

## THIRD DIVISION

[ G.R. No. 124892, January 30, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAURO MARTINEZ, ACCUSED-APPELLANT.**

### DECISION

**GONZAGA-REYES, J.:**

Before us is an appeal from the Decision of the Regional Trial Court of Romblon, Branch 81 in Criminal Case No. 1735 that found herein accused-appellant LAURO MARTINEZ (LAURO) guilty of the murder of RIZALINA ROTONI (RIZALINA).

LAURO and four other co-accused, namely, Herminio Rase, Angeles Martinico, Primitivo Rollon and Ruben Real were charged in an information that reads:

"That on or about the 27th day of September, 1987, at around 11:00 o'clock in the evening, in sitio Cabangahan, barangay Danao, municipality of Cajidiocan, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping one another, did then and there, by taking advantage of their superior strength and with evident premeditation, willfully, unlawfully and feloniously, in consideration of a price, reward or promise, attack, assault, hack and shoot one RIZALINA R. ROTONI, with the use of bladed weapons and firearms, inflicting upon the latter multiple mortal injuries in different parts of her body which were the cause of her death.

Contrary to law, with the aggravating circumstances of nocturnity purposely sought by the accused in the commission of the offense, with insult or in disregard of the respect due the offended party on account of her age and sex and the crime was committed in the dwelling of the offended party."<sup>[1]</sup>

On March 21, 1990, all the accused except for Real who was at large, pleaded not guilty to the crime charged.

At the trial, the prosecution presented (1) Dr. Benito M. Male, Jr., Medical Officer IV; (2) German Rotoni, husband of the victim; (3) Mirasol Parolan, granddaughter of the victim; (4) Alta Rotoni-Alcala, daughter of the victim; (5) Lilia Rotoni-Parolan, daughter of the victim; (6) SPO4 Roque Altobano, member of the Philippine National Police (PNP); (7) Jose Rotoni, son of the victim; (8) Noel Riano, laborer; (9) SPO3 Rodolfo Riño, Sr., Assistant Station Commander, PNP Magdiwang, Romblon; and (10) Atty. Cesar M. Madrona, Public Attorney's Office.

The defense presented (1) accused-appellant LAURO himself; (2) his co-accused Herminio Rase; (3) Gerry Maron, farmer; (4) Willard Reta, farmer; (5) Joselito

Venus, farmer; (6) Prisca Riñon Martinez, farmer; and (7) Luis Rtoni, farmer and carpenter, while co-accused Angeles Martinico testified on his behalf. Co-accused Primitivo Rollon died on May 17, 1994 as evidenced by a death certificate dated December 2, 1994.

The Office of the Solicitor General summarizes the version of the prosecution regarding of the brutal slaying of RIZALINA as follows:

"The spouses Rizalina Rtoni and German Rtoni reside at Sitio Cabangahan, Barangay Danao, Cajidiocan, Sibuyan Island, Romblon.

At around 8 o'clock in the evening of September 27,1989, the couple slept together with their granddaughter, Mirasol Parolan, in one room of their house (p. 9, TSN, June 10, 1991). Mirasol is the daughter of Lilia Rtoni Parolan who lives a few meters away from the house of the couple while Lilia is the couple's daughter.

At around 11 o'clock in the evening, the household was awakened by someone knocking on the gate and asking to buy gasoline (pp. 9-10, TSN, June 10, 1991). Wearily, German got out of bed and took the key to the *kamalig* where the gasoline was stored. Flashlight in hand, he went outside the house, leaving its door open (pp. 12-13, TSN, June 10, 1991). German proceeded to the gate where Primitivo Rollon and Angeles Martinico awaited him (p. 42, July 20, 1990). He asked the duo how much gasoline they wanted to buy (p. 7, July 20, 1990). Primitivo Rollon answered one (1) gallon and handed over a plastic container. German proceeded to the *kamalig*. Left alone, Angeles Martinico and appellant surreptitiously entered the Rtoni house (p. 14, TSN, Aug. 6, 1992). When German returned to the gate, he found nobody there (p. 7, TSN, July 20, 1990) so he decided to go back to the house (p. 11, TSN, July 20, 1990). As he passed by a stack of hollow blocks, Angeles suddenly emerged and clutched German's neck (p. 50, TSN, July 20, 1990). German fought back but Angeles overpowered him (pp. 48, 49 & 50, TSN, July 20, 1990). At a point in their struggle, German managed to disengage himself and fled (p. 12, TSN, July 20, 1990).

Rizalina followed German. On her way, she met appellant at the door (pp. 14-15, TSN, June 10, 1991). Without warning, appellant boxed Rizalina on the left face (p. 15, TSN, June 10, 1991). Then he aimed and fired his handgun at her but missed (p. 15, TSN, June 15, 1991). He grabbed her and dragged her outside the house (p. 15, TSN, June 10, 1991).

Meanwhile, Jose Rtoni who was awakened by the gunshots (p. 5, TSN, April 7, 1992) proceeded to the gate of the victim's house (p. 6, TSN, April 7, 1992). There, he saw appellant who was outside the gate dragging out Rizalina (p. 6, TSN, April 7, 1992). Jose rushed to the gate and held Rizalina's waist to pull her back inside (p. 8, TSN, April 7, 1992). Appellant shouted "*(B)arila na! Barila na! para mapatay na ini*" (Shoot! Shoot! So she will die) (p. 9, TSN, April 7, 1992). Jose Rtoni was fired at but he was not hit (p. 10, TSN, April 7, 1992). Jose Rtoni ran to the *kamalig* to get a crowbar (p. 9, TSN, April 7, 1992). At this juncture, Angeles Martinico hacked the victim on the neck (p. 14, TSN,

Aug. 6, 1992). Thereafter, the attackers fled.

Jose Rtoni and Alta Rtoni Alcala brought the victim who was still alive to the latter's house (p. 19, TSN, June 10, 1991). Mirasol Parolan followed them (p. 19, TSN, June 10, 1991). Once inside the house, they put the victim on the floor (p. 19, TSN, June 10, 1991). Alta Rtoni Alcala told the victim "*(N)ay dayhon ta kaw sa hospital?*" (Mother, I will bring you to the hospital) and the victim responded "*(I)ndi na*" (Do not bother) (pp. 19-20, TSN, June 10, 1991). Aunt Alta inquired from the victim, "*(S)i Lauro ba ang naghimo ini sa imo?*" (Was it Lauro who did this to you), the victim answered "*(S)iya*" (He was the one) (pp. 20, 21, TSN, June 10, 1991). Aunt Alta finally asked her "*(S)i Felomino Renon ba kay kaibahan sa paghimo nii sa imo?* (Was Felomino Renon also one of those who did this to you?) The victim did not reply (p. 22, TSN, June 10, 1991).

Dr. Benito Maler, Jr., (sic) Medico-Legal Officer of Sibuyan District Hospital conducted an autopsy on the victim's corpse. Dr. Male testified that the victim sustained a 10-inch long wound at the left side of the base of the neck, a six-inch long wound at the left side of the neck, another wound on the left shoulder and mandible (pp. 5-7, TSN, July 19, 1990). Furthermore, the victim suffered abrasions on both knees and hands which could have been caused by the dragging of the victim (pp. 7-8, TSN, July 19, 1990). The victim also suffered one (1) gunshot wound in the navel (pp. 8-9, TSN, July 1, 1990)."<sup>[2]</sup>

Accused-appellant LAURO disclaimed any participation in the murder of RIZALINA and raised alibi as his defense before the court *a quo*.

On the night that the crime occurred, accused-appellant LAURO was allegedly at the betamax show house of Flosie Hormego (Hormego) in Danao, Cagayan, Romblon from 8:30 to 10 p.m., drinking in the company of Percelito Reta, Gerry Marron, Renfredo Ruga and Willard Reta. Thereafter, they transferred to the kitchen of Hormego where they continued drinking and proceeded to argue about the previous congressional elections until about 1 to 1:30 in the morning of the following day. After they finished drinking, LAURO slept, upon the invitation of Gerry Marron, in the house of Myrna Marron, the mother of Gerry Marron.

Willard Reta corroborated the testimony of accused-appellant LAURO regarding the drinking session. Joselito Venus, neighbor of Hormego, confirmed in his testimony in court and his affidavit that his evening rest was inordinately disturbed by the group's argumentation. Joselito Venus allegedly tried to approach the group to stop the ruckus and it was at this time, at exactly 11 p.m., that Joselito Venus saw accused-appellant LAURO with said group, arguing with Renfredo Ruga.

After trial, the court *a quo* promulgated the now assailed judgment that reads:

"WHEREFORE, this Court finds both co-accused LAURO MARTINEZ and ANGELES MARTINICO GUILTY beyond reasonable doubt of the crime of MURDER under the Information, dated December 26, 1989, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

Both said co-accused, jointly and severally, are ORDERED to pay the heirs of RIZALINA R. ROTONI the sum of P50,000.00 as indemnity for death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The bail bond of co-accused Angeles Martinico is ORDERED CANCELLED and said co-accused is ordered immediately confined in jail.

The periods of preventive imprisonment which both co-accused may have undergone shall be credited in their favor to their full extent pursuant to Article 29 of the Revised Penal Code, as amended.

The case against co-accused RUBEN REAL who is at large is ORDERED ARCHIVED pending his arrest.

The case against co-accused Primitivo Rollon who died on May 17, 1994 is DISMISSED and his bail bond is ORDERED CANCELLED.

Co-accused HERMINIO RASE is entitled to acquittal, as he is hereby ACQUITTED, of the charge of murder under the aforesaid Information, his guilt beyond reasonable doubt not having been established. The bail bond filed for his provisional liberty is automatically cancelled (Section 22, Rule 114, 1985 Rules on Criminal Procedure, as amended by Administrative Circular No. 12-94, dated August 16, 1994).

SO ORDERED."<sup>[3]</sup>

Hence, this appeal brought solely by accused-appellant LAURO who relies upon the following issues:

#### "ASSIGNMENT OF ERRORS

##### I

THE COURT A QUO ERRED IN NOT FAVORABLY CONSIDERING APPELLANT LAURO MARTINEZ' DEFENSE;

##### II

THE COURT A QUO ERRED IN TOTALLY DISREGARDING THE UNCONTRADICTED TESTIMONY OF SPO3 PERCELITO CLUB;

##### III

THE COURT A QUO ERRED IN ACCORDING PRECIPITATE CREDULITY TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION DESPITE THEIR GLARING CONTRADICTIONS, INCONSISTENCIES AND IMPROBABILITIES;

##### IV

THE COURT A QUO ERRED IN FINDING THAT APPELLANT LAURO MARTINEZ AND ACCUSED ANGELES MARTINICO CONSPIRED IN KILLING RIZALINA ROTONI; AND

V

THE COURT A QUO ERRED IN NOT ACQUITTING APPELLANT LAURO MARTINEZ OF THE CRIME CHARGED AND FINDING HIM CIVILLY LIABLE FOR THE DEATH OF RIZALINA ROTONI."<sup>[4]</sup>

After a careful evaluation of the evidence on record, we hold that the trial court did not err in convicting accused-appellant LAURO for the murder of RIZALINA.

Accused-appellant LAURO insists that the evidence taken in its entirety will readily show that he was merely accused of the crime "in view of the bad blood between the Rotonis and the Martinez families"<sup>[5]</sup> and that he was "the most expedient and simplistic suspect".<sup>[6]</sup> The acrimonious relationship between him and the victim's kin allegedly stemmed from land disputes. Proof of this supposed bad blood is the fact that prior to RIZALINA's death, she had filed criminal cases against accused-appellant LAURO. Accused-appellant LAURO cites the testimony of Alta Rotonis Alcala to the effect that he together with Filomino Rinon challenged the family of RIZALINA to a fight to the finish ("*ubusan ng lahi*").

We do not find merit in accused-appellant's claim that he was convicted merely because he was an expedient suspect. The evidence of the prosecution, which the trial court described as "overwhelming"<sup>[7]</sup>, established beyond reasonable doubt his guilt in the conspiracy to murder RIZALINA. The dying declaration of RIZALINA pointing to accused-appellant LAURO as the killer; the testimony of Mirasol Parolan, who was present at the scene of the incident that fateful night, positively identified accused-appellant LAURO as the one who boxed RIZALINA, fired the first shot, and dragged RIZALINA<sup>[8]</sup>; and the testimony of Jose Rotonis who recognized the voice and body of the person who was dragging the body of RIZALINA to be that of accused-appellant LAURO<sup>[9]</sup> establish with certainty the participation of accused-appellant LAURO in the murder of RIZALINA.

Accused-appellant LAURO tried to account for his whereabouts on the night that the victim was killed. He contends that he was not at the scene of the crime which occurred around 11 p.m. since he was drinking with a group of people at the betamax show house from 8:30 p.m. to 10 p.m. that same evening. The group then transferred to the kitchen wherein they allegedly continued drinking up to 1:30 a.m. the following day. Accused-appellant LAURO claims that he was with Gerry Marron after the drinking session and went with the latter to sleep at the house of Myrna Marron, mother of Gerry Marron. He implores this Court to give credence to his defense of alibi considering that it is allegedly duly supported by the testimonies of Willard Reta, Gerry Marron, and Joselito Venus.

We are not convinced. The defense of alibi requires an accused to prove his presence in another place at the time of the perpetration of the offense and to demonstrate that it would thus be physically impossible for him to be at the scene of the crime.<sup>[10]</sup> For alibi therefore to prosper, two (2) elements must concur: (a) the