

EN BANC

[G.R. No. 140402, January 28, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERASTO ACOSTA, SR. ALIAS "ATTO", CARLO ACOSTA, RICHARD
ACOSTA, ALIAS "IMBO", SIGFREDO ACOSTA ALIAS "SIG" (AT
LARGE), ARNOLD ACOSTA ALIAS "ANNOD", AVELINO ACOSTA
ALIAS "AVEL", ROSENDO TARA ALIAS "GANI" AKA "DOYOG",
AMBONG NARTE (AT LARGE) AND ERNESTO SALAZAR ALIAS
"ERNING", ACCUSED,**

**ERASTO ACOSTA, SR. ALIAS "ATTO", CARLO ACOSTA, RICHARD
ACOSTA ALIAS "IMBO" ARNOLD ACOSTA ALIAS "ANNOD",
AVELINO ACOSTA, ALIAS "AVEL" AND ROSENDO TARA,
ACCUSED-APPELLANTS.**

DECISION

CARPIO, J.:

The Case

Before this Court for automatic review^[1] is the Decision^[2] of Branch 46 of the Regional Trial Court of Urdaneta City, in Criminal Case No. U-9788 promulgated on August 27, 1999 finding appellants Erasto Acosta, Sr., Arnold Acosta, Carlo Acosta, Avelino Acosta, Richard Acosta and Rosendo Tara ("appellants" for brevity) guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the death penalty.

The Charge

The Information against appellants reads as follows:

"That on or about June 14, 1998 in the evening at Brgy. Pinmaludpod, Urdaneta City, and within the jurisdiction of this Honorable Court, the above-named accused Erasto "Atto" Acosta, Sr., Carlo Acosta, Richard Acosta, Sigfredo Acosta, Arnold Acosta, Avelino Acosta and Rosendo Tara, armed with a piece of wood (*dos por dos*) with protruding nail, lead pipe, icepick and bamboo pole with intent to kill, treachery and taking advantage of superior strength, conspiring with one another, did then and there wilfully (sic), unlawfully and feloniously box, hit, stab and maul NESTOR ADAJAR inflicting upon him the following:

- * Body previously embalmed, in a moderate state of decomposition, with slight moldy growth at the right side of the trunk.
- * Pallor, nailbeds.

- * Head, previously autopsied.
- * Abrasions:
 - 1.) 2.0 cms., x 1.0 cm., cheek, malar surface, left.
 - 2.) Linear, 6.0 cms., chest, anterior, left, level of the 7th ICS.
 - 3.) Linear, 8.0 cms., chest, lateral, left level of the 4th ICS.
Linear, multiple, over an area of
 - 4.) 32.0 cms. x 19.0 cms., trunk, left, lateral surface.
 - 5.) 5.0 cms. x 1.5 cms., deltoid, right.
 - 6.) 3.0 cms. x 1.5 cms., scapular area, right.
 - 7.) Linear, 4.0 cms., hypochondriac area, left.
 - 8.) Multiple, over an area 16.0 cms., x 11.0 cms., left hand, dorsal surface.
Multiple, over an area of 11.0 cms.
 - 9.) x 11.0 cms., right hand, dorsal surface.
- * CONTUSION, 36.0 cms. x 20.0 cms., thigh, antero-lateral surface, right.
- * LACERATIONS: All modified by suturing and embalming.
 - 1) 6.0 cms., mid-frontal area extending to the left forehead.
 - 2) 2.0 cms., forehead, left.
 - 3) 3.0 cms., fronto-temporal area, left.
 - 4) 3.0 cms., temporo-parietal area, left.
 - 5) 4.0 cms., knee, left.
- * PUNCTURE WOUNDS: two (2) in number, pinpoint, almost inconspicuous in appearance, chest, lateral, left, level of the 4th and 5th ICS, posterior axillary line, both penetrating the left thoracic cavity and both puncturing the lateral surface of the upper lobe of the left lung, producing pinpoint hemorrhages, entering to an approximate depth of 5.0 cms.
- * SCALP HEMATOMA, MASSIVE, LEFT.
- * FRACTURE, cuboidal in shape, with a punched-in hole at its inner table, Temporal bone, left.
- * FRACTURE, linear, frontal bone, left.
- * Fracture, complete, 9th anterior rib, left.
- * Sub-dural Hemorrhage, moderate (about 200 cc.), left temporal area.
- * Hemothorax, moderate (about 250 cc.) left.
- * The other visceral organs are pale.

which caused the instant death of said NESTOR ADAJAR and thereafter accused Ambong Narte and Ernesto "Erning" Salazar well knowing of the commission of the criminal act of the above-mentioned principal accused and without having participated therein, with the intention of concealing or destroying the body of the crime or the effects thereof in order to prevent its discovery carried and brought the dead body of NESTOR ADAJAR and placed it on the pavement of the highway to give semblance that the latter was a victim of a "hit and run", to the damage and prejudice of the heirs of said Nestor Adajar.

CONTRARY to Article 248 of the Revised Penal Code, as amended by R.A. 7659 in relation with Art. 19, also of the Revised Penal Code."^[3]

Arraignment and Plea

Upon arraignment, appellants Erasto, Sr., Arnold, Carlo, Avelino, Richard, all surnamed Acosta, Rosendo Tara and Ernesto Salazar, assisted by counsel, pleaded not guilty to the charge.^[4] Sigfredo Acosta and Amboy Narte are at large.

The Trial

On February 8, 1999, trial on the merits commenced. On March 17, 1999, on motion of the prosecution, the trial court issued an Order^[5] dismissing the case against Ernesto Salazar for insufficiency of evidence. Ernesto was presented as a witness for the prosecution.

Version of the Prosecution

Dioquino Adajar testified that at around 6:00 p.m. of June 14, 1998, her husband Nestor Adajar ("Nestor" for brevity) told her that he would visit his cousin Ernesto Salazar in the latter's house. Dioquino slept at past 8:00 p.m. that evening. She was awakened by Civilian Volunteer Officer ("CVO" for brevity) Romeo Campos who informed her that her husband Nestor was already dead. Dioquino and her cousin Sabina found Nestor's body lying on the side of the McArthur Highway at Pinmaludpod, Urdaneta City. His slippers were aligned near his body which bore injuries. Very little blood oozed from Nestor's body. Dioquino noticed shattered glasses on the road near Nestor's body.^[6]

Eyewitness Rodrigo dela Cruz, a carpenter and a resident of Pinmaludpod, Urdaneta City, testified that at around 11:00 p.m. of June 14, 1998, he was resting at his house. Rodrigo went outside to urinate and heard a commotion. He went near the place of the commotion, which was about twenty (20) meters away from his house. He hid himself and watched a fist fight among a group who had been drinking. He saw Arnold Acosta, Richard Acosta, Erasto Acosta, Sr. and Carlo Acosta physically assaulting the victim, Nestor. Arnold hit Nestor on the head with a piece of wood (dos por dos) with a protruding nail on one end. Then, Avelino struck Nestor with a pipe hitting the left side of his forehead. Nestor fell down. Rosendo Tara thrust an ice pick on the left side of Nestor's body. Sigfredo Acosta followed by hitting the left side of Nestor's body with a bamboo pole. Erasto, Sr. then uttered, "Are you sure that he is dead?" Erasto told his sons to carry the victim's body and bring it to the road. Carlo, Sigfredo and Arnold carried the victim's body to the road going to

Dagupan City, in front of Rodrigo's house. Rodrigo knew the victim because Nestor was his neighbor.^[7]

Ernesto Salazar, a farmer and a resident of Barangay Pinmaludpod, Urdaneta City, testified that at around 11:00 p.m. of June 14, 1998, he was watching television at his house. Arnold Acosta invited Ernesto to drink at the back of Avelino Acosta's house, which was five (5) meters away from Ernesto's house. Ernesto agreed and they drank gin with Rosendo Tara, Sigfredo Acosta, Richard Acosta, Avelino Acosta, Carlo Acosta, Erasto Acosta, Sr., Junior dela Cruz and two visitors. After drinking three shots, Ernesto went home and watched television again. After thirty minutes, Ernesto heard a commotion at the back of Avelino's house and so he went out. Ernesto heard people shouting and he saw Arnold, Richard, Rosendo, Sigfredo, Avelino, Carlo and Erasto, Sr. lifting the body of Nestor who was unconscious (*nakalupaypay*). Ernesto heard Erasto, Sr. utter, "Be sure he is dead." Then Ernesto went home. The following day, he heard that Nestor was run over by a vehicle.^[8]

Leonora Talvo, a resident of Pinmaludpod, Urdaneta City, testified that in the early morning of July 15, 1998, she was awakened by the barking of dogs. Leonora noticed three persons near her gate. She heard these words uttered, "Are you sure that he is already dead?" Leonora remarked "wa" and they ran away. Then Leonora saw Ambong Narte placing a trunk of "seneguelas" in the middle of the national road to Dagupan which was lighted by a passing vehicle. She also saw Richard Acosta pulling a dead person to the road. She called Ambong and asked him who they were pulling and Ambong answered that Nestor was run over. Afterwards, Barangay Kagawad Beatriz Abian, the parents of the victim and other people arrived at the road.^[9]

On June 15, 1998, Dr. Ramon B. Gonzales, rural health physician, conducted the autopsy of the victim and prepared this Autopsy Report:^[10]

"SIGNIFICANT EXTERNAL FINDINGS:

- Lacerated wound forehead, 6 cms. x 1 cm.
- Lacerated wound forehead, 1 cm. x ¼ cm.
- Lacerated wound forehead, 1.5 cm. x ¼ cm.
- Abrasion right malar region.
 - Left anterior chest wall, anterior axillary line 4th intercostal space.
 - Left anterior chest wall anterior axillary line 7th intercostal space.
 - Left hypochondriac region.
 - Left knee
 - Left hand, dorsum
- Lacerated wound, left temporal region just above left ear 6 cms. x 1 cm.

SIGNIFICANT INTERNAL FINDINGS:

- Fracture temporal bone 1 cm. x ¼ cm. (rectangular in shape).
- Fracture frontal bone 1.5 cm. x ¼ cm.
- Cerebral hemorrhage and injury, frontal lobe and left temporal lobe, brain.

CAUSE OF DEATH:

-Cerebral hemorrhage and injury, frontal lobe and left temporal lobe, brain due to fracture, skull."

Upon the request of the victim's wife, Dr. Ronald R. Bandonill, medico-legal officer of the National Bureau of Investigation ("NBI" for brevity), Baguio City, conducted on June 24, 1998 a second autopsy of the victim's body to determine whether his death was caused by a vehicular accident or foul play.^[11] Dr. Bandonill prepared Autopsy Report No. 98-14-P^[12] with the following findings:

"POSTMORTEM FINDINGS

- * Body previously embalmed, in a moderate state of decomposition, with slight moldy growth at the right side of the trunk.
- * Pallor, nailbeds.
- * Head, previously autopsied.
- * Abrasions:
 - 1) 2.0 cms., x 1.0 cm., cheek, malar surface, left.
 - 2) Linear, 6.0 cms., chest, anterior, left, level of the 7th ICS.
 - 3) Linear, 8.0 cms., chest, lateral, left level of the 4th ICS.
 - 4) Linear, multiple, over an area of 32.0 cms. x 19.0 cms., trunk, left, lateral surface.
 - 5) 5.0 cms. x 1.5 cms., deltoid, right.
 - 6) 3.0 cms. x 1.5 cms., scapular area, right.
 - 7) Linear, 4.0 cms., hypochondriac area, left.
 - 8) Multiple, over an area 16.0 cms., x 11.0 cms., left hand, dorsal surface.
 - 9) Multiple, over an area of 11.0 cms. x 11.0 cms., right hand, dorsal surface.
- * CONTUSION, 36.0 cms. x 20.0 cms., thigh, antero-lateral surface, right.
- * LACERATIONS: All modified by suturing and embalming.
 - 1) 6.0 cms., mid-frontal area extending to the left forehead.
 - 2) 2.0 cms., forehead, left.
 - 3) 3.0 cms., fronto-temporal area, left.
 - 4) 3.0 cms., temporo-parietal area, left.
 - 5) 4.0 cms., knee, left.
- * PUNCTURE WOUNDS: two (2) in number, pinpoint, almost inconspicuous in appearance, chest, lateral, left, level of the 4th and 5th ICS, posterior axillary line, both penetrating the left thoracic cavity and both puncturing the lateral surface of the upper lobe of the left lung, producing