

SECOND DIVISION

[G.R. No. 132318, July 06, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO MUERONG Y FAJARDO, ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court, Third Judicial Region, Branch 63, Tarlac, Tarlac finding accused-appellant Fernando Muerong y Fajardo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information dated May 7, 1996 charging accused-appellant with the crime of murder which reads:

That on or about the 13th day of January 1996 at around 8:30 o' clock in the evening at Brgy. Tangcarang, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill Rudy Pascua, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack and stab the victim (Rudy Pascua) with the use of a kitchen knife hitting the latter on the forehead and right side of the chest that caused his death while on his way to the hospital.

CONTRARY TO LAW.^[2]

When arraigned on September 6, 1996, accused-appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The evidence of the prosecution established that at 4:00 o'clock in the afternoon of January 13, 1996, Ricardo Madriaga, Sergio Cadiente, Florante Facun and Rudy Pascua were drinking gin (Ginebra San Miguel "*bi-log*") at the store of Ella Bautista beside the house of Pablo Agustin in Barangay Tangcarang, Gerona, Tarlac, where a wedding celebration was taking place. Accused-appellant Fernando Muerong arrived when it was already dark and the group of Rudy Pascua had consumed one bottle of gin. Appellant joined the group. The group was using only one glass for drinking the liquor and the glass was being passed around. When it was appellant's turn, he drank from the glass and then poured the remaining liquor on the head of Rudy Pascua. Appellant did this twice. Rudy Pascua did not do anything. Thereafter, some persons brought appellant home which was about one hundred (100) meters away from the place where the group of Pascua continued drinking. After about an hour, appellant returned, without anyone noticing him approaching, and suddenly stabbed Rudy Pascua from behind with a stainless knife, hitting the latter on his left chest. Appellant was taken to the municipal building. Rudy Pascua was brought to the

hospital in Camiling, Tarlac but he was dead on arrival.^[3] Rudy Pascua died of "hemorrhagic shock due to stab wound as shown in his death certificate."^[4]

Accused-appellant Fernando Muerong, fifty (50) years old, a carpenter, admitted having stabbed Rudy Pascua. Appellant testified that at about 8:00 o'clock in the evening of January 13, 1996, he went to the wedding party then being held at the place of Pablo Agustin. Ricardo Madriaga called him to join his group as they were drinking gin. They gave him two (2) shots of gin. Appellant consumed the first shot, but had some leftover of the second shot. Madriaga told him to consume all the gin, but he refused as he had already taken some gin before he left home. Ricardo Madriaga and Sergio Cadiente then boxed him. Romulo Vanzuela, Elpidio Raceres and Kagawad Aceres led him away from the place and brought him to his house which was about thirty (30) meters away. When he was thus boxed and led away, his blood rose to his head. He wanted to take revenge on the persons who mauled him and so he returned to the place where the group of Rudy Pascua was still drinking. Only Rudy Pascua confronted him, and he stabbed Rudy because he thought Rudy was the one who boxed him. He used a kitchen knife in stabbing Rudy Pascua, after which he just stayed there and raised his hands until they took away his knife. He surrendered to Romulo Vanzuela, Elpidio Raceres and Barangay Captain Amorsolo Raceres who took him to the municipal building in Gerona, Tarlac. When he surrendered to the said barangay official, he also surrendered his weapon and the same was turned over to the policemen at the municipal building.^[5]

Rebuttal witness Cesario Ramos testified that he knew the appellant because they live in the same barangay. In the evening of January 13, 1996, Ramos attended the wedding celebration of his niece at Tangcarang. He saw the appellant there, at around 8:00 o'clock in the evening, drinking liquor. He stated that Rudy Pascua did not meet appellant when the latter returned. Rudy Pascua was then on the table with his head bent when appellant who was behind Rudy Pascua stabbed him, and thereafter the appellant left.^[6]

On July 28, 1997, the court *a quo* rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused guilty of murder and is hereby sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided for by law, and to indemnify the heirs of Rudy Pascua in the sum of fifty thousand pesos (P50,000.00) and to pay the costs.

SO ORDERED.^[7]

Appellant ascribes to the court *a quo* the following errors:

I

THE COURT ERRED IN RULING THAT THE KILLING WAS ATTENDED BY ALEVOSIA.

II

THE COURT ERRED IN RULING THAT THERE WAS AN EVIDENT

PREMEDITATION ON THE PART OF ACCUSED-APPELLANT IN KILLING THE
VICTIM RUDY PASCUA.^[8]

Appellant admitted that he killed the victim, Rudy Pascua, but he argued that the killing was not attended by treachery because the victim was forewarned of an impending attack as the incident of the throwing of gin on the victim preceded the stabbing incident. Moreover, there is absence of evident premeditation on his part. Therefore, he should not be held liable for murder, but only for homicide.

Appellant's argument is devoid of merit.

It should be pointed out that the court *a quo* did not make any finding that appellant killed the victim with evident premeditation although the same was alleged in the Information. Evident premeditation cannot be considered against appellant as the prosecution failed to prove the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.^[9]

However, the court *a quo* correctly held that the killing was committed with treachery. There is treachery when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.^[10] Treachery requires the concurrence of two (2) conditions: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.^[11] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.^[12]

We are not persuaded by appellant's contention that the killing was not attended by treachery since the victim, Rudy Pascua, was allegedly forewarned of an impending attack after he (appellant) poured the remaining gin in his glass on the head of Pascua. As the Solicitor General observed, no one in the group, especially Pascua, retaliated against appellant. Instead, appellant was just sent home. The group of Pascua never expected appellant to return to stab Pascua. Nevertheless, even if a victim may have been warned of a possible danger to his person, what is decisive in treachery is that the attack was executed in such a manner as to make it impossible for the victim to defend himself or to retaliate.^[13]

Against the uncorroborated testimony of the appellant, the court *a quo* correctly gave credence to the version of the prosecution as to how the stabbing incident took place. The absence of evidence of improper motive on the part of the prosecution witnesses to testify against appellant strongly tends to sustain the conclusion that no such improper motive exists and that their testimonies are worthy of full faith and credit.^[14] Prosecution witnesses Ricardo Madriaga and Sergio Cadiente testified that when appellant returned an hour after he poured gin on the head of Rudy