

## EN BANC

[ G.R. No. 147667, January 21, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RESTY TIGLE,  
APPELLANT.**

### DECISION

**CARPIO, J.:**

#### The Case

On automatic review is the Decision<sup>[1]</sup> dated 17 January 2001 of the Regional Trial Court of Ozamis City, Branch 15, 10<sup>th</sup> Judicial Region ("trial court") in Criminal Case No. 2193. The trial court found appellant Resty Tigle ("appellant") guilty of murder qualified by treachery and attended by the aggravating circumstances of evident premeditation, taking advantage of superior strength, and disregard of the age and sex of the victim. The trial court sentenced appellant to suffer the death penalty and to pay the heirs of the victim P50,000 as civil indemnity, P30,000 as moral damages, as well as to pay the costs.

#### The Charge

The Information charged appellant with the crime of murder as follows:

That on or about the evening of December 17, 1997 in Barangay Capucao C, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there with malice afterthought [sic], evident premeditation and with deliberate intent to take the life of Luisa Lapera, willfully, unlawfully, feloniously, suddenly, unexpectedly, and treacherously attack the latter with a bolo directing blows against the vital parts of the body of said Luisa Lapera thereby inflicting upon her mortal wounds, which directly caused the death of said Luisa Lapera.

CONTRARY to Article 248 of the Revised Penal Code.<sup>[2]</sup>

Appellant was committed to the City Jail of Ozamiz City on 6 January 1998.<sup>[3]</sup>

#### Arraignment and Plea

Appellant pleaded not guilty on his arraignment on 26 February 1998. However, during the pre-trial, appellant manifested that he would like to withdraw his plea of not guilty and replace it with a plea of guilty to the lesser offense of homicide. The prosecution rejected this manifestation. Appellant admitted that he killed the victim Luisa Lapera ("Luisa") but invoked the mitigating circumstance of incomplete self-defense. The prosecution also rejected the claim of incomplete self-defense.

## **The Trial**

### **The Version of the Prosecution**

Thereafter, trial commenced. The prosecution presented three witnesses: (1) appellant's mother-in-law Mrs. Catalina Clarin ("Catalina"); (2) Dr. Daniel T. Medina; and (3) the victim's son Saturnino Lapera ("Saturnino").

Catalina testified that appellant killed Luisa. At about 8:30 o'clock in the evening of 17 December 1997, Luisa was caroling with some kids at Catalina's house. After the carolers left, appellant, his two friends, and two of Catalina's sons drank beer on the porch. At around 10:00 o'clock in the evening, Luisa returned to buy cigarettes from Catalina. Luisa came up to the porch, and Catalina sold her P2 worth of cigarettes. Luisa sat on the bench and tried to start a conversation with her. Catalina told Luisa that she could not attend to her because she would pray the rosary. Catalina then went inside the house. While Catalina was praying, she heard the sound of a falling object outside. Catalina went out and saw appellant holding a bolo. Appellant's face was bloodied. Luisa was lying face down in front of appellant. Catalina asked appellant, "What's wrong, Resty?" Appellant allegedly replied, "You are not included, Ma. Just put off the light." Catalina went back inside<sup>[4]</sup> and roused her husband. When she looked out again, appellant and Luisa were no longer on the porch stairs.<sup>[5]</sup> Appellant later returned to Catalina's house and slept there.<sup>[6]</sup>

The barangay captain, together with Civilian Volunteer Officers ("CVOs"), went to Catalina's house around midnight. The barangay captain asked what happened, but Catalina was unable to talk coherently to them. The barangay captain and the CVOs were looking for appellant. They left after Catalina pointed to where appellant was sleeping. The barangay captain, accompanied by policemen this time, returned to Catalina's house at 4:00 o'clock in the morning. The barangay captain informed Catalina that appellant killed Luisa. The police took appellant with them. Catalina declared that the bolo appellant used to stab Luisa belonged to her husband. She did not know how appellant got it.<sup>[7]</sup>

Dr. Daniel T. Medina conducted the post-mortem examination on Luisa. He testified that Luisa suffered six stab wounds caused by a sharp instrument. He testified thus:

Q So in this sketch, how many stab wounds did the victim suffer?

A Six (6) stab wounds.

Q Are they all vital?

A No. Only one (1) I mentioned here the parasternal area penetrating the heart.

x x x

Q Are they all frontal?

A Yes, sir. This stab wound 3.5 cm in front and one (1) at the back or left side of the back and stab wound at the left thoracic [sic] cavity.

- Q Do you mean to say, that the victim was stabbed at the back also?
- A Yes, sir. One at the back and one in front and another wound at the head medial area.
- Q Showing to us the wounds, what instrument could have caused these wounds?
- A Sharp instrument.
- Q Like bolo?
- A Yes, sir?
- Q And what was the caused [sic] of the death of the late Luisa Lapera?
- A Hyphovolemic [sic] shock secondary to stab wounds. Meaning, loss of blood. In fact I stated that in the death certificate.
- Q From your record, what wound that caused [sic] the death of the late Luisa Lapera?
- A Stab wound in front at the left side parasternal area going to the heart.
- Q Was the heart punctured?
- A Yes, sir.
- Q Do you remember doctor, if you have signed a death certificate?
- A Yes, sir.
- Q I am showing to you that death certificate, tell the court what relation has that to the death certificate you issued?
- A This is the one, sir. The cause of death [is] cardiac arrest, secondary to hyphobulemic [sic] shock, secondary to multiple stab wounds in the body.
- Q Is that the same certificate of death you issued?
- A Yes, sir.<sup>[8]</sup>

The prosecution offered Saturnino's testimony to prove there was evident premeditation in the killing of Luisa. Saturnino testified that he was hired as an overseer in Blanca Nieve Kelly's plantation. He saw appellant stealing coconuts from this plantation. At around 6:00 o'clock in the evening of 14 May 1994, Saturnino was on his way home from a basketball game when he saw someone climbing a coconut tree. He did not recognize this person because it was already dark. Saturnino fetched Barangay Councilor Marcelo Angne and a CVO but all they were able to see were coconuts arranged in a pile. They guarded the place until 9:00 o'clock in the evening. Saturnino returned at 6:00 o'clock in the morning of the next day. He saw appellant getting coconuts from the pile. On seeing Saturnino, appellant ran and disappeared among the bushes. Saturnino executed an affidavit on the matter. Appellant later advised Saturnino not to testify in the case for qualified theft, or else his family would be killed.<sup>[9]</sup>

### **The Version of the Defense**

The defense also presented three witnesses: (1) appellant Resty Tigle, (2) Wilfredo Flores ("Wilfredo"), and (3) Allan Roa ("Allan").

Appellant Resty Tigle did not offer an alibi. He maintained that what he did was done in incomplete self-defense. Appellant confirmed that he was in his parents-in-law's house in the evening of 17 December 1997. Wilfredo and Allan were drinking beer on the porch. Appellant came out from the kitchen and was on the mouth of the stairway when Luisa suddenly struck him on the left eyebrow with an empty beer bottle. She was standing on the second step of the stairs, directly in front of appellant. There was blood on appellant's face. At this point, appellant saw a bolo under the bench. He took it, and stabbed Luisa. Luisa fell on the stairway. Wilfredo and Allan fled from the scene. Catalina looked through the window and asked, "What is that, Resty?" Appellant supposedly replied in the Visayan dialect, "Be not afraid, for you are not included, Ma." Appellant then carried Luisa's body away from his parents-in-law's house.<sup>[10]</sup> On redirect examination, appellant showed the scar on his left eyebrow to the court.<sup>[11]</sup>

Wilfredo testified that before going to the house of his nephew Hilario Calunsag, he dropped by Catalina's house and bought a bottle of beer. He was drinking beer on the porch with Allan when Luisa arrived to buy cigarettes. After buying cigarettes from Catalina, Luisa sat on the bench. Wilfredo and Allan offered Luisa a glass of beer, which she refused. When appellant came out to the porch from the kitchen, Luisa suddenly struck appellant on the left eyebrow with an empty bottle of beer. Appellant saw a bolo under the bench and immediately used it to stab Luisa. Wilfredo saw that appellant stabbed Luisa only once before she fell down the stairs. After seeing this, Wilfredo and Allan fled to the house of Hilario Calunsag.<sup>[12]</sup> During cross-examination, Wilfredo stated that he did not see Catalina's two sons while he was on the porch.<sup>[13]</sup>

Allan corroborated Wilfredo's account of the incident. Wilfredo bought a bottle of beer from Catalina. They were drinking beer on the porch when Luisa arrived to buy cigarettes. Luisa then sat on the bench where Wilfredo and Allan were also seated. The two men offered Luisa a glass of beer, which she refused. When appellant appeared, Luisa hit him on the left eyebrow with an empty beer bottle. Appellant saw a bolo underneath a bench and stabbed Luisa. Luisa fell down the stairs. Wilfredo and Allan fled to the house of Hilario Calunsag. They were afraid of appellant, as he looked furious.<sup>[14]</sup>

Both Wilfredo and Allan did not know of any previous dispute between appellant and Luisa.<sup>[15]</sup>

### **The Trial Court's Ruling**

The trial court found appellant guilty of murder. The trial court stated that a spirit of lawlessness, anger and revenge motivated appellant when he killed Luisa. The trial court's version of the incident reads:

[U]pon seeing Luisa Lapera buying cigarettes in the porch of Catalina Clarin the accused got the bolo of his father-in-law and waited down

below the stairs for the victim to come down. And when the victim was coming down the accused met her with a stab directed at the parasternal area penetrating the heart. The victim fell towards the accused but the latter avoided [her] and the victim fell to the ground. Then the accused delivered more stabs on the fallen victim and hacked the medial area of the head. Having accomplished his criminal acts the accused told [his] mother-in-law to [turn] off the light and to close the door. He carried the lifeless body of the victim to a distance away from the scene of the crime towards the house of Saturnino Lapera.<sup>[16]</sup>

The trial court appreciated treachery to qualify the killing to murder. Evident premeditation, taking advantage of superior strength, disregard of the respect due to the offended party on account of her age and sex were appreciated as aggravating circumstances. The dispositive portion of the trial court's decision reads:

WHEREFORE, the Court sentences the accused Resty Tigue to the penalty of Death and to pay the heirs of the victim the sum of P50,000.00 for her life and P30,000.00 as moral damages; and to pay the cost.

Immediate commitment of Resty Tigue to the National Bilibid Penitentiary, Muntinlupa City is hereby ordered.

SO ORDERED.<sup>[17]</sup>

This case is now before us on automatic appeal, pursuant to Article 47 of the Revised Penal Code.

### **The Issues**

Appellant raises the following errors:

#### **I**

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE THE FACT THAT NO QUALIFYING AND AGGRAVATING CIRCUMSTANCES HAD BEEN PROVED BEYOND REASONABLE DOUBT.

#### **II**

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

### **The Court's Ruling**

After weighing the evidence, we find appellant guilty of homicide, not murder.

### **Specificity of the Qualifying Circumstances**

In his reply brief, appellant cited ***People v. Alba***<sup>[18]</sup> and ***People v. Manlansing***<sup>[19]</sup> as bases for the non-imposition of the death penalty. According to appellant, although the Information alleged treachery and evident premeditation, the