

## THIRD DIVISION

[ G.R. No. 123074, July 04, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO FERNANDEZ Y MAGNO, ALIAS "FERNAN" AND JOEL  
SANTIAGO Y RUSTIA, ACCUSED.FERNANDO FERNANDEZ Y  
MAGNO, ACCUSED APPELLANT.**

### D E C I S I O N

**MELO, J.:**

Accused-appellant Fernando Fernandez y Magno appeals the judgment of the Regional Trial Court of the Third Judicial Region, Branch 6 stationed at Malolos, Bulacan in its Criminal Case No. 753-M-91, finding him guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries and consequently sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim P 50,000 as civil indemnity, P400,000 as actual damages, and P100, 000 as moral damages.

The Information filed against Fernandez and his co-accused Joel Santiago charged:

That on or about the 10th day of April, 1991, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with chisel and screw driver, conspiring and confederating together and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence, intimidation, take rob and carry away with them one (1) Sony Betamax worth P9,000.00, assorted jewelries worth P300,000.00 and cash amounting to P100,000.00, belonging to Sps. Dr. Delfin Tolentino and Eugenia Lindain-Tolentino, to the damage and prejudice of the latter in the total amount of P409,000.00; and on the occasion of the commission of the said robbery, the said accused, conspiring and confederating together and mutually helping one another, and with intent to kill one Eugenia Lindain-Tolentino, did then and there, wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and stab with the said chisel and screw driver the said Eugenia Lindain-Tolentino, hitting the latter of her body thereby causing her serious physical injuries which directly caused her death and also causing physical injuries to Dr. Delfin Tolentino which required medical attendance for some period of time.

Contray to Law.

Malolos, Bulacan, April 30, 1991.

(pp. 5, 17 Rollo)

Initially, only Santiago was apprehended, and after the trial was found guilty beyond reasonable doubt of the crime charged. A partial decision dated December 23, 1991 convicting him was promulgated on February 3, 1992. Herein accused-appellant Fernandez remained at large and was arrested by elements of the Philippine National Police-Baliuag only on January 28, 1993 (p. 18, Ibid.).

On February 3, 1993, Fernandez, assisted by counsel de oficio, pleaded not guilty to the charge. After trial, the regional trial court rendered its now appealed decision.

Accused-appellant anchors his appeal on his lone and shot-gun type of argument that the trial court erred in finding him guilty beyond reasonable doubt of the crime of robbery with homicide (p. 152, Ibid.).

The facts, as determined by the trial court and duly supported by evidence, show that on April 10, 1991, at around 2 o'clock in the afternoon, a man pretending to be having difficulty breathing and wanting treatment rang the door bell at the residence of Dr. Delfin Tolentino and his wife Eugenia Lindain-Tolentino at Vergel de Dios St., Baliuag, Bulacan. Because of the man's persistence, the doctor let him in. Once inside, the otherwise sickly man overpowered Dr. Tolentino, covered his eyes with masking tape and gagged him. The doctor, however, got a good look at the man's face before his eyes were covered. He would later positively identify the intruder as accused-appellant Fernando Fernandez (pp. 19-20, Ibid.).

Accused-appellant then forced Dr. Tolentino down on the floor, took his watch and tied both his hands and feet. A second person entered the room. The doctor was told to keep quiet, otherwise he would be killed. Both men entered the room where Dr. Tolentino's wife was staying. The doctor heard his wife saying "Joel, ano ba?", but nothing was heard from her thereafter. After about twenty minutes, they returned and carried the doctor upstairs. After the masking tape over his eyes was removed, Dr. Tolentino was told to open the vault. Both men then ransacked its contents, taking jewelry, cash, certificates of title and stock certificates. Dr. Tolentino testified that as he was only about two feet away from the safe, and with Fernandez in front of him and Santiago to his right, he could see them both very clearly. When the door bell rang, both men hurriedly left. Dr. Tolentino locked the door and telephoned his son, Dr. Nilo Tolentino. When his son and a helper arrived, Dr. Tolentino was brought down to the clinic where he later learned that his wife was killed (p. 19, Ibid.).

Dr. Nilo Tolentino testified that when he came to their house after the call from his father, he saw the latter upstairs. The cabinets were ransacked. He also noticed a pool of blood in front of the stereo and television cabinets and drops of blood leading to the examination room. There, he saw lifeless body of his mother. He called the police immediately and his father related to him what had happened. In court, he identified pictures showing his father's injuries and the lifeless body of his mother. He also testified that they spent around P300,000 for the wake and burial of his mother. (pp. 19-20, Ibid.).

PO3 Eladio San Pedro, the investigator assigned to the case, testified that Santiago admitted his participation in the killing of Eugenia and that Fernandez was the one who stabbed her after she called for help. PO3 San Pedro also testified that they were able to recover the Sony Betamax machine from the house of a certain Rogelio Abesamis while a search of Santiago's house yielded the chisel used in killing

Eugenia and some bloodied clothes (p. 20, Ibid.).

Another witness, Rene Julian, stated that he was the owner of the tricycle which Fernandez used to drive for a living. This witness testified that early on the morning of April 10, 1991, Fernandez took the tricycle from its garage. Later that afternoon, between 1:30 and 2 o'clock, he saw the tricycle parked in front of Dr. Tolentino's house. At around 7:05 o'clock that evening, accused appellant returned the tricycle and personally handed over P50 as a "boundary" for the day (p. 20, Ibid.).

Dr. Benito Caballero testified that Eugenia Lindain-Tolentino sustained twenty-four stab wounds on different parts of the body, which could have been inflicted by more than one person with the use of sharp, pointed objects, probably two, due to different sizes of the wounds (p. 21, Ibid.).

Accused-appellant Fernandez admitted that he took the tricycle from Rene Julian's garage early on the morning of April 10, 1991. However, having had a quarrel with his wife, he was in no mood to drive it, and so he instead asked his brother, Freddie, to drive it for him. Thus, his alibi is that at around 6 o'clock on that same morning, he took a NELBUSCO bus bound for Isabela, and that he was already some distance away from the scene of the crime when it happened. His wife, Amelia, and his mother, Emma, tried to corroborate accused-appellant's testimony as to the fact of the quarrel and his stay in Isabela (p. 21, Ibid.).

In support of his lone assigned error, accused-appellant Fernandez contends that the trial court gave undue weight to the statements of co-accused Joel Santiago and to the testimony of Dr. Delfin Tolentino. Accused-appellant argues that Santiago's declarations as relayed to the trial court by PO3 San Pedro, should not have been considered as Santiago was not called as a witness in the case and thus could not have been cross-examined on such matter. Accused-appellant likewise faults the trial court for lending credence to the positive identification given by Dr. Delfin Tolentino inasmuch as the doctor's perceptions are not very clear since he was already eighty-two years old at the time of the incident. Furthermore, it is said, Dr. Delfin Tolentino may have pointed to accused-appellant only because of the prior statements of Santiago before the police authorities implicating the accused-appellant (pp. 152-154, Ibid.).

The Court finds the appeal unmeritorious, although obviously accused-appellant's contention that the trial court erred in considering PO3 San Pedro's testimony regarding Santiago's declarations implicating Fernandez is correct. The implicatory statements of Santiago, it must be noted, were not given during the trial of accused-appellant, who was thus deprived of the right of cross-examining and confronting his accuser. Thus, Santiago's statements on this matter, as related to the trial court by PO3 San Pedro, are mere hearsay, which even if not objected to, as in this case, nevertheless do not deserve credence (People vs. Damaso), 212 SCRA 547, 554 [1992]). However, this is not sufficient to exonerate accused-appellant. The Office of the Solicitor General, citing People vs. Barba (203 SCRA 436, 452 [1991]), correctly points out that the positive identification of accused-appellant by Dr. Delfin Tolentino who is untainted by any motive to falsely testify, sufficiently established the guilt of accused-appellant, for the law does not require that positive identification be corroborated to obtain conviction (p. 82, Rollo). The people submits that it does not matter that it was only after such declaration that the police were able to get a lead on Fernandez. Indeed, and most helpfully, the

police got valuable information from their interview with Dr. Delfin Tolentino which led to the successful solution of the crime.

Likewise, there was no proof that Dr. Delfin Tolentino, at the time of the incident, did not possess the proper mental and physical faculties as to make him less than credible witness. The record shows Dr. Delfin Tolentino saw who the malefactors were:

Q: How far or how near were you then from that person who wants to consult you as physician at that time that you saw that person?

A: Probably 3-4 feet, Sir.

(p. 17, TSN, March 22, 1993)

Q: Before you were actually over-powered, your eyes were covered with masking tape, were you able to recognize that person who according to you consulted you for medical treatment?

A: Yes, Sir. He was very near to me and I was able to see him very well.

Q: If that person is present in court, can you identify him, point to him?

A: Yes, Sir.

Q: Please look around before this courtroom and tell us if that person is present?

A: Yes, Sir.

Interpreter:

Witness pointed to a detention prisoner, in uniform and who then asked of his name, answered Fernando Fernandez.

(pp. 18-19, Ibid.)

Q: At the time they were trying to open the safe, how far of how near were you from them?

A: They were just very near me, probably around 1 to 2 feet, Sir.

Q: Can you tell us who was the person who first attempted to open the safe?

A: At first, Fernando Fernandez, Sir (Witness pointing to accused Fernando Fernandez).

Q: And what was the other person doing then when this Fernando Fernandez was first trying open the safe or vault?

A: He was just standing beside me, Sir.

(pp. 23-24, Ibid.)

Verily, Dr. Delfin Tolentino's categorical, clear, and consistent answers during the intensive cross-examination all the more indicated that he possessed all the faculties