

EN BANC

[G.R. No. 140870, February 11, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LINO ABUJAN
ALIAS "EKE" AND RICHARD VALMORES ALIAS "CARDO,"
APPELLANTS.**

D E C I S I O N

QUISUMBING, J.:

For automatic review is the judgment^[1] dated October 29, 1999, of the Regional Trial Court of Cagayan de Oro City, Branch 19, in Criminal Case No. 98-696 finding herein appellants Lino Abujan and Richard^[2] Valmores guilty of murder and imposing upon them the penalty of death. In the said decision, appellants were also ordered to pay the heirs of the victim, Reselda Patong, the sum of P75,000, as civil indemnity, P50,000 as moral damages, and reimburse their actual expenses of P170,000, including the attorney's fees of P10,000, and to pay the costs.

The facts, as borne by the records, are as follows:

In an Information dated August 18, 1998, appellants were charged of the murder of Reselda^[3] Patong, committed as follows:

That on the 1st day of March, 1998 at about 3:00 o'clock in the afternoon, more or less at Barangay Wagoron, Municipality of Manticao, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, with intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab one Reselda Patong, hitting her on different parts of her body, with the use of bladed weapon which caused victim instantaneous death.

The crime was committed with the attendance of the following aggravating circumstances, to wit:

1. That the act was committed with disregard of the respect due to the victim on account of her sex;
2. That the crime was committed in an uninhabited place;
3. That the act was committed with evidence (sic) premeditation;
4. That the act was committed by taking advantage of superior strength;

5. That the act was committed with treachery;

6. That means was employed or circumstances brought about when the crime was committed which add ignominy to the natural effects of the act by means of removing the flesh of the right thigh of the victim;

7. That the crime was committed with cruelty;

CONTRARY TO and in violation of Article 248 and Article 14 of the Revised Penal Code as amended by R.A. 7659.^[4]

Upon being arraigned, appellants pleaded not guilty and trial thereafter ensued.

The first witness for the prosecution, Edwin Longakit, testified that on March 1, 1998 at about 4:00 p.m. while he was on his way to work in Digkilaan, Misamis Oriental, he saw appellants squatting on the road at Sitio Wagoron.^[5] According to the witness, appellant Abujan asked him where he was going. He replied that he was going to his place of work. He said he noticed that appellant Abujan was holding a knife and had blood on his forehead, chest and stomach.^[6]

The next prosecution witness, Victoriano Ramos, testified that at about 3:00 p.m. on March 1, 1998, at Sitio Wagoron, while he was on his way home to Sitio Kilablab, Mahayahay, he saw appellants from a distance of about three meters talking with the victim. He said he heard the victim say, "I'm in a hurry," to which appellant Valmores responded, "Don't go, as if you are not from this place." He averred he then heard the victim retort, "It's already late in the afternoon."^[7]

The prosecution then presented Carlito Aguilar, who testified that on March 1, 1998, at about 8:00-11:00 a.m., he was with appellants and three other men drinking *tuba* and Tanduay rum at the store of one Fredo Lacbain^[8] at Tuod, Manticao, Misamis Oriental. He testified he saw appellant Valmores slice a chicken thigh using a knife^[9] with no handle, but with a scabbard made of carton, which was the same knife he saw thrust on the victim's chest at the crime scene. He further testified that they stopped drinking when appellant Lino Abujan invited them to go to the mountain to get some sex, which the witness declined as he had to return home.^[10] Before his drinking buddies left, continued the witness, he observed that appellant Valmores took the knife from the table where it lay and tucked it in his armpit.^[11]

The next witness for the prosecution was Dr. Tammy Uy, the medico-legal officer at the National Bureau of Investigation (NBI) in Cagayan de Oro who conducted the autopsy on the victim. He testified that, basing on his examination of the seventeen stab wounds inflicted on the victim, he concluded that there must have been one or more assailants employing one or more bladed instruments.^[12]

SPO2 Leonardo Macasero, of the Manticao Police Station, testified that he arrived at the crime scene at about 9:30 a.m. on March 6, 1998. Together with the municipal health officer, they recovered a woman's panty, slippers, strands of hair, a knife without a handle thrust on the victim's left chest, a scabbard, a man's brown belt with stainless buckle, a live bullet of caliber 5.56, a yellow cartolina paper, and a

man's photograph.^[13]

Atty. Alex Caburnay of the NBI in Iligan City next testified. He said he was the agent in charge of investigating this case. According to this witness, on March 11, 1998, the Manticao Police Station turned over to him the following items recovered from the crime scene: (1) strands of hair of the victim; (2) a live ammunition of caliber 5.56; (3) a panty; (4) a pair of brown lady sandals; (5) a man's brown belt with stainless buckle; (6) a face towel; (7) a yellow cartolina paper; (8) a double-bladed hunting knife without handle; (9) a scabbard; and (10) a picture of the alleged suitor of the victim.^[14]

For the defense, the first witness was appellant Lino Abujan. He denied the charges against him. He testified that on March 1, 1998 from 9:00-11:00 a.m., he was in *Purok* 8, Tuod, Manticao, Misamis Oriental, drinking 1 gallon of *tuba* and 1 pocket-size *Tanduay* rum with Ruben Habla^[15], Jesus Calisagan, Marcos Alicabo^[16], Castor Alicabo, Carlito Aguilar, Tata Mansilao, and co-appellant Valmores. He stated that they did not have any chicken thigh during their drinking session. He claimed that at about 11:20 a.m., he went home, helped his mother with the household chores, and took his lunch. Subsequently, he said that the *purok* president, Timoteo Gaid,^[17] came to their house. Gaid informed them that there would be a *purok* meeting at 1:00 p.m. that day to be held at the waiting shed of Tuod Manticao, Misamis Oriental. According to appellant Abujan, he attended the said meeting, which started at 2:00 p.m. and ended at 3:00 p.m.^[18] From 3:00-5:00 p.m. that day, he said he played volleyball with Gerry Buna^[19], Castor Alicabo, Marcos Alicabo, Richard Valmores, Ruben Habla, and Tata Mansilao. After playing volleyball, he said he went home.^[20] He further testified that on March 9, 1998, while attending the wake of the victim, he was arrested by Atty. Caburnay. He also testified that he was mauled with a *rattan* stick by Caburnay to force him to confess that he killed the victim.^[21]

Abujan's testimony was essentially corroborated by the other appellant, Richard Valmores. Aside from denying the charge against him, Valmores also denied having partaken of a chicken thigh during their drinking session in the morning of March 1, 1998, much less using a knife to slice the chicken.^[22] He stated that after downing 1 gallon of *tuba* and 1 pocket size *Tanduay* rum with his drinking pals, he went home and took his lunch. He then helped his father with the household chores. Then at about 1:00 p.m. of that day, Valmores said, his co-appellant Abujan passed by their house and invited him to play volleyball. Thus, he claimed that he alternately played volleyball and attended the *purok* meeting from 2:00-3:00 p.m. that day. Then from 3:00 until 5:00 p.m., he played volleyball continuously. Thereafter, according to the witness, he went home.^[23] He said he was arrested at his house by Atty. Caburnay in the evening of March 9, 1998.^[24]

The next defense witness was *purok* president Timoteo Gaid. He stated that on March 1, 1998, between 1:00-3:00 p.m. at Tuod, Manticao, Misamis Oriental, while he was attending the *purok* meeting he saw appellants Abujan and Valmores playing volleyball with other men in front of the waiting shed.^[25] However, on cross-examination, he denied that in the afternoon of March 1, 1998, he went to appellant Abujan's house to invite him to attend the *purok* meeting, as earlier testified to by

the said appellant.^[26]

Another witness for the defense, Ruben Habla, testified that on March 1, 1998 between 9:00-11:00 a.m., he was with Gerry^[27] Buna, Jesus Kalisagan, Marcos Alicabo, Carlito Aguilar, and appellants Abujan and Valmores, on a drinking spree at the store of one Lakbain. He also denied that they had a chicken thigh or that anyone of his companions carried a knife. When they finished drinking, he said he went straight home to take his lunch. He then headed to the waiting shed of *Purok* 8 to attend the *purok* meeting. He stated that from the waiting shed, he saw appellants Abujan and Valmores playing volleyball. He testified that after the *purok* meeting ended at about 3:00 p.m., he played volleyball with Valmores and the others while Abujan stood nearby watching them play until 5:00 p.m. that day.^[28]

The last defense witness was Rally Buna. He testified that on March 1, 1998 at around 3:00 p.m., he saw the victim, Reselda Patong, pass his house. He further testified that a man was following her, but he was sure the man was neither appellant Abujan nor appellant Valmores as he could easily identify both from either the front or back view. He also testified that during custodial investigation, he was mauled by Atty. Caburnay and his men to implicate appellants Abujan and Valmores. He said his chest hair was pulled off, his hands were beaten with a stick, and his right head was struck with a .45 caliber pistol.^[29]

After trial, the court found the following circumstantial evidence sufficient to convict both appellants of murder:

"1. From 9:00 to 11:00 A.M. of March 1, 1998 the two accused and their friends: Ruben Jabla, Jesus Calisayan, Marcos Alicabo, Castor Alicabo, Tata Mansilao and prosecution witness Carlito Aguilar got into a drinking spree of tuba and Tanduay Rhum which they downed with 2 chicken thighs.

"2. They stopped their drinking at 11:00 A.M. without having eaten their lunch yet.

"3. At their drinking session prosecution witness Carlito Aguilar, a friend of both the accused, saw Richard Valmores use his knife to cut the chicken thighs.

"4. The drinking session was stopped upon suggestion of Kino (sic) Abujan as he and other were going out to the mountain to find sex ('saplot').

"5. Later, at 4:00 P.M. prosecution Edwin Longakit passed by the 2 accused squatting by the roadside when he was hiking toward his place of work in Digkilaan, Wagoron, Manticao, Mis. Or. Edwin noticed blood stains on Lino's forehead, chest and stomach. He saw Lino Abujan holding a knife with his right hand.

"6. The accused had no shirts on.

"7. Victim Reselda Patong was to take her semi final exam on Mar.