

FIRST DIVISION

[G.R. No. 133892, August 12, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOVITO LLAVORE Y BARRIENTOS, JOEL LOBATON Y ORETA, RODOLFO FUENTES Y CASTILLO (AT LARGE) AND DANIEL GUILLERO Y ALVAREZ, ACCUSED.

**JOVITO LLAVORE Y BARRIENTOS, JOEL LOBATON Y ORETA^[1]
AND DANIEL GUILLERO Y ALVAREZ,^[2] ACCUSED-APPELLANTS.**

D E C I S I O N

VITUG, J.:

Jovito Llavore y Barrientos a.k.a. Boy, Joel Lobaton y Oreta a.k.a. Imbong, Rodolfo Fuentes y Castillo a.k.a. Nene, Daniel Guillero y Alvarez a.k.a. Moran and one "Galoy" Longno were charged with the crime of robbery with homicide before the Regional Trial Court, Branch 60, of Cadiz City, Negros Occidental, in an information that averred:

"That on or about 6:30 in the afternoon of May 23, 1991 at the reclamation area, Cadiz City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery, evident premeditation and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and kill with the use of firearm and knives one Danilo Malata, a tricycle driver, in order to rob, steal and take away with intent of gain and without the consent and against the will of the owner the motor tricycle belonging to Erna Tancinco which cost more or less P53,000.00 and inflicting upon the person of Danilo Malata, the following wounds, to wit:

-Stabbed wound, immediately below the left nipple; 2 cm. in length, 7 cm. depth projecting upward;

-Stabbed wound, left subcostal area, about 4 cm. from the midline; 4 cm. in length with omentum protruding outward;

-Stabbed wound, left subcostal area, midclavicular line; 2 cm. in length with omentum protruding outward;

-Stabbed wound, through and through, deltoid area; 3 cm. in length, left upper arm;

-Stabbed wound, through and through, 2 cm. in length, left upper arm about 8 cm. below the upper wound;

-Stabbed wound, through and through, posterior chest, left postaxillary line; 4 cm. in length with exit at the left axilla;

-Stabbed wound, left elbow, superficial; 4 cm. in length;

which directly caused the death of the said victim Danilo Malata, to the damage and prejudice of the heirs of said victim in the amount, to wit:

1. P30,000.00 - as indemnity for the death of the victim;
2. P144,000.00 - as indemnity for the loss of earning capacity, or such amount to be fixed by the court."^[3]

Jovito Llavore and his co-accused, Joel Lobaton and Rodolfo Fuentes, entered a plea of not guilty at their arraignment. Fuentes thereafter escaped from prison. Daniel Guillero was later arrested and, when arraigned, also pleaded not guilty. "Galoy" Longno remained at large.

The case for the prosecution. -

On 23 May 1991, about six-thirty in the afternoon, Danilo Malata was found dead in a reclamation area along Hitalon Bridge in Cadiz City. Malata was last seen alive driving a tricycle^[4] belonging to his sister Erna Malata-Tancinco and her husband Hernani Tancinco. At around five-fifteen on the afternoon of 30 July 1991, a unit of the Cadiz City Philippine National Police (PNP) apprehended Joel Lobaton and Perlito Pastrano in connection with another attempted robbery case involving a tricycle owned by a certain Francisco Gerongan. During the investigation conducted by SPO3 Jerry Montecino and SPO3 Sofronio Neri, Lobaton confessed that he, along with Jovito Llavore, Daniel Guillero, Rodolfo Fuentes, and "Galoy" Longno, had killed Danilo Malata and took away the latter's tricycle which they then brought it to the house of Llavore.

On 31 July 1991, police officers saw Llavore driving a tricycle along Gustilo Boulevard in Cadiz City. When confronted, Llavore voluntarily went with the officers to the police station using the tricycle.^[5] While Llavore was being interrogated by SPO3 Neri, SPO3 Montecino, and SPO3 Tayco in the presence of Hernani Tancinco, the latter observed that the top cover of the tricycle was identical with the top cover of his tricycle which Malata was driving at the time he was killed. Llavore admitted his involvement in the crime. SPO3 Belcezar Javier and Tancinco thereupon proceeded to the house of Llavore in Crossing, Cadiz City. At the backyard of the house, they saw a maroon-colored tricycle without its top cover.^[6] Tancinco immediately recognized the same to be his tricycle based on its windshield, cover of the side wheel, and its decorations. When the maroon paint of the tricycle's sidecar was scraped, the vehicle showed an orange paint which was its original paint. Tancinco identified the markings he placed on the top cover of his tricycle like the hole where he inserted a wire and a brace of 3/8 steel bar. Some parts of the tricycle had been removed. The tricycle's motorcycle was still painted red, although the motor and chassis number had been defaced. Tancinco pointed to other distinguishing marks on the motorcycle of his tricycle such as the welding marks on the hub, the two uneven holes on the fender where he had attached a break light, the spline of the original transmission which was replaced with a shorter one, the

epoxy steel on the leaking tank, and the cut steel on the fork.

SPO3 Javier repaired to Talisay and invited Rodolfo Fuentes for questioning. Fuentes executed an affidavit, dated 5 August 1991,^[7] at the police precinct. In a sworn confession, dated 12 August 1991,^[8] taken by SPO3 Sofronio Neri in the presence of one SPO3 Melzasar Tayco, Fuentes, with the assistance of Atty. Reginaldo Conol, admitted his participation in stabbing Malata to death and then bringing the tricycle to the house of Llavore. SPO3 Javier said Fuentes tagged Lobaton, Guillero, and Longno as being his companions.

Dr. Joy Gladys T. Guanzon conducted a *postmortem* examination on the body of Danilo Malata. The autopsy report, dated 24 May 1991, contained the following findings:

- Stabbed wound, immediately below the left nipple; 2 cm. in length, 7 cm. in depth projecting upward;

- Stabbed wound, left subcostal area, about 4 cm. from the midline; 4 cm. in length with omentum protruding outward;

- Stabbed wound, left subcostal area, midclavicular line; 2 cm. in length with omentum protruding outward;

- Stabbed wound, through and through, deltoid area; 3 cm. in length, left upper arm;

- Stabbed wound, through and through, 2 cm. in length, left upper arm about 8 cm. below the upper wound;

- Stabbed wound, through and through, posterior chest, left postaxillary line; 4 cm. in length with exit at the left axilla;

- Stabbed wound, left elbow, superficial; 4 cm. in length.

"CAUSE OF DEATH: Cardiac Tamponade and pneumo-hemothorax secondary to multiple stabbed wounds.^[9]

Dr. Guanzon testified that the stabbed wounds were caused by a sharp bladed instrument. The stabbed wound immediately below the left nipple, "2 cm. in length and 7 cm. in depth projecting upward," was fatal.

The version of the defense. -

In seeking an exoneration of those indicted for the crime, the defense anchored itself on denial and *alibi*.

Jovito Llavore, a tricycle driver by occupation, testified that he was the owner of a tricycle which Rodolfo Fuentes borrowed sometime during the first week of July 1991. When Fuentes returned the tricycle, its top cover had been damaged. At about six o'clock on the morning of 23 July 1991, Llavore was in Cadiz City plying his usual route when Fuentes went to his house and left a tricycle with his wife. Llavore presumed that the tricycle belonged to Fuentes and that it was intended to

secure the latter's debt of P2,400.00. At noontime of 28 July 1991, when he and his wife were not home, Fuentes came to their house and took back the tricycle. When the tricycle was returned to him later in the day, he noticed that the top cover of his tricycle had been replaced with the top cover of the tricycle earlier brought by Fuentes. The tricycle which he thought belonged to Fuentes happened to be the same tricycle recovered from his house by the police officers on 31 July 1991. Llavore denied knowing at that time Daniel Guillero and "Galoy" Longno but admitted being acquainted with Rodolfo Fuentes, who used to borrow his tricycle in transporting lumber, and with Joel Lobaton, a former student in *Hiyang-Hiyang* Elementary School in 1984, who worked in the lumber business of Nestor Lobaton. Llavore disclaimed any participation in the killing of Danilo Malata when he, together with Fuentes and Lobaton, underwent an investigation conducted on 31 July 1991 by the police. He claimed that at around five o'clock on the afternoon of 23 May 1991, he and his wife were buying some goods at the public market in Cadiz City from where, about an hour later, they went back home and stayed in the house up to seven o'clock in the evening. Llavore stated that he was confined on 31 July 1991 without any warrant of arrest and was released only the following morning. He was later asked to go with police officers SPO1 Rogelino Caniedo, SPO3 Montecino, PO3 Santiago Solatorio, PO2 Mario Jarina, PO3 Remy Tio, PO3 Zaldy Esperancilla, and SPO1 Regulus Blancaflor and one "cafgu" to *Hacienda* El Paso. The place was about two kilometers away from his father's house where some missing parts of the tricycle, placed in a sack, were recovered. Thereupon, Llavore was again arrested.

Nilda Llavore, the wife of Jovito Llavore, corroborated the latter's testimony. She added that her husband did not leave the house after dinner and that they went to bed soon thereafter.

Daniel Guillero stated that he, his wife and the latter's parents were residing at *Hacienda* Lau-ang, *Barangay* Luna, in Cadiz City. He denied any involvement in the crime with which he was charged and said that, on 23 May 1991, he was a watchman at the *hacienda* of one Dr. Diez where he reported for work from six o'clock to eleven o'clock in the morning and then from one o'clock to five o'clock in the afternoon. From work, he went home, had dinner at seven o'clock in the evening and did not leave the house. Guillero denied knowing Rodolfo Fuentes, Joel Lobaton, and "Galoy" Longno.

Joel Lobaton testified that during the months of May and July 1991, he was staying in Villa Barbas, Cadiz City, and working in the lumber business of his brother Nestor Lobaton in Sto. Niño Village, Cadiz City. At about five-fifteen on the morning of 31 July 1991, he was with one Perlito Pastrana when they were arrested somewhere in Crossing, Cadiz City, in connection with the attempted robbery of a tricycle belonging to one Francisco Gerongan. The police officers recovered from each of them a knife. Lobaton denied having been acquainted with "Galoy" Longno or Daniel Guillero but knew Llavore, his former teacher in *Hiyang-Hiyang* Elementary School, and Rodolfo Fuentes who used to deliver lumber in Sto. Niño Village. He negated any involvement in the crime and asserted that between seven o'clock to eleven o'clock on the morning of 23 May 1991, he and Perlito Pastrana were busy cutting coconut trees in *Barangay* Mabini, Cadiz City. After partaking of lunch, they resumed their work up to six o'clock that afternoon.

The decision under review. -

On 27 February 1997, the court *a quo* rendered its decision^[10] finding Jovito Llavore y Barrientos and his co-accused guilty of robbery with homicide. The trial court held:

"WHEREFORE, in view of all the foregoing, this Court finds accused, JOVITO LLAVORE Y BARRIENTOS alias 'Boy' (detained), JOEL LOBATON Y ORETA alias 'Imbong' (detained), RODOLFO FUENTES Y CASTILLO alias 'Nene' (Escapee and *in absentia*), and DANIEL GUILLERO Y ALVAREZ (detained) all GUILTY beyond reasonable doubt of the crime of 'Robbery with Homicide' as charged in the Information, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA including its accessory penalties as provided for by law.

"With respect to accused alias 'Galoy Longno' (at-large) not having been arrested and arraigned, the case against him is hereby ordered ARCHIVED and shall be automatically revived upon his arrest.

"The accused are further ordered jointly and severally to pay the heirs of Danilo Malata the sum of P50,000.00 as indemnity for the death of the latter, and in addition to pay jointly and severally Hernani Tancinco the sum of P53,000.00 as indemnity for the value of the motorcycle without subsidiary imprisonment in case of insolvency in accordance with paragraph 3 of Article 39 of the Revised Penal Code of the Philippines.

"The accused being detained are entitled to the full credit of their preventive detention as per R.A. No. 6127.

"The Jail Warden of the BJMP, Silay City, PNP in the case of accused Jovito Llavore and the Jail Warden of the BJMP, Cadiz City PNP for accused Joel Lobaton y Oreta alias 'Imbong' and accused Daniel Guillero y Alvarez are all hereby ordered to commit all the said accused to the National Penitentiary for Service of their sentence as per Supreme Court Circular No. 4-92-A dated April 20, 1992.

"Let an alias Warrant of Arrest be immediately issued against accused Rodolfo Fuentes (Escapee) for his immediate arrest, and the officer-in-charge of the Warrant and Subpoena Section of the PNP, Cadiz City is hereby directed to explain within ten (10) days from receipt of a copy of this decision why up to the present the said two (2) accused have not been arrested despite the lapse of more than six (6) months after the issuance of the alias Warrant of Arrest against alias 'Galoy' Longno (at-large) and the accused Rodolfo Fuentes from the time of the latter's escape from jail.

"Let copies of this Decision be furnished the officer-in-charge of the Warrant and Subpoena Section of the PNP, Cadiz City and the private complainant in accordance with Supreme Court Circular No. 7-92 dated October 12, 1992."^[11]

Jovito Llavore, along with his co-accused Joel Lobaton and Daniel Guillero, appealed from the decision; Lobaton and Guillero, however, later withdrew their respective appeals.