

THIRD DIVISION

[G.R. No. 178233, December 04, 2008]

**JOSEPH A. GANDOL, PLAINTIFF-APPELLEE, VS. PEOPLE OF THE
PHILIPPINES, ACCUSED-APPELLANT.**

[G.R. No. 180510]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO GANDOL Y ALBOR, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

These consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assail the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00059 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Legazpi City, finding Joseph A. Gandol (Joseph) and Eduardo A. Gandol (Eduardo) guilty of the crime of Murder.

In an Amended Information dated 10 September 1997, Joseph, Eduardo and Nestor Ocaña (Nestor) were charged before the RTC with the crime of Murder defined under Article 248 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

That on or about the 1st day of June, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, with intent to kill, did then and there willfully, unlawfully and feloniously, and with treachery and taking advantage of superior strength, attack, assault and stab with a knife one RICARDO ASEJO, JR., thereby inflicting upon the latter injuries which directly caused the death of the said RICARDO ASEJO, JR.^[3]

During the arraignment on 8 December 1997, Joseph, Eduardo and Nestor, with the assistance of counsel *de officio*, pleaded not guilty.^[4] Thereafter, trial on the merits ensued.

On 17 August 1998, after the prosecution presented four witnesses, the Assistant City Prosecutor of Legazpi City filed a motion for the discharge of Nestor as accused to utilize him as a state witness. Without the opposition of the counsel from the remaining accused, the RTC granted said motion on the same date.^[5]

The prosecution presented five witnesses, namely: (1) Senior Police Officer (SPO) 1 Salvador Batas, Jr. (SPO1 Batas), the responding police officer to whom Joseph admitted that he committed the crime; (2) Dr. Modesto T. Kapuno (Dr. Kapuno), the

City Health Officer of Legazpi City, who conducted the autopsy on the victim; (3) Rosita Asejo, mother of the deceased who testified on the actual damages incurred by the family; (4) SPO1 Virgilio Broncano, the Desk Officer of the Legazpi City Philippine National Police, who recorded in the police blotter the killing of Ricardo Asejo, Jr. (Ricardo); and (5) Nestor, who allegedly saw the actual killing of Ricardo.

As documentary evidence, the prosecution offered the following: (1) Exhibit "A" - Medico-Legal Examination Report issued by Dr. Kapuno; (2) Exhibit "B" - a receipt issued by the funeral parlor Nuestra Señora de Salvacion for the funeral services amounting to P5,200.00 and other internment expenses written on a piece of paper in the amount of P20,035.00; (3) Exhibit "C" - Police Blotter of the incident; (4) Exhibit "D" - the knife allegedly used in the killing of Ricardo; (5) Exhibit "E" - the Joint Sworn Affidavit of SPO1 Batas and a certain SPO3 Brigones.

Taken together, the evidence of the prosecution shows that in the afternoon of 1 June 1997, while Nestor was on his way home from work, he chanced upon the Gandol brothers; Eduardo, Joseph and Celso drinking gin in Celso's house.^[6] Nestor arrived home and took a rest in his yard. A little later in the evening, Eduardo and Joseph came and invited Nestor to join them for a drink in the house of Joseph at Taysan, Legazpi City.^[7] Nestor accepted the invitation. Eduardo, Joseph and Nestor arrived at the drinking place at around 6:30 pm.^[8] They positioned themselves in the living room around a table where two bottles of gin were set. At the center of the table was a big kerosene lamp that illuminated the living room. In a while, Ricardo, a brother-in-law of Eduardo and Joseph, arrived and joined the group.^[9] After the group had almost consumed the first bottle, Joseph, with a knife at the back of his waist, stood up and went outside the house.^[10] Joseph called on Ricardo to go outside as well. In deference to his brother-in-law, Ricardo obliged. Eduardo, who was also armed with a knife, followed Ricardo on his way out.^[11] All of a sudden, Joseph stabbed Ricardo twice at the back. Eduardo followed his brother by stabbing Ricardo frontally a couple of times.^[12] Ricardo fell down on his back. Dissatisfied, Eduardo again dealt the victim three stab blows on the chest. Eduardo approached Nestor threatening to kill the latter if he would not help in disposing of the body of the victim.^[13] Overcome by fear, Nestor helped Eduardo in dragging the body to a nearby brook. Joseph remained at the scene and removed the traces of blood splashed all over the door of the house. After the body was thrown beside the brook, Eduardo and Nestor returned to the house with the former poking a knife at the latter's back.^[14] In the house, Eduardo pushed Nestor to a chair. Eduardo heated his knife in the burning embers, and with the reddened knife, he pricked Nestor's right hand with it, and warned him not to tell anybody about the incident.^[15] Thereafter, Joseph told Nestor to accompany him to *Barangay* Busay so he could not be used as a witness against the brothers. Afraid for his life, Nestor went with Joseph and Eduardo. On the way to *Barangay* Busay, Nestor was walking between the two brothers who were holding both his hands. They were proceeding to their destination when, by a stroke of luck, Nestor found a chance to escape when Eduardo ran towards the brook, and Joseph was a little far behind him. He then ran away and went home.^[16] Nestor, however, did not linger in his house. He temporarily stayed with his uncle who resided in another *barangay*. It was while he was in the house of his uncle that he agreed to surrender to the police authorities.^[17]

On the morning of 2 June 1997, responding police officer Batas went to the crime scene to conduct an investigation. When he reached the place, he interviewed Eduardo's mother who told him it was Eduardo who was responsible for the crime. When Eduardo came out of his mother's house, he admitted the killing and voluntarily surrendered to the police officer.^[18]

When Dr. Kapuno conducted an autopsy on the corpse of Ricardo, he found ten stab wounds, six of which were in the chest, three at the back and one in the right arm. He likewise found lacerations in both wrists and abrasions in the chest. Dr. Kapuno opined that the abrasion in the chest was caused by the dragging of the victim face down with his clothes on. He stated that the victim was still alive when he was submerged under water and that the fatal wounds in the chest that reached the heart hastened the death of the victim.^[19] He then concluded that the ultimate cause of the victim's death was asphyxia by drowning. Dr. Kapuno's autopsy report reveals the following findings:

FINDINGS:

I. STAB WOUNDS

A. ANTERIOR CHEST AND ABDOMEN

1. 3.5 cm in length and 15 cm in depth along midsternal line at the nipple line, penetrating the sternum and left ventricle of the heart.
2. 3.5 cm in length and 3 cm in depth, right costal area.
3. 3.5 cm in length and 3.5 cm in depth, miclavicular line, cm below the right nipple.
4. 3.5 cm in length and 5.5 cm in depth, right costal angle.
5. 3.5 cm in length, penetrating the abdominal cavity with evisceration of intestine, 3 cm below the umbilicus
6. 3.5 cm in length, penetrating the abdominal cavity.

B. POSTERIOR CHEST AND BACK

1. 3.5 cm in length and 3 cm in depth, 3 cm lateral to the vertebral line at the level of posterior angle of scapula, left.
2. 3.5 cm in length and 3 in depth, lumbar area, right
3. 3.5 cm in length and 5 cm in depth, lumbar area, right.

C. UPPER EXTREMITIES:

1. 4 cm in length and 3 cm in depth, distal third of arm, posterior aspect, right.

II. LACERATED WOUNDS:

1. 1.0 cm, posterior aspect of wrist area, right
2. 1.5 cm, middle third of forearm, posterior aspect, left.
3. 3. 5.0 cm, gaping medial aspect of forearm, left.

III. ABRASIONS:

- Confluent, bilateral, posterior chest.

OTHER FINDINGS:

- Positive for WASHERWOMAN'S HANDS
- Positive for Alcoholic smell of viscera

LUNGS

- doughy and positive for crepitations
- pale looking

HEART:

- Positive for Stab wound, running antero-posteriorly hitting the left ventricle.

PERICARDIUM & THORACIC CAVITY:

- Positive for Dark Reddish Blood, app. 300 mm.

CAUSE OF DEATH: Asphyxia by Drowning

CONTRIBUTORY CONDITION: Cardiac Tamponade, Secondary to Stab Wound at Heart.^[20]

As to the funeral expenses incurred by the family of the deceased, the prosecution's witness, Rosita Asejo, testified that she paid P5,200.00 for the funeral services, as evidenced by the official receipt issued by the Nuestra Señora de Salvacion funeral parlor.^[21] She also testified that she spent another P19,835.00 for the wake and burial.^[22]

Both Eduardo and Joseph advanced the theory of denial as they pointed at each other as the author of the killing.

On the witness stand, Eduardo admitted that he, Joseph, Nestor and Ricardo were having a drinking spree at Joseph's house. According to him, during the drinking session, Nestor and Ricardo were having an argument over the slow passing around

of the glass of gin. Joseph got mad and asked the squabbling buddies, Nestor and Ricardo, to leave the living room. Thereafter, Joseph went outside and was followed by Ricardo. There, Joseph stabbed Ricardo.

Although Eduardo confessed that he and Nestor were the ones who dragged the lifeless body of the victim to a nearby brook, he, however, explained that he was coerced by Joseph into doing such.^[23]

On his part, Joseph claimed that at some point during the drinking spree, he fell asleep and was awakened by the noise of Ricardo and Nestor quarrelling. Then he saw his brother Eduardo enter the house with a knife and told him: "*Mano ta nadeskuedo ko si bayaw*" (I accidentally stabbed my brother-in-law).^[24]

In a decision dated 7 January 2002, the RTC found Eduardo guilty beyond reasonable doubt of the crime charged and imposed upon him the penalty of *reclusion perpetua*. The RTC stated that while relationship -- the victim was a brother-in-law of both Eduardo and Joseph -- could have earned the death penalty for Eduardo, he was able to present one mitigating circumstance of surrender to offset the aggravating circumstance of relationship. On the other hand, the RTC adjudged Joseph guilty of murder aggravated by relationship and imposed on him the supreme penalty of death.

The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the accused Eduardo Gandol y Albor and Joseph Gandol y Albor are hereby found GUILTY beyond reasonable doubt of the crime of murder. Accordingly, the accused Eduardo Gandol y Albor is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua*. The accused Joseph Gandol y Albor is hereby sentenced to suffer the supreme penalty of death.

Both accused are hereby ordered to pay jointly and severally, the sum of P5,000.00 as actual funeral expenses, P50,000.00 as indemnity for the death of Ricardo Asejo, Jr. and the further sum of P10,000.00 as moral damages pursuant to Art. 2219 (1) of the Civil Code. Costs against the accused.^[25]

Eduardo and Joseph appealed the RTC decision to the Court of Appeals. In a decision dated 27 September 2006, the Court of Appeals affirmed the murder convictions of Eduardo and Joseph but modified the penalty imposed on the latter by reducing the penalty from death to *reclusion perpetua* pursuant to Republic Act No. 9346 which abolished the imposition of the death penalty. The judgment provides:

WHEREFORE, the January 7, 2002 Decision of the Regional Trial Court of Legazpi City, Branch 6, in Criminal Case No. 7517, is AFFIRMED with modification reducing the penalty imposed upon Joseph Gandol to RECLUSION PERPETUA. The Decision is further modified ordering both accused to pay jointly and severally, the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages to the legal heirs of Ricardo Asejo, Jr. All other aspects of the Decision are maintained.^[26]