

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELO BOLIMA, LEOPOLDO BRITANICO, ROGELIO BRITANICO,
DEFENDANTS-APPELLANTS.**

G.R. No. 96549, March 22, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Because of a controversy over the collection of fees of incoming trucks, a man was stabbed and mercilessly killed by several assailants.

In the afternoon of May 7, 1986, Generoso Lelis and Carmelo Bolima were at the Tabaco Police Station in Albay to thresh out the dispute in that Lelis was allegedly intruding upon Bolima's territory in the collection of fees of incoming trucks. Lelis and Bolima were both collectors in the Office of the Municipal Treasurer of Tabaco. Bolima left the police station at 5:00 p.m. that day.

Before 7:00 p.m. of the same day, Lelis was drinking with Oro Atun at the store of Tino Beronilla at the supermarket of Tabaco when Jose Brillantes joined them.

Thereafter the three left to drink further. While passing near the stalls where cutlery products were being sold, a man suddenly attacked Lelis by stabbing him with a bolo. The attacker stumbled so Lelis ran away. The assailant, who was identified as Carmelo Bolima, stood up and chased Lelis. The latter also stumbled and he was confronted by Leopoldo Britanico who hacked him several times with a bolo. Again, Lelis ran towards Mercy's Place but then he was hacked by Rogelio Britanico and Leopoldo Britanico who maligned him and said they would kill him. Someone blew a whistle so the assailants fled.

Lelis was rushed to the Tabaco General Hospital. Dr. Cope, the attending physician, after treating him, advised that he be transferred to the Albay Provincial Hospital which has better facilities. On the way, Lelis expired.

Dr. Maximino Vera, Municipal Health Office of Tabaco conducted an autopsy on the body of Lelis and listed the following findings:

EXTERNAL PHYSICAL FINDINGS:

- Generalized Rigor Mortis; Rigor mortis, back & buttock;
- Incised wound approximately 2 cm. in length and 4 cm. depth, shallow, above the 10th lumbar vertebra, middle portion;
- Incised wound approximately 5 cm. in length, shallow at the right lumbar area, medial aspect;
- Small punctured wound approximately 0.2 cm. in diameter, shallow lumbar region, right side;
- Small punctured wound approximately 0.2 cm. in diameter, shallow, near lumbar vertebra, right side, approximately 3 inches from the spine;

- Incised wound approximately 4.5 cm. in length and 2 cm. in width, central portion, left wound;
- Incised wound approximately 5 cm. in length and 2 cm. in width, penetrating the abdominal cavity, below the last rib, left side;
- Small circular irregular wound approximately 0.9 cm. in length and 0.4 cm. in width, shallow, left epigastric region;
- Incised wound left shoulder approximately 2 cm. in length and 0.4 cm. in width, shallow;
- Incised wound approximately 10.4 cm. in length and 1.5 cm. in width from the angle of the mouth to the base of ear, left side;
- Abrasion, approximately 3 inches in length and approximately 2 inches in width, anterior mid-portion, left leg;
- Incised wound approximately 10 cm. in length and 3.5 cm. in width, from the nose to the cheek, left side; (Exhibit B,1)

The cause of death was 'Internal Hemorrhage Secondary to Stab Wound [sic]."[1]

In due course an information was filed in the Regional Trial Court in Tabaco, Albay by the Assistant Provincial Fiscal, approved by the Provincial Fiscal, charging Carmelo Bolima, Leopoldo Britanico, Rogelio Britanico, Gomer Bolima and Domingo Britanico of the crime of murder allegedly committed in this manner:

"That on or about the 7th day of May, 1986 at 7:00 o'clock in the evening, more or less, in the Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery, with evident premeditation and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, hack, stab and thrust with bolos GENEROSO LELIS hitting and inflicting upon the latter fatal injuries in the different parts of his body which caused his death, to the damage and prejudice of his heirs."[2]

Upon arraignment, all the accused pleaded not guilty to the information, except Gomer Bolima who was at large. After the pre-trial and the trial on the merits, a decision was rendered by the trial court on June 15, 1988, the dispositive part of which reads as follows:

"WHEREFORE, premises considered, this Court finds accused CARMELO BOLIMA, LEOPOLDO BRITANICO and ROGELIO BRITANICO, guilty beyond reasonable doubt of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and the above-named accused are hereby sentenced to suffer an indeterminate prison term of from TWELVE (12) YEARS OF PRISION MAYOR AS MINIMUM TO SIXTEEN (16) YEARS AND ONE (1) DAY OF RECLUSION TEMPORAL AS MAXIMUM, with all the accessories of the law.

For Lack of evidence to support the conviction of accused DOMINGO BRITANICO, he is hereby ACQUITTED.

Further, accused CARMELO BOLIMA, LEOPOLDO BRITANICO and ROGELIO BRITANICO, are hereby jointly and severally ordered to the heirs of the late Generoso Lelis, [sic] namely, CRISTETA LELIS, BENJAMIN LELIS, minor and FRANCIS JOHN LELIS, minor, to pay the following amounts:

(1)

Thirty Thousand (P30,000.00) Pesos for and as indemnity for causing the death of Generoso Lelis;

(2)

One Hundred Seventeen Thousand (P117,000.00) Pesos for and as loss of income which the heirs failed to receive by reason of the death of Generoso Lelis;

(3)

Thirteen Thousand One Hundred Fifty (P13,150.00) Pesos for wake, funeral, burial and other expenses for the late Generoso Lelis;

(4)

Fifty Thousand (P50,000.00) Pesos for and as moral damages.

With equal costs against the aforementioned three (3) accused.

Let the records with respect to accused Gomer Bolima be sent to the file of archived cases to be revived upon his apprehension."^[3]

Not satisfied therewith accused Carmelo Bolima, Leopoldo Britanico and Rogelio Britanico appealed to the Court of Appeals alleging that the court a quo committed the following errors:

"I

THE LOWER COURT ERRED IN CONVICTING THE APPELLANTS DESPITE THE EXECUTION BY THE DECEASED OF A DYING DECLARATION POINTING TO GOMER BOLIMA AS THE ONE WHO STABBED HIM.

II

THE LOWER COURT ERRED IN DISREGARDING OR OVERLOOKING SUBSTANTIAL FACTS AND MATERIAL CIRCUMSTANCES WHICH, IF PROPERLY APPRECIATED, COULD RESULT IN THE ACQUITTAL OF THE APPELLANTS."^[4]

The Solicitor General filed the brief for the appellee. As no reply brief was filed by appellants the case was deemed submitted for decision.

On October 12, 1990 a decision was rendered by the appellate court affirming the appealed decision with costs but with the modification as to the penalty sentencing appellants to reclusion perpetua. However, no entry of judgment was made and instead the case was certified to this Court for review.

The appeal is devoid of merit.

Under the first assigned error the appellants argue that in the dying declaration the victim only identified accused Gomer Bolima as his assailant thus exculpating them.

The dying declaration of Lelis was taken by Police Corporal Rosalio Bonavente at the Tabaco Hospital. Lelis was already stuttering and the words uttered by him were no longer clear. When he was asked why he was in the hospital he answered that he was stabbed. The volume of the voice of Lelis was so low that Bonavente had to put his ear near the mouth of Lelis to be able to hear him. When Bonavente asked who stabbed him, Bonavente heard a faint sound from the mouth of Lelis saying "Gomer" so he indicated in the dying declaration the name of Gomer Bolima. When questioned further, Lelis no longer gave any answer and turned his head sideways.

Appellants offered no objection to this dying declaration. Instead, taking advantage thereof, they assert that it is exculpatory insofar as they are concerned.

On the contrary the said dying declaration in effect confirmed the theory of the prosecution that Gomer Bolima was involved in the conspiracy to murder Lelis. Unfortunately, when the victim was asked to identify the other assailants he was too weak to answer any further. He died soon after.

Under the second assigned error, the appellants contend that witnesses Atun and Brillantes testified that the place where Lelis was stabbed was dark and that the said witnesses did not recognize the person who stabbed the deceased, while witness Edwin Nipolo claimed it was well-lighted with a fluorescent lamp although he admitted on cross-examination that the place was dark. Consequently, appellants assert that Leopoldo Britanico had not been duly identified as the one who hacked Lelis. They also point out certain alleged inconsistencies in the testimony of the prosecution witnesses.

The Court is not persuaded.

While on the one hand the appellants doubt the veracity of the testimonies of said prosecution witnesses that Leopoldo Britanico hacked Generoso Lelis, on the other hand, they give weight to the testimonies of the same witnesses that the place was dark.

Moreover, the alleged inconsistencies of prosecution witnesses were more apparent than real. The assault upon the person of Lelis did not occur in one place. In fact, the whole incident was ambulatory, occurring as it did in various places. Thus, while it is true that Atun testified that the place of the incident was dark, referring to the place where the bolos were sold, yet Nipolo said the place was well-lighted, as he was referring to the place in the supermarket where the victim ran and was pursued by his assailants.

The trial court correctly assessed the situation when it made the following disquisition:

"With respect to the claim of the defense that it was dark at the time, as testified to by some of the witnesses for the prosecution, the same may be true with respect to the first of the series of attacks but such darkness cannot totally exclude others, especially those who know one another to recognize someone. In the place where the second attack took place, it is not so dark and near the Mary's Place, with all the establishment (sic) there, the place is not dark..."[5]

Another prosecution witness, Magdalena Sancopan, identified the three appellants as among the aggressors in this manner:

Q.

Please tell the Honorable Court what was that unusual incident about?

A.

I saw somebody being chased.

Q.

Who was that somebody being chased?

A.

Generoso Lelis.

Q.

And? Please continue.

A. I saw him being chased by a man carrying a bolo.

Q.

What happened next?

A.

He continued running and when he took a turn at a corner near the place where mats are being sold, he was met by three (3) other men.

Q.

What happened after he was met by three (3) other men?

A.

He was being hacked and stabbed by the men.

Q.

Now, how many did you see hacking and stabbing Generoso Lelis?

A.

Four (4) x x x.

x x x x

Q.

Now, what happened to Generoso Lelis after he was hacked and stabbed by these four (4) persons?

A.

He stumbled on the ground x x x.

x x x

Q.

Now, what happened after Generoso Lelis fell to the ground?

A.

They were about to leave him and Generoso Lelis stood up and ran away.

Q.

What happened after Generoso Lelis stood up and ran away?

A.

He ran away and he was again chased by the four men x x x,

x x x

Q.

These four (4) persons whom you saw chased Generoso Lelis with a bolo, if he is inside the Court, please point to him?

A.

That man in blue (witness pointed to a man in blue T-shirt who identified himself as Carmelo Bolima).

Q.

What about these three (3) persons who met Generoso Lelis by the place where mats were sold, if they are in Court, please point to them?

A.

That man wearing violet T-shirt (witness pointed to a man in violet T-shirt, who, when asked, identified

himself as Domingo Britanico) and that man at the back (witness pointing to another man in blue T-shirt who answers to the name of Rogelio Britanico) and also that one, also at the back next to him (again witness pointed to a man in gray T-shirt who likewise identified himself as Leopoldo Britanico).

Q.

Before this incident happened, do you already know these four (4) persons you have just pointed?

A.

I do not know them by their names, but I can recognize them because they usually pass by the place where I am vending my wares or goods.[6]

Another prosecution witness, Rodolfo Villegas, testified as follows:

Q.

Mr. Witness, do you remember where were you on May 7, 1986 at about 7:00 o'clock in the evening?

A.

At Mary's Place.

Q.

Where is that Mary's Place?

A.

At the supermarket.

Q.

While you were in that place on May 7, 1986 at the Mary's Place of the supermarket, do you remember whether there was an unusual incident that happened?

A.

There was ma'am.

Q.

What was that unusual incident?

A.

I heard people saying that there was a hacking incident.

Q.

Now, what did you do when you heard those people saying that there was a hacking incident?

A.

I went out.

Q.

And what did you do?

A.

I watched.

Q.

You watched the what?

A.

The hacking incident.

Q.

Were you able to recognize the person hacked?

A.

Yes, sir.

Q.

And who was that?

A.

Mr. Lelis.

Q.

Do you know the name of that Mr. Lelis?

A.

Gene Lelis.

x x x

Q.

My question to you is, if you were able also to recognize the person who hacked him?

A.

Yes, ma'am.

Q.

Who were those persons who hacked him?

A.

Witness points to a man wearing a white and blue T-shirt who answers to the name of Rogelio Britanico and witness points to a man wearing a yellow T-shirt who answers to the name of Leopoldo Britanico)."[7]

As to the alleged inconsistencies in the testimonies of the prosecution witnesses, suffice it to say that the same relate to minor matters. Rather than affect the credibility of witnesses, they are badges of their truthfulness and candor.

As to the alleged failure of witness Nipolo to come to the aid of Lelis, the Court observes that this is not unnatural. He must have been caught by surprise by the turn of events and the better part of discretion prevented him to come to his aid as it may jeopardize his own life thereby.

The failure of witnesses Rodolfo Villegas and Magdalena Sancopan to immediately reveal what they knew to the police is also understandable. Sancopan, when asked, admitted that the fear of the possibility of reprisal was the reason why she hesitated to immediately reveal the matter to the police. Such similar initial reluctance of Rodolfo Villegas in volunteering the information to the police must also be because out of fear of the appellants. It cannot affect his credibility.

Finally, conspiracy had been established in this case by the simultaneous attack by appellants on the victim and the multiple wounds the latter suffered caused by different weapons that caused the death of the victim soon thereafter. Treachery and abuse of superior strength attended the commission of the offense. The conviction of all

appellants for murder is but proper.

WHEREFORE the Court AFFIRMS the decision of the Court of Appeals dated October 12, 1990 with the modification that the indemnity to the heirs of the victim is increased to P50,000.00. Costs against defendants-appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit B-1.

[2] Page 4, rollo.

[3] Page 3, rollo; pages 48 to 49, decision.

[4] Page 4, appellants' brief; pages 1 to 2, rollo.

[5] Pages 42 to 43, decision; page 3, rollo.

[6] TSN, December 15, 1986, pages 11 to 12. Emphasis supplied.

[7] TSN July 10, 1987, pages 5 to 7. Emphasis supplied.

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