

## THIRD DIVISION

[ G.R. No. 212206, July 04, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GABBY CONCEPCION Y NIMENDA AND TOTO MORALES, ACCUSED-APPELLANTS.**

### R E S O L U T I O N

**PEREZ, J.:**

An Information was filed charging appellant Gabby Concepcion y Nimenda (Gabby), Leopoldo Caguring y Losa (Leopoldo), Algel Negapatan y Castro (Algel), Martin Esgana (Martin), and two John Does with the crime of murder.

The accusatory portion of the Information reads:

That on or about the 23<sup>rd</sup> day of June 2004, in Navotas, Metro Manila, and within the jurisdiction of this Honorable [Court], the above-named accused, armed with a gun and bladed weapon, acting with discernment, conspiring, confederating, and mutually helping one another, with intent to kill, treachery and evident premeditation, with cruelty, did then and there willfully, unlawfully and feloniously, attack, assault, shoot and stab one JESSIE ASIS y NAMOC, hitting the victim on the different parts of his body, thereby inflicting upon the victim serious wounds which caused his immediate death.<sup>[1]</sup>

The two John Does were later identified as accused Elloy Caguring (Elloy) and appellant Toto Morales (Toto). An Amended Information<sup>[2]</sup> of the same tenor was filed charging the two accused with Murder. When arraigned, appellants pleaded not guilty to the charge.

Elloy remained at large. Trial ensued.

Reggie Lacsá (Reggie) and Jessie Asis (Jessie) belonged to a group named *Siete Pares*<sup>[3]</sup> while appellants were members of the group *Otso Makulit*. On 23 June 2004, at around 9:00 p.m. at Pier 5, Market 3, Navotas Fishport Complex in Navotas, Metro Manila, Reggie was cleaning Danny Ang's banca when he heard his friend Jessie shout for help. Reggie hid on top of a tolda which is about two to three arms length from the *situs criminis*. He then saw Jessie being chased by Martin, Toto and Elloy. Jessie was running towards the banca where Leopoldo, Algel and Gabby with other companions were waiting for him. Upon seeing Jessie, Leopoldo and Algel held his arms while Toto stabbed him. Thereafter, Jessie was pushed into the water. Thereat, Gabby tried to shoot Jessie but he missed. The other accused roamed around the *banca* and served as Gabby's lookout. Thereafter, they walked away.<sup>[4]</sup>

As a result, Jessie died due to hemorrhagic shock secondary to two stab wounds.<sup>[5]</sup> The police recovered a homemade shotgun and two butcher's knives.

The defense presented Gabby and Algel who both testified that on that fateful night, they, together with Leopoldo, Martin and Toto had just attended a dance party. They left at 10:00 p.m. that same night. While they were walking along Market 3, Navotas Fishport, they were suddenly chased by a group of men armed with a bolo.<sup>[6]</sup> They all fled and went their own separate ways. Gabby and Algel claimed that they do not know Jessie and Reggie.<sup>[7]</sup> Leopoldo, Algel and Martin were all minors at the time of the commission of the crime.

On 4 November 2011, the Regional Trial Court (RTC) of Malabon City, Branch 169, rendered its Decision,<sup>[8]</sup> the dispositive portion of which reads:

**WHEREFORE**, the foregoing considered, this [c]ourt finds the Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY, GABBY CONCEPCION y NIMENDA**, and **TOTO MORALES** guilty beyond reasonable doubt of crime of **MURDER**.

Accused **GABBY CONCEPCION y NIMENDA** and **TOTO MORALES** are sentenced to suffer the penalty of *Reclusion Perpetua*.

Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY**, being minors are entitled to the privileged mitigating circumstance of minority and are sentenced to suffer the penalty of six (6) years of *Prision Mayor* as minimum to fourteen (14) years eight (8) months and one (1) day of *Reclusion Temporal* as maximum.

Considering, however that accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY** were minors at the time of the commission of the crime, the Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) is directed to facilitate the confinement of the said minors in an agricultural camp or other training facilities.

The Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) are likewise directed to make a report with respect to accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY** within ten (10) days from the time this case becomes final and executory.

Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY, GABBY CONCEPCION y NIMENDA** and **TOTO MORALES** are likewise directed to pay the legal heirs of the Jessie Asis y Namoc the

amounts of **FIFTY THOUSAND PESOS (P50,000.00)** as civil indemnity, and **FIFTY THOUSAND PESOS (P50,000.00)** as moral damages and **TWENTY FIVE THOUSAND PESOS (P25,000.00)** as temperate damages.

Let warrant of arrest be issued against ELLOY CAGURING who remains at large up to this time. In the meantime, let this case against accused Elloy Caguring be archived subject to automatic revival upon his arrest.

Furnish the Department of Social Welfare and Development (DSWD) and Bureau of Corrections (BUCOR) of this Decision.<sup>[9]</sup>

The trial court found that the killing was attended by treachery and that appellants conspired to kill Jessie. The trial court gave credence to the testimony of eyewitness Reggie who had no motive to falsely testify against appellants. The trial court also considered the flights of appellant Toto and accused Elloy as indicia of guilt.

Aggrieved, appellants appealed to the Court of Appeals. In their Brief,<sup>[10]</sup> appellants first argue that Reggie's testimony is full of inconsistencies pertaining to the following: (1) number of stab wounds inflicted on the victim; (2) where the victim came prior to the incident; (3) the reason why Reggie was at the *situs criminis*; and (4) whether the victim was alone when the crime happened. Second, appellants stress that Reggie had the motive to falsely testify against them because he is a member of *Siete Pares*, the rival of their group *Otso Makulit*. Third, it was improbable that Reggie witnessed the entire incident because of the fact that he was hiding and the place was not well-lighted. Appellants assert that the prosecution failed to prove treachery to qualify the crime to murder. Appellants add that it was not shown that the stabbing was premeditated or that the accused made some preparations to ensure its execution.

The Court of Appeals, in its Decision<sup>[11]</sup> dated 7 August 2013, affirmed in full the ruling of the RTC, viz.:

**ACCORDINGLY**, the Decision dated November 4, 2011 is **AFFIRMED with MODIFICATION**, as follows:

(1) the awards of civil indemnity and moral damages are increased to P75,000.00 each;

(2) exemplary damages of P30,000[.00] are awarded.<sup>[12]</sup>

The Court of Appeals concurred with the findings of the RTC that prosecution witness Reggie witnessed the incident and positively identified appellants as the assailants. The appellate court dismissed the alleged inconsistencies in the testimony of Reggie as "more apparent than real, if not totally trivial."<sup>[13]</sup>

After a painstaking review of the records, we see no reason to grant the appeal. Both lower courts correctly found appellants guilty beyond reasonable doubt of the crime of murder.