

## SECOND DIVISION

[ G.R. No. 139069, June 17, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NIÑO GARIN,  
APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

This is an appeal of the Decision of the Regional Trial Court of Caloocan City, Branch 127, convicting the appellant, Niño Garin, of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information against the appellant reads:

That on or about the 3<sup>rd</sup> day of April 1997 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously stab one ELEAZAR GALANG, thereby inflicting upon the victim serious physical injuries which injuries caused his death.

CONTRARY TO LAW.<sup>[1]</sup>

Upon arraignment, the appellant, assisted by counsel, entered a plea of not guilty.<sup>[2]</sup>

#### The Case for the Prosecution<sup>[3]</sup>

Eleazar Galang, a fourteen-year-old student, lived with his parents at Barangay 176, Zone 15, Phase 8-C, Lot 19, Block 5, Bagong Silang, Caloocan City.<sup>[4]</sup> His father eked out a living as a Metro Aide,<sup>[5]</sup> while his mother, Florencia, was a plain housewife.<sup>[6]</sup>

In the afternoon of April 3, 1997, Eleazar and his younger brother Mario, along with their friends Jonathan, Demdem, Ikot, and Marlon,<sup>[7]</sup> went swimming in a river at Phase 7, Bagong Silang, Caloocan City, to beat the scorching heat of the noonday sun.<sup>[8]</sup> As they were bathing in the river at around 3:30 p.m., they espied the appellant, a toughie in the community, and his notorious friends<sup>[9]</sup> coming towards their direction.<sup>[10]</sup> Sensing danger, the boys hurriedly came out of the water half-naked, and made a dash for safety uphill, leaving behind Eleazar, who opted to get dressed first. Mario, realizing that he had left his older brother behind, stopped short and waited for the latter.<sup>[11]</sup>

Meanwhile, the appellant slowly<sup>[12]</sup> approached Eleazar, drew out his seven-inch butcher's knife<sup>[13]</sup> and poked it at the latter.<sup>[14]</sup> Eleazar attempted to break away and run for his life, but he lost his balance, causing him to fall prostrate on the ground.<sup>[15]</sup> Seeing Eleazar's hapless condition, the appellant seized the moment, went on top of the victim's back, and stabbed him.<sup>[16]</sup> Mario, who was about six to seven meters away, could only watch helplessly at his *kuya* being mercilessly stabbed to death by the appellant.<sup>[17]</sup>

Thereafter, the appellant dismounted from Eleazar, checked out his victim, looked at Mario and shouted in the vernacular "*Boy, ang kapatid mo patay na, doon mo siya makikita sa ilog.*" (Your brother is dead, you'll see him in the river).<sup>[18]</sup>

Whereupon, Mario ran home and related the incident to his parents.<sup>[19]</sup> Upon hearing the terrible news, the latter immediately proceeded to the place where the aforesaid incident took place, and found the bloodied corpse of Eleazar sprawled by the riverbank. Florencia could not believe her eyes. She embraced the lifeless body of his son.<sup>[20]</sup> They got a tricycle and brought the victim to the Tala Hospital, where he was pronounced dead on arrival.<sup>[21]</sup> The victim's father reported the incident to the Caloocan Police Station 6.<sup>[22]</sup>

The cadaver was autopsied at the St. Matthew Funeral Homes by Dr. Dominic Aguda, a Medico-Legal Officer of the National Bureau of Investigation. His post-mortem examination showed the following findings:

Cyanosis, lips and fingernail beds

Brain – pale

Heart – chambers, contain a small amount of clotted blood

Stab wound

- 2.5 cms. gaping, located at the back, right, 6.0 cms. from the posterior median line, 115.0 cms. from the right, one end is sharp, the other is contused, directed forward then upwards, involving the skin, causing a clean-cut fracture on the 11th rib, posterior entering the right thoracic cavity and severing the lower lobe of the right lung with a depth of 8.0 cms.

Hemothorax – 2,000 cc.

Visceral organs – pale

Stomach – 1/3 filled with partially digested food particles

...

CAUSE OF DEATH:

STAB WOUND, BACK, RIGHT<sup>[23]</sup>

Dr. Aguda opined that the assailant used a sharp, single-bladed instrument. He added that the assailant must have been behind the victim at the time the stabbing occurred, considering that the stab wound was located at the back. The doctor could not tell, however, whether the assailant was a southpaw or right-handed.<sup>[24]</sup>

Florencia Galang, the bereaved mother of the victim, testified that she experienced anxiety by reason of her son's death. The entire family felt despondent and could

not accept that Eleazar was no longer with them.<sup>[25]</sup> For the week-long wake, they spent P5,000.<sup>[26]</sup> As shown by the certification of St. Matthew Funeral Homes, the Galangs spent P12,500 for funeral services.<sup>[27]</sup> They paid the amount of P1,500 to El Ruaro Funeral Homes where the cadaver was first brought. They also spent P12,000 for the burial lot, and paid P800 for vehicles they hired during the occasion. However, no receipts were issued for these amounts.<sup>[28]</sup>

Meanwhile, the appellant could not be located. In February 1998, the appellant was arrested for illegal possession of firearm and detained in the Caloocan City jail for investigation. When the Galangs learned of the appellant's arrest, they wasted no time and proceeded to the police station. Florencia and Mario executed their respective Sinumpaang Salaysay<sup>[29]</sup> before SPO1 Emilio B. Mabalot concerning the stabbing incident. After the usual preliminary investigation, Assistant City Prosecutor Aurelio R. Ralar, Jr. recommended the filing of an information for murder against the appellant.<sup>[30]</sup>

### The Case for the Appellant<sup>[31]</sup>

Appellant Niño Garin claimed that he was born on June 5, 1981 and adduced in evidence a birth certificate under the name of "Noe Garing." He denied any participation in the crime, contending that he was misidentified as the culprit. He added that he did not know the Galang family from Adam.<sup>[32]</sup>

The appellant testified that he was seventeen years old. At about 1:00 p.m. on April 3, 1997, he went on swimming with his *barkadas*, Larry Perito, Jeffrey Mendoza, Junior Bron and Dennis Manalo, at the neighboring Barangay of Tungko, San Jose del Monte, Bulacan. After an hour of swimming in the river, they headed for home. Along the way, they indulged picking mangoes from trees. When they reached Phase 7, Bagong Silang, Caloocan City, at about 3:00 p.m., they passed by a teenage boy who turned out to be Eleazar, fetching water from an artesian well. One of their companions, Dennis, played with Eleazar but before they knew it, the two were already quarreling with each other. Eleazar punched Dennis, who retaliated. But, when Eleazar was about to hit Dennis with his pingga (a carrying pole), the appellant intervened to separate the protagonists.<sup>[33]</sup>

Meanwhile, Eleazar's father, angered by what he saw, immediately stepped out of his nearby house and called for reinforcements. Moments later, ten persons, eight males and two females, who were all armed, ran after them. He and his companions ran downhill, jumped into the water and swam away for safety. Children who were also bathing in the river panicked and hurriedly got out of the water.<sup>[34]</sup>

Across the river, the appellant and Larry stopped. They saw a man approach Eleazar, and suddenly stab the latter. Thereafter, the assailant dumped Eleazar's body in the river and shouted, "*Maghanda na kayo ng kabaong*" (Better be ready with a coffin).<sup>[35]</sup> When the dust settled down, he passed the day at Larry's place. Thereafter, Larry saw him off to his house.<sup>[36]</sup>

Larry Perito corroborated the appellant's testimony and recounted that he himself saw Eleazar being stabbed by an unidentified assailant. He was with the appellant

from the time they went swimming, up to the time of the commotion and the stabbing and, thereafter, the two of them stayed in their house. When they crossed the river after being chased by a number of armed persons, he and the appellant stopped uphill. When they looked back, they saw the assailant stab Eleazar at the back. Eleazar was then naked and in the process of putting on his shorts. After stabbing Eleazar, the assailant threw the poor boy's body onto the river. Thereafter, the assailant shouted at them, saying, "Be ready with a casket." Before they proceeded home, he saw someone take Eleazar's body out of the water. Upon returning home, he reported the incident to their purok leader and the police authorities. He accompanied the lawmen to the place of the incident and, thereafter, to the house of the assailant. When they reached the latter's house, they were too late because the assailant was no longer around.<sup>[37]</sup> He described the killer as "*Kulot, maitim*, semi-flat top, long hair up to the nape and a small person with a muscular body."<sup>[38]</sup>

Rosario Sabalza, a vegetable vendor, corroborated Larry's testimony. On the same afternoon that Eleazar was killed, at about 3:30 p.m., while washing her goods, she saw the lifeless body of a boy floating on a river very near her house. At the same time, she saw a man wielding a knife walking away from the cadaver. She saw the assailant, but the latter's back was turned against her. She was, however, certain that it was not the appellant.<sup>[39]</sup> The appellant did not fit the description of the killer: "*maitim na mama* (black man), *pandak* (short), and medium built."<sup>[40]</sup> After the killer left, she asked someone to report the crime to the barangay and to take the body out of the water.<sup>[41]</sup> She volunteered to testify because she was sympathetic to the appellant's plight.<sup>[42]</sup>

Rodrigo Resurreccion, a barangay purok leader, was the last to testify for the defense. He testified that when he got wind of the incident in the late afternoon of April 3, 1997, he recorded the same in the barangay blotter. The next day, policemen came into his house, and the victim's father asked to be accompanied to the crime scene. He was also told that it was a person with an alias "*Togo*" who killed the child. They proceeded to the crime scene and, thereafter, to the suspect's place, but the latter was, by then, nowhere to be found.<sup>[43]</sup>

After trial, the lower court, in its Decision<sup>[44]</sup> dated June 2, 1999, convicted the appellant of murder qualified by treachery. The dispositive portion of the decision reads:

WHEREFORE, premises considered, and the prosecution having established the guilt of Accused NIÑO GARIN @ NIÑO GALIS of the crime of Murder as defined and panalized (sic) under Art. 248 of the Revised Penal Code, as amended by RA 7659, this Court, in the absence of any generic aggravating or mitigating circumstance, hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the legal heirs of the deceased the civil indemnity of P50,000.00; to pay the private complainant actual damages of P12,500.00 plus moral damages of P60,000.00 and to pay the costs without any subsidiary imprisonment in case of insolvency.

The preventive imprisonment suffered by the Accused shall be credited in

full in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.<sup>[45]</sup>

In convicting the appellant, the trial court gave full credence to the eyewitness account of the victim's brother, Mario Galang, who positively identified the appellant as the killer. The court a quo also noted that the medical findings jibed with Mario's narration. The court made short shrift of the defense of denial raised by the appellant for being weak, and concluded that the killing was qualified by treachery, because the victim was totally defenseless and had no opportunity to defend himself or to retaliate when stabbed.

Hence, this appeal.

The appellant seeks a reversal of the appealed decision asserting as follows:

I

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY IN THE CASE AT BAR.

II

ASSUMING THE ACCUSED-APPELLANT IS GUILTY, HE SHOULD ONLY BE HELD LIABLE FOR THE CRIME OF HOMICIDE AS THE AGGRAVATING CIRCUMSTANCE OF TREACHERY WAS NOT ALLEGED WITH SPECIFICITY SO AS TO QUALIFY THE KILLING TO MURDER PURSUANT TO SECTIONS 8 AND 9 OF THE REVISED RULES ON CRIMINAL PROCEDURE.<sup>[46]</sup>

In criminal cases, an appeal throws the whole case open for review and the appellate court may correct such errors it may find in the appealed judgment, even if they have not been specifically assigned.<sup>[47]</sup> Thus, the Court shall address the following matters: (1) the sufficiency of the prosecution's evidence; (2) the presence of qualifying circumstances; (3) the award of damages; and, (4) the proper penalty.

*The Sufficiency of the  
Prosecution's Evidence*

We have carefully examined the records of the case and find no cogent reason to disturb the findings of the trial court that the appellant is guilty beyond reasonable doubt of killing Eleazar Galang. A detailed account of the killing was furnished by the fourteen-year-old prosecution eyewitness, Mario Galang. His testimony regarding the identity of the assailant, the assault, and the weapon used, was direct, positive and categorical. Thus, Mario testified:

Prosecutor Sison/Witness:

...

q In the stabbing incident, will you tell the Honorable Court