

## THIRD DIVISION

[ G.R. No. 144598, February 06, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RANIL DUETES (AT LARGE), BASILIO QUIJADA @ "KOKOY," (AT LARGE), REYMAN FONCARDAS & RITCHIE DEQUIXIA (AT LARGE), ACCUSED,**  
**REYMAN FONCARDAS, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

From the Decision<sup>[1]</sup> of the Regional Trial Court, Branch 17, Davao City finding appellant Reyman Foncardas guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Napoleon Erno (the victim) P50,000.00 as civil indemnity and P50,000.00 as moral damages, appellant comes to this Court on appeal.

Appellant, together with Ranil Duetes, Basilio Quijada alias "Kokoy" and Ritchie Dequixia, was indicted for murder under an information dated September 1, 1997 which reads:

The undersigned accuses the above named accused of the crime of Murder, under Art. 248 of the Revised Penal Code, as amended by R. A. 7659, committed as follows:

That on or about May 14, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, with several unidentified companions, with treachery and evident premeditation, armed with a piece of wood, and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and struck with the piece of wood one Napoleon Erno, thereby inflicting upon the latter mortal wounds which caused his death.

CONTRARY TO LAW.<sup>[2]</sup>

As Duetes, Quijada and Dequixia remained at large, only appellant, assisted by his counsel, was arraigned. He entered a plea of not guilty,<sup>[3]</sup> whereupon trial commenced.

From the evidence for the prosecution, the following version is established.

At around 12:00 midnight of May 14, 1997, after having a drinking spree at Romeo's Videoke located at Trading Boulevard, Duetes, Quijada, Dequixia, Marco Mariaca (Mariaca) and appellant (the group) walked some 50 meters to the corner of Trading

Boulevard, fronting Rizal Extension, where it stayed for five minutes. Realizing that it had run out of cigarettes, the group proceeded to Carol's Store,<sup>[4]</sup> but returned to the corner of Trading Boulevard, fronting Rizal Extension, to sit, smoke and while the time away.

Soon after, the victim who had just purchased a bottle of Coke from Carol's Store, repaired to the corner of Trading Boulevard, fronting Rizal Extension where he bought *balut* from a vendor. About 5 meters away from the group, the victim ate *balut* and drank the coke. Quijada then approached the victim, and the two started talking while Duetes, Dequixia, Mariaca, and appellant just watched and smoked.

Minutes later, Duetes approached the victim and Quijada and sat down behind the two. Not long after, Quijada was heard shouting something in the Visayan dialect, allegedly angered by the victim's not acceding to his demands for money.

Without any warning, Duetes pulled the victim from behind, causing the latter to fall down on his back. Appellant and Dequixia rushed to join their companions Duetes and Quijada. Apparently, the victim was able to rise. Appellant, Quijada, Duetes and Dequixia, however, pummeled him with their fists while Mariaca looked on in shock and disbelief. The mauling of the victim continued even as Quijada left the scene momentarily. When Quijada returned bearing a piece of wood about two and half feet long, appellant and Duetes who were standing behind the victim, held the latter, rendering him helpless, as Quijada struck the victim's nape with the piece of wood. The victim fell down after being struck. Duetes then told Mariaca, who was merely looking at his companions, to run. Mariaca did as he was told and immediately ran away from the scene.

Seeing that a person was struck by a piece of wood, garbage collectors Quirino Cabag (Cabag), Ronil Viilano, Roman Tajo, and the driver of the garbage truck, who were 50 meters away, shouted at the assailants and approached them. Quijada thereupon told his companions to move away from the victim, who was already sprawled helplessly on the ground. Quijada continued to strike at the victim's head, however. When the garbage collectors were about 7 meters away, appellant, Duetes and Dequixia scampered away even as Quijada continued to assault the victim with the piece of wood. Before the garbage collectors could apprehend him, however, Quijada speedily left the scene of the crime.

Gathered from the postmortem examination conducted on the victim by Dr. Gene. L. Gulanes, a medico-legal officer at the Davao City Health Office, are the following:

#### POSTMORTEM FINDINGS

Pallor, marked generalized

Body in Rigor Mortis

Lacerated wound located at frontal area midline 2.5 x 1.3 cms; 3.5 x 1.3 cms, located at supraorbital area, left; 3.2 x 0.8 cms, located at left lateral canthus; 2.5 x 1.0 cms, located at right lateral canthus.

Hematoma, 2.0 x 4.5 cms, periorbital area, right; 6.0 x 5.0 cms, periorbital area, left; 10.0 x 6.0 cms, zygomatic area, left.

Fracture, comminuted: FACIAL BONE EXCLUDING MANDIBULAR, frontal; parietal; temporal bone; left, occipital; base of the skull.

Hemorrhage, intracerebral, intracranial, meningeal, generalized.

Stomach 1/4 filled with partially digested food particles.

Other visceral organs pale

CAUSE OF DEATH: Severe Hemorrhage Secondary to skull fracture.<sup>[5]</sup>

Hence, appellant and his co-accused's indictment.

Denying the accusation, appellant claimed that although he was seated at a bench outside Carol's store, smoking, he did not participate in any manner in the mauling of the victim, as he was merely an innocent bystander.<sup>[6]</sup>

Discrediting appellant's denial in favor of the positive and categorical testimony of prosecution witnesses Cabag and Mariaca that they saw him as part of the group that mauled the victim and that he held the victim as Quijada struck the victim with the piece of wood, the trial court convicted him of murder by Decision<sup>[7]</sup> of May 12, 2000 the dispositive portion of which is quoted verbatim:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused, Reyman Foncardas of the offense charged beyond reasonable doubt, without any aggravating circumstance proved by the prosecution, attendant in the commission of the offense charged of murder, with inherent attending circumstance of treachery and conspiracy among all his co-accused, on the resultant offense, accused, REYMAN FONCARDAS, is sentenced to suffer the penalty of RECLUSION PERPETUA, together with all accessory penalty as provided for by law.

Pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused Reyman Foncardas, is moreover ordered to pay the mother of the deceased, Fedelina Erno-Ignacio, the amount of P50,000.00 by way of civil indemnity and another P50,000.00 as moral damages, for all the sorrow and worries she suffered, as a result of the death of her son, Napoleon Erno.

On account of this judgment, issue warrant for the immediate arrest of the other accused, Ranil Duetes, Basilio Quijada and Ritchie Dequixia, for their prosecution and immediate trial of the offense charged, after their arrest.

SO ORDERED.<sup>[8]</sup>

Hence, the present appeal which ascribes the following errors to the trial court:

I.

THE TRIAL COURT ERRED IN HOLDING THAT "THE ACCUSED REYMAN FONCARDAS WAS TOGETHER IN THE GROUP OF QUEJADA, DUETES AND

DEQUI×A.”

II.

THE TRIAL COURT ERRED IN HOLDING “THAT THERE IS NO EVIDENCE ON RECORD TO PROVE MARCO MARIACA WAS MOTIVATED WITH PERSONAL AND MALICIOUS INCLINATION IN TESTIFYING AGAINST ACCUSED REYMAN FONCARDAS.”

III.

THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS CONSPIRACY AMONG THE ACCUSED WHICH INCLUDES REYMAN FONCARDAS [AND]

IV.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT.<sup>[9]</sup>

In his brief, appellant argues that the trial court erred in relying on the testimony of Mariaca upon a finding that there was no evidence on record to prove that Mariaca was motivated by malice in testifying against appellant just to avoid being himself implicated in the death of the victim.

Additionally, appellant argues that the testimony of Cabag should not be believed due to poor visibility in the *locus criminis* and the improbability that, as claimed by Cabag, the assailant stared at the garbage collectors for such length of time to enable Cabag to remember his face.

In bolstering his case, appellant highlights the inconsistency between the testimonies of Mariaca and Cabag as to the number of persons during the incident.

Once again, this Court is confronted with the issue of credibility of witnesses. The rule is well settled that the findings of fact and the assessment of the credibility of witnesses is a matter best left to the trial court.

The rationale for this doctrine as explained in *People vs. Cayabyab* is that the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused.

That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent assertion; or the sudden pallor of a discovered lie; or the tremulous mutter of a reluctant answer; or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion, or looked down in confession, or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.<sup>[10]</sup> (citations omitted)

Such settled rule aside, a close scrutiny of the testimonies of both prosecution witnesses reveals that appellant was categorically and positively identified as one of the perpetrators of the crime. Mariaca testified thus:

Q: And what did this actually (sic) Foncardas and Dequiña do when they approached Napoleon Erno?

A: They helped one another in mauling him.

Q: Now, for how long more or less was the mauling?

A: About 5 minutes because he fell down and he was able to stand-up again.

Q: What happened next to Napoleon Erno?

A: He was held and again Duetes mauled him.

Q: **How about Foncardas, what else did he do?**

A: **He also helped in mauling Napoleon Erno.**

Q: After that what did Foncardas do if any?

A: Napoleon Erno became dizzy or he was groggy, it appear to me he held on to a table.

Q: **What did Foncardas do?**

A: **They again approached him at the back of Erno, and they held both hands of Erno.**

Q: **Who held the hands of Napoleon Erno?**

A: **Duetes and Foncardas.**

Q: And after that what did Foncardas do?

A: At that instance Cocoy arrived.

Q: Who is this Cocoy?

A: Quijada.

Q: You are referring to Cocoy who is one of the accused in this case, but he is at large?

A: Yes, sir.

Q: Where did Cocoy come from?

A: I don't know because all of a sudden he appeared.

Q: When he appeared did he join the group?

A: He was already carrying a piece of wood.

Q: You are referring to Quijada?

A: Yes, sir.<sup>[11]</sup>