the house of Exequiel about 400 meters away but upon finding that he was not there she proceeded to the housx (sic) of Eufrocino Badion who informed her that Exequiel was in the house of Veneranda Marcelo. Veneranda admitted that at about 2:00 o'clock in the morning of May 14, 1983, Exequiel Cinco and the two accused, Fortunato Sioc, Jr. and Pablo Gonzales, were in her house where they drank one gallon of tuba. After finishing the gallon of tuba, Exequiel Cinco asked permission to leave and he was followed by the two accused. While Exequiel Cinco was proceeding on the path to his house he was held by Pablo Gonzales and was told to go with the two accused to Barangay Pandan as they will still drink there. The three the left fol (sic) Barangay Pandan at 2:00 o'clock that morning. Pablo Gonzales was drunk and was talking about killing somebody whose name he did not mention. Barbara Qguindo (sic) followed the path to Barangay Pandan in her search for her brother. Along the way (about 300 meters from Venerada's house) she heard Pablo Gonzales saying, Exequiel, you are going to die Barbara beamed her flashlight in the direction where the voice came from and she saw Exequiel Cinco already fallen down while Fortunato Sioc Jr. and Pablo Gonzales were stabbing Exequiel at the back. Barbara Aguinde went home because she was afraid she might be killed. Barbara notified the Barangay Captain of the death of her brother and the Barangay Captain ordered the police to bring the body of the deceased to the morgue.

Earlier that evening of May 13, 1983, the two accused, Fortunato Sioc, Jr. and Pablo Gonzales, were guests in the house of Barbara Aguinde as it was the eye of the barangay fiesta. After eating and drinking, the two accused left the house of Barbara Aguinde at about past 10:00 o'clock that evening.

Dr. Dionesio Conde conducted and (sic) autopsy of the cadaver of Exequiel Cinco and he executed a Medical Certificate (Exhibit A) describing therein the five wounds suffered by the accused four of which are located at the back as shown in the Sketch of the Human body (Exhibit B). The weapon used was a sharp pointed bladed instrument. The cause of death was profuse hemorrhage severe due to stab wounds. It is possible that the wounds were caused by two bladed weapons.

x x x."[6]

Theorizing upon his defense of alibi, accused-appellant testified, that:

"x x x at around 4:00 o'clock in the afternoon of May 13, 1983 he was at home in Barangay Pandang (sic), Burauen, Leyte with his wife who has just delivered a child and Pablito Cuyo who massaged his daughter who had fallen from the stairs. After attending to his daughter, he and Pablito Cuyo started to drink which lasted until the next morning. In the early morning of May 15, 1983 Barbara Aguindo paid him a visit and requested him to testify in favor of the victim who was allegedly killed by Pablo Gonzales. She promised him that he would be paid one hundred (P100.00) pesos every hearing. He, however, refused because he did not know what happened. Thereafter, Barbara left saying that he `would regret it someday'. He stated that Barbara requested him to testify because there was no witness to testify in their favor.

Pablo Cuyo testified that on May 12, 1983 at around 4:00 o'clock in the afternoon he was at the place of


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> accused Fortunato Sioc, Jr. because he was requested to massage the daughter of the latter who had a sprain. He took his supper with the accused and then they started drinking until morning of the next day. After eating his breakfast with the accused and his family, he left."[7]

On November 13, 1983, the trial court came out with its decision, from which accused-appellant appealed; contending that:

> I
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> THE COURT A QUO ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION IN CONVICTING THE ACCUSED AND TOTALLY DISREGARDING THE TESTIMONY OF ACCUSED FORTUNATO SIOC, JR.
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> II
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> THE COURT A QUO ERRED IN NOT FINDING THAT THE GUILT OF ACCUSED FORTUNATO SIOC, JR. WAS NOT PROVED BEYOND REASONABLE DOUBT.[8]

To buttress the first assigned error, accused-appellant invites attention to the testimonies of prosecution witnesses Barbara Aguindo and Venerada Marcelo, which he brands as incredible and inconsistent, to wit:

> "It should be noted that according to witness Barbara Aguindo, she first went to the house of Venerada Marcelo to inquire for the whereabouts of her brother, Exequiel Cinco. Then she was allegedly informed by Venerada that her brother together with the accused Pablo Gonzales and Fortunato Sioc, Jr. went in the direction toward Barangay Pandang (sic) (T.S.N., hearing of October 5, 1983, pp. 19-20; 31-32). About 300 meters from Venerada Marcelo's house, she heard Pablo Gonzales saying `Sekel you are going to die.' When she beamed the flashlight she allegedly saw the two accused stabbing her brother. Thereafter, she went home directly because she was afraid they might kill her. (Id., pp. 21-22; 33-34). Barbara Aguindo's testimony is incredible. If it is true that she actually saw the stabbing incident and considering that the victim was her brother, her testimony that after she saw the two accused stabbing the victim (her brother), she did nothing to help her brother but went home and slept without even reporting the incident to the authorities is not credible (see People vs. Bulawin, 29 SCRA 710). If it is really true that she beamed her flashlight at the two accused while the latter were allegedly stabbing her brother, the natural reaction of the suspects would be to flee post haste or go after the one who had beamed the flashlight. The record is silent as to these facts. Neither is it shown that Aguindo was threatened or that she was in grave danger. She testified that it was she who informed the barangay chairman of the death of her brother. Why did she not reveal immediately that accused Fortunato Sioc, Jr. was one of the perpetrators of the crime? Why did she not expose Fortunato's participation in the crime as could ordinarily be expected of witnesses to such a gruesome crime involving her very own brother? The logical conclusion is that Aguindo had never witnessed the incident leading to the death of Exequiel Cinco. As a matter of fact Fortunato Sioc, Jr. testified that she went to this house on May 15, 1983 to persuade him to testify in their favor. When he refused, she told him that `he would regret it someday' (TSN., hearing of October 26, 1983, pp. 53-54). This testimony of Sioc, Jr. remains unrebutted.

On the part of witness Venerada Marcelo, she testified that she met Barbara Aguindo only when the latter informed her that her brother was killed x x x.

> x x x
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> xxx Witness Aguindo categorically denied going to the house of Venerada after she saw her brother being stabbed because she was afraid they might kill her. (Id. pp. 33-34). The inconsistency in the accounts of these two witnesses creates doubt as to the truth of the declaration of Aguindo having witnessed the alleged killing of her brother by the accused. x x x"[9]

The submission of accused-appellant is barren of any sustainable basis. The improbabilities alluded to are more

imaginative than real and the inconsistencies too minor to deserve serious consideration. They do not adversely affect the credibility of subject witnesses'.[10] As correctly pointed out by the Solicitor General, Barbara can not be faulted for not helping her brother. Pitted against two armed men at past 2:00 o'clock in the morning, what could she have done to help her brother? Succinct and clear was her intimation later that she might also be killed, she sought the sanctuary of her home.[11] This should explain why she (Barbara) waited until daylight to report the incident to the Barangay Captain. It may be true that the malefactor did not threaten her, but being a witness to a murder, she must have realized that her life would also be exposed to danger. Moreover, different people react differently to a given type of situation and there is no standard form of behavioral response when one is confronted with a startling, strange, or frightful experience.[12]

Then too, a scrutiny of the records fails to show that Barbara did not implicate Fortunato Sioc, Jr. when she reported the killing of her brother to the Barangay Captain. Neither does the Court find convincing the testimony of accused-appellant that on May 15, 1983, Barbara went to his house to persuade him to testify against Pablo Gonzales in exchange for P100.00 per hearing. It bears stressing that Pablo Gonzales voluntarily surrendered on May 14, 1983.[13] It is thus unworthy of belief that Barbara would still seek the help of accused-appellant considering that Pablo Gonzales had already confessed guilt.

How accused-appellant reacted upon being surprised by Barbara in the act of stabbing the deceased, is of no moment. It is worthy to note that Barbara immediately fled upon seeing the two accused assaulting her brother. Therefore, other than the act of the two accused of stabbing Exequiel Cinco, Barbara could not be expected to describe the reaction of accused-appellant.

Accused-appellant also points to alleged inconsistencies in the testimonies of Barbara Aguindo and Venerada Marcelo. In the account of Venerada, Barbara went to her house after Exequiel was killed. Barbara on the other hand, said she passed by the house of Venerada before Exequiel died. Suffice it to note, however, that the said inconsistency is too inconsequential to merit attention it referring only to a minor point. After all, Venerada's house was only a few meters away from the scene of the crime and was along the path leading to Barbara's house. Minor lapses even enhance the veracity of the testimony of a witness as they erase any suspicion of a rehearsed declaration.[14] Failing to establish proof for Barbara to falsely testify, the logical conclusion is that no such improper motive exists and her testimony is worthy of full faith and credit.[15]

Accused-appellant placed reliance upon the defense of alibi in disowning liability for the commission of the crime. According to him, he was in his house at Barangay Pandan, Burauen, Leyte, when the crime was perpetrated. The Court believes, and so rules, that the alibi theorized upon by appellant is unavailing because he failed to show convincingly that his presence at the locus criminis was physically impossible.[16] The distance between Barangay Balatson, where the victim was killed, and Barangay Pandan where accused-appellant resides, does not discount the presence of the latter at the scene of the crime, considering that Pandan and Balatson are neighboring Barangays of Burauen, Leyte. So also, alibi can not hold against the positive identification of accused-appellant by the witnesses, Barbara Aguindo and Venerada Marcelo. As declared by Venerada on the witness stand, the two felons had a drinking spree with the victim in her house, and they left for Barangay Pandan with the latter,[17] a few minutes before Barbara Aguindo witnessed the death of his brother in the hands of the two offenders. Alibi is a weak defense and can not prevail over the positive identification of the accused-appellant.[18]

The Court believes, however, that the qualifying circumstance of treachery is not attendant in the commission of the crime. It is well-settled that a qualifying circumstance cannot be presumed, but must be established by clear and convincing evidence, as conclusively as the killing itself.[19] There is treachery when the offender commits any of the crimes against persons employing means, methods, or forms in the execution thereof which tends

directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[20] In the case under scrutiny, Barbara Aguindo did not see how the attack on her brother commenced because the latter was already lying prostrate on the ground when she saw the two assailants stabbing him. The stab wounds located at the back of the victim were the sole basis of the trial court in appreciating the qualifying circumstance of treachery, concluding thus:

> "The Court is of the opinion that the killing of Exequiel Cinco by Fortunato Sioc, Jr., and Pablo Gonzales is qualified by treachery (absorbing the aggravating circumstances of superior strength and nocturnity) considering that four out of the five wounds inflicted on the deceased were all at the back."[21]

For treachery to exist, there must be evidence showing that the mode of attack was consciously or deliberately adopted by the accused-appellant to make it impossible or difficult for the person attacked to defend himself or retaliate.[22] It cannot be presumed but must be proven positively. Since Barbara, the lone eyewitness in the instant case, was not able to observe how the assault started, there is thus no evidence that would show that the accused-appellant deliberately adopted a method or means to deprive the victim of an opportunity to retaliate. Consequently, treachery cannot be appreciated.[23]

Absent the qualifying circumstance of treachery, the crime committed could only be homicide, defined and penalized under Article 249 of the Revised Penal Code. With neither aggravating nor mitigating circumstance present in the commission of the crime, the prescribed penalty of reclusion temporal has to be imposed in its medium period.[24] But the accused-appellant is entitled to the application of the Indeterminate Sentence Law; and should therefore, be sentenced to an indeterminate penalty the minimum of which would be within the range of prison mayor and the maximum thereof to be within the range of reclusion temporal in its medium period.

The trial court ordered the accused-appellant to pay one-half (½) of P12,000.00 as indemnity ex delicto and one-half (½) of the costs. Consistent with prevailing jurisprudence, the indemnity should be increased to Fifty Thousand pesos (P50,000).[25]

WHEREFORE, as above indicated, the appealed judgment in Criminal Case No. BN-2014 is MODIFIED, and accused-appellant Fortunato Sioc, Jr. is hereby found guilty of homicide under Article 249 of the Revised Penal Code and is accordingly sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; and is further ordered to indemnify the heirs of Exequiel Cinco in the amount of Fifty Thousand (P50,000.00) Pesos. Costs against the accused-appellant.

In the service of his sentence, accused-appellant who has been detained since June 16, 1983, shall be credited with the period of his preventive imprisonment, subject to the provisions of Article 29 of the Revised Penal Code, as amended. No pronouncement as to costs.

**SO ORDERED.**

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by Judge Fortunato B. Cuna.

[2] Rollo, p. 80.

[3] Decision, Rollo, pp. 11-12.

[4] Rollo, p. 6.


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[5] Original Records, p. 24.

[6] Decision, Rollo, pp. 8-9.

[7] Accused-Appellants' Brief, pp. 3-4 of the; Rollo, p. 47.

[8] Accused-Appellants' Brief, p. 1.

[9] Accused-Appellant's Brief, pp. 5-6.

[10] People vs. De la Cruz y Cercada, G.R. No. 111704; May 17, 1999, citing; People vs. Benitez 264 SCRA 586.

[11] Appellee's Brief, p. 3; Rollo, p. 65.

[12] People vs. Talaboc, 256 SCRA 441, p. 453, citing: People vs. Quinones, 245 SCRA 87 [1995]; People vs. Ching, G. R. No. 103800, January 19, 1995, 240 SCRA 267; People vs. Raptus, 198 SCRA 425 [1991].

[13] Decision, Rollo, p. 12.

[14] People vs. De la Cruz y Cercada, supra, citing: People vs. Verano, 264 SCRA 546.

[15] People vs. Pija, 245 SCRA 80, pp. 84-85; citing: People vs. Rostata, Jr., 218 SCRA 657.

[16] People vs. Alojado, G.R. No. 122966-67, March 25, 1999.

[17] Tsn, pp. 40-41; Direct Examination of Venerada Marcelo.

[18] People vs. De la Cruz, supra, citing: People vs. Patrolla, Jr., 254 SCRA 467.

[19] People vs. Tabones, G.R. No. 129695, March 17, 1999, citing: People vs. Gama, 271 SCRA 517.

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

[21] Decision, Rollo, p. 11.

[22] People vs. Eduarte, 187 SCRA 291, P. 298; citing: Art.14, subpar. 16, Revised Penal Code; People vs. Virgilio Uribe, G.R. No. 76493-94, Feb. 26, 1990 and People vs. Crisostomo, 160 SCRA 47 [1990].

[23] People vs. Alcartado, 261 SCRA 291, p. 299; citing: People vs. Quilatan, 205 SCRA 279 [1992]; People vs. Cordero, 217 SCRA 1 [1993]; and People vs. Agcaoili, 206 SCRA 606 [1992].

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

[25] People vs. Tabones, supra.

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