

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANITO REVILLAME Y TAGANA, ACCUSED-APPELLANT, AND
JOHN DOE, ACCUSED.**

G.R. Nos. 100714-15. March 03, 1994

Ponente: NOCON, J.

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NOCON, J.:

Because of a seemingly inconsequential stare among men who were having a drink, accused-appellant was provoked to attack victims, Romeo Hael and Eduardo Ladio resulting to their untimely death.

Accused-appellant was charged under two informations:

"Criminal Case No. Q-89-8961

"That on or about the 1st day of November, 1989 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to kill and without any justifiable cause, qualified by evident premeditation, treachery and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ROMEO HAEL Y RIMANDO by then and there mauling and stabbing him inside the jeepney and when he tried to escape accused MARIANITO REVILLAME Y TAGANA fired his gun hitting his left bicep which the bullet went through the left armpit, which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of ROMEO HAEL Y RIMANDO, in such amount as may be awarded under the provisions of the New Civil Code.

CONTRARY TO LAW."[1]

"Criminal Case No. Q-89-8962

"That on or about the 1st day of November, 1989 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to kill and without any justifiable cause, qualified by evident premeditation, treachery and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one EDUARDO LADIAO, JR Y RIMANDO by then and there shooting and firing at him with a gun, hitting the trunk of his body which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of EDUARDO LADIAO, JR. Y RIMANDO in such amount as may be awarded under the provisions of the New Civil Code.

CONTRARY TO LAW."[2]

The facts of the case are as follows:

It was around 5:30 in the afternoon of November 1, 1989 when Rodolfo Jocson was having a drink with Jojo Galvez and one of the victims, Eduardo Ladio, Jr. at their residence at 405 Project Condominium, Project 4,

Quezon City.

It was at this point when a man passed by and exchanged "dagger looks" with victim Eduardo Ladio, Jr. and suddenly boxed the latter on the face. Rodolfo Jocson tried to pacify them but the man ran away.

Thereafter, the said man came back but this time he was with accused-appellant Marianito Revillame and two (2) other men. Accused-appellant stayed at the corner of J.P Rizal and Aurora Boulevard. The two other men then began to hit Eduardo Ladio, Jr. with stones at his head. Rodolfo tried to help Eduardo and joined the fighting. Romeo Hael and Ramil Jocson who were incidentally at the same place heard the commotion and went out to help. Accused-appellant and his companion approached Romeo. It was at this instance where accused-appellant poked a gun at Romeo. They forced Romeo to board a passenger jeep. The two men who ganged up on Eduardo ran towards Escopa. Rodolfo, Ramil and Eduardo followed the jeep up to the Caltex station at the corner of J.P Rizal and Aurora Boulevard. When Rodolfo was able to finally overtake the jeep, he saw Romeo being mauled and hit on the head with a gun. They were about to help Romeo but the accused who was armed with a gun alighted from the jeep and poked a gun at them. Romeo then ran outside the jeep but accused-appellant fired his gun at him resulting to a gunshot wound on his left arm. Eduardo wanted to help Romeo who was then lying prostrate but instead Eduardo was shot by accused-appellant.

Accused-appellant turned to Rodolfo Jocson and said: "Papatayin ko kayong lahat" and chased Rodolfo Jocson who ran away towards Marikina. Accused-appellant then rode a jeepney failing to catch Rodolfo Jocson.

Subsequently, Rodolfo Jocson and Ramil Jocson returned to the scene of the crime and helped bring the victims Romeo Hael and Eduardo Ladio, Jr. to a nearby hospital where both subsequently died.[3]

Accused-appellant pleaded not guilty to the charges against him. However, after trial on the merits, judgment was rendered convicting him of the crime of Murder, the dispositive portion of which reads:

"The crime committed is murder, the unlawful killing being committed by taking advantage of superior strength. An attack made by a man with a weapon which resulted in the death of the victim is murder. His weapon gave him superiority of strength.

"WHEREFORE, finding the accused, Marianito Revillame y Tagaan, GUILTY BEYOND REASONABLE DOUBT of the crime of murder, as charged in the information, he is hereby sentenced as follows:

1. In Criminal Case No. 89-8961, accused is sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased, ROMEO Hael Y RIMANDO, the sum of P30,000.00, without subsidiary imprisonment in case of insolvency, to suffer all the accessory penalties provided for by law and to pay the costs, and

2. In Criminal Case No. 89-8962, accused is sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased EDUARDO LADIAO, JR. Y RIMANDO, the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, to suffer all the accessory penalties provided for by law and to pay the costs.

SO ORDERED."[4]

Accused-appellant anchors his defense on alibi and raises the following as errors of the trial court:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE TESTIMONIES OF PROSECUTION WITNESS RODOLFO JOCSON AND RAMIL JOCSON.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON GROUND OF REASONABLE DOUBT.

III

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH.

Accused-appellant contends that the testimonies of Rodolfo and Ramil Jocson deserve scant consideration for the following reasons: First, it was highly improbable that accused-appellant would challenge a fight in the territory of the victims. Second, accused-appellant was not identified as the man who gave dagger looks to Eduardo Ladio, Jr. Third, it is improbable that Eduardo Ladio, Jr., Ramil Jocson and Rodolfo Jocson would be able to get close to him at a distance of about three (3) meters, considering that he had a gun with him.

We are not convinced.

Accused-appellant was armed when he went to the territory of the victims. Eduardo Ladio, Jr. and his friends were not armed. This is enough to embolden accused-appellant to attack Eduardo Ladio, Jr and his friends.

Moreover, accused-appellant was at the corner of J.P. Rizal St. and Aurora Boulevard and had the opportunity to reconnoiter his surroundings to ensure the successful perpetuation of the crime.

Though accused-appellant was not the one who stared at one of the victims, prosecution witnesses Rodolfo and Ramil Jocson however, positively identified him as the one who shot Eduardo Ladio, Jr. and Romeo Hael.

As aptly found by the trial court:

"The categorical declaration of the witnesses for the prosecution on the details of the crime are more credible than the denial and alibi interposed by the accused. Where the eyewitnesses had no grudge against the accused and they did not know him before the shooting of the victim, their testimony is credible. Accused was positively identified. Although Rodolfo Jocson was engaged in a fistfight with one of the four men for about five minutes, only two of the four men fought with his group. They were able to follow the jeep where Romeo Hael was boarded although they have no means of transportation because the place where they brought him was very near and the jeep was not running so fast. Another prosecution witness, Ramil Jocson, was even able to describe the location of the gunshot wounds sustained by the two victims and the weapon used." [5]

Jurisprudence teaches us that:

"Firmly settled is the rule that the finding of the trial court on the credibility of a witness is entitled to great respect. The appellate courts will generally not disturb the conclusions and finding of fact of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial, unless the court has plainly overlooked certain facts of substance or value that, if considered, might affect the result of the case." [6]

Accused-appellant further contends that the use of a gun does not constitute superior strength.

Such contention is devoid of merit.

To appreciate superior strength as a qualifying circumstance of murder, the same should be taken advantage of. [7]

In the case at bar, the accused-appellant who was armed with a gun together with three others, used excessive force in mauling and shooting the victims who were then unarmed. The possession of a gun by the

accused-appellant bolstered his capacity to kill the victims.

In the case of *People vs. Cabiling*,^[8] the Court had the occasion to rule that -?

"To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked. According to Cuello Colon, it is 'Abuse of Superior numbers or employment of means to weaken the defense (Art. 10, 8.a.). This circumstance greatly resembles alevosia when placed in a situation of advantage over those on whom it is employed, such that one is confused for the other. This circumstance should always be considered whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. To properly appreciate it, not only is it necessary to evaluate the physical conditions of the protagonists of opposing forces and the arms or objects employed by both sides, but it is also necessary to analyze the incidents and episodes constituting the development of the event. There is no need for previous agreement among the aggressors.' Thus in *People vs. Verzo* (21 SCRA 1403) this Court held that there was abuse of superior strength which qualified the killing where three of the defendants were wielding bolos, whereas the victim was unarmed and trying to flee."

WHEREFORE, there being no reversible error committed by the trial court, the appealed decision is hereby **AFFIRMED** with the modification that the indemnity to be paid to the heirs of each of the victims, is increased to P50,000.00 in accordance with existing jurisprudence.^[9]

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Records, p. 2.

[2] Records, p. 1.

[3] Exh. "A", Crim. Case Q-89-8961; Exh. "A", Crim. Case Q-89-8962.

[4] Records, p. 80.

[5] Records, p. 79.

[6] G.R. No. 86640, 193 SCRA 355.

[7] *People vs. Pura*, C.A. 44 O.G. 3841.

[8] No. L-38091, 74 SCRA 285 (1976).

[9] *People vs. Sison*, G. R. No. 86455, 189 SCRA 643.

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