

THIRD DIVISION

[G.R. No. 124706, February 22, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO EREÑO Y AYSON, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Accused Carlito A. Ereño appeals from the decision^[1] dated October 27, 1995 of the Regional Trial Court, National Capital Region, Branch 72, Malabon, Metro Manila in Criminal Case No. 15944-MN finding him guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* for the death of ROSANNA HONRUBIA and ordering him to pay the heirs of the victim the total amount of P124,000.00.

The information^[2] filed by Assistant Provincial Prosecutor Leandro C. Catalo against accused-appellant reads:

"That on or about the 21st day of June 1995, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon, one ROSANNA HONRUBIA, hitting the victim on different parts of her body, thereby inflicting upon the victim stab wounds which caused his (sic) immediate death.

CONTRARY TO LAW."

When arraigned, accused-appellant entered a plea of not guilty. Pre-trial was waived by the accused,^[3] and trial on the merits ensued.

The trial court summed up the evidence as follows:

"The prosecution presented evidence substantially showing that on June 21, 1995, at 9:30 o'clock in the evening, Rosanna Honrubia was at N. Domingo Street in Tangos, Navotas, Metro Manila, sort of supervising and helping in the work being done on the busted electric line from which residents of that place were drawing electricity. Wilfredo Quibado and Arminggol Teofe were the once (sic) actually working thereon with Quibado the one in-charge of the work. Rosanna was from time to time giving a helping hand but most of the time she was the one holding the flashlight being used in the work that was being undertaken.

While Rosanna was holding the flashlight, accused Carlito Ereño

approached and took from her the flashlight and brought the same with him to the interior of the place. Rosanna followed Ereño and when she returned she already had with her the flashlight which Ereño took with him. Ereño, however, followed Rosanna to the place where the work on the busted electric line was going on and confronted her about her taking back the flashlight. Rosanna explained that it was being used in the work that must be finished and when finished would be to the benefit of all the residents of the place. A heated argument followed which made Rosanna to move away to a place known thereat as "Bato" which place consists of a low hollow block fence.

Teofe followed her to the "Bato" and with another person sat beside Rosanna. Ereño also followed Rosanna and the argument between the two of them continued. Ereño himself sat at the Bato with Teofe and one other person separating him from Rosanna. Ereño all of a sudden stood up and drew a bladed weapon and with it stabbed Rosanna at the back. This made Rosanna to run towards a tricycle which happened to be in said place but Ereño followed her again and gave chase to Rosanna resulting in a situation whereby the two of them would be running around the tricycle.

Rodolfo Dematera also happened to be in that place. He tried to pacify Ereño but was instead hit by the latter on his left arm. Teofe himself was shouting to Ereño to stop what he was doing but the latter ignored him.

Rosanna was able to run away from the tricycle but in the process stumbled and Ereño was able to catch up with her. Ereño then held Rosanna frontally by the hair and thereafter stabbed her at the chest twice. Rosanna slumped to the ground clutching her chest. At this point, Teofe approached Rosanna while Dematera called for Rosanna's parents.

Ereño again approached Rosanna but without actually reaching her, he ran away from the place.

Teofe tried to talk to Rosanna but Rosanna could not answer him anymore as blood was coming out of her mouth. Thereafter, Teofe boarded Rosanna on a tricycle with which her relatives brought her somewhere else.

In Court, Teofe identified Ereño as the assailant of Rosanna. He also identified the dagger which was recovered in another place as the one used by Ereño in stabbing Rosanna. Teofe maintained that he had seen said dagger before in the possession of Ereño.

Rosanna died by reason of the stab wounds she sustained at the back and at the chest (Exhs. C, C-1, D and F). Her mother Lita spent P24,000.00 in connection with her death and burial. She is also claiming P187,200.00 by way of lost income which Rosanna could have earned had she not been untimely killed. There was also a claim for moral damages brought about by the pain and sorrow caused by Rosanna's untimely demise.

SPO1 Benjamin Bacunata of the Navotas Police effected the arrest of Ereño shortly after he fled from the scene of Rosanna's stabbing. An alert/alarm was issued for Ereño who was spotted at the corner of Estrella and Naval Streets in Navotas and identified by one Hector Domingo. When frisked, Ereño was found to be in possession of a small improvised bladed weapon (Exh. G). Bacunata presented the dagger (Exh. H) that was recovered in another place and which Teofe identified as the fatal weapon.

Accused Carlito Ereño denied killing Rosanna whom he acknowledged he learned was stabbed to death by another person.

Ereño also denied the testimony of Teofe claiming that while he really returned the flashlight to Rosanna he never followed her back to the place where the work on the busted electric line was being done. Hence, there could have been no confrontation between the two of them.

Ereño also maintained that when Rosanna must have been stabbed he was already on board a passenger jeep bound for Monumento. He acknowledged that there was a check point in Navotas whereat the jeep he was riding on was stopped followed by somebody pointing to him. Policeman Bacunata then boarded Ereño on a mobile car and was brought to the police headquarters and detained.

Positive and clear are the appropriate words that can describe the testimony given by Teofe. He narrated in terms simple and distinctive the incident from the time work was started on the busted electric line to the taking of the flashlight from Rosanna by Ereño, to the return of the two to the place and the argument between them that followed. In the same vein, he described the stabbing of Rosanna by Ereño first at the back and then twice at the chest while Ereño was holding Rosanna by her hair. And Teofe was not shown to have been motivated in giving his testimony by any evil purpose or consideration.

On the other hand, we have Ereño's version consisting mainly of a denial and a claim that he was already somewhere else when Rosanna must have been stabbed to death. Ereño's version also included admissions concerning his having taken the flashlight from Rosanna and his having been arrested in a checkpoint after he was pointed to by Domingo which checkpoint according to the arresting officer was brought about by an alert or alarm for the reported killer of Rosanna.

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In fine, the Court is convinced that Ereño is guilty as charged in this case. The offense committed by him was murder, for no other word could describe a killing initiated by a treacherous stab at the back followed by frontal stabbings while the victim was being frontally held by the assailant by the hair. More so, when the victim is a woman."^[4]

The dispositive portion of the trial court's decision dated October 27, 1995, reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Carlito Ereño y Ayson guilty beyond reasonable doubt of the crime of murder and said accused is hereby sentenced to the prison term of *reclusion perpetua*.

Accused Ereño is also ordered to pay the following sums to the heirs of Rosanna Honrubia who died single:

1. P24,000.00 for the expenses incurred in connection with the death and burial of the victim;

2. P50,000.00 for the loss of the victim's life;

3. P50,000.00 by way of moral damages for the pain and sorrow suffered by the victim's family in connection with her untimely death. Spcedâ

The claim for lost income, not having been substantiated by any document that will show that Rosanna at the time of her death was earning P600.00 a day, six day (sic) a weak (sic) cannot be sustained. Costs against accused Ereño.

SO ORDERED."

Accused-appellant appeals his conviction citing as lone error that:

"THE TRIAL COURT A *QUO* ERRED IN CONVICTING THE ACCUSED CONSIDERING THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS ARRESTED WITHOUT A WARRANT UNDER CIRCUMSTANCES WHICH DO NOT WARRANT THE APPLICATION OF RULE 113, SECTION 5 OF THE 1985 RULES OF CRIMINAL PROCEDURE ALLOWING WARRANTLESS ARRESTS UNDER EXCEPTIONAL CIRCUMSTANCES."

Accused-appellant avers that late in the night of June 21, 1995 while riding in a tricycle, SPO1 Benjamin Bacunata, along with elements of the Navotas Police Station, arrested and detained him at the Navotas Police Station; that he was arrested without a warrant and was apprehended merely on the basis of a report of a certain Hector Domingo who did not have any personal knowledge of the identity of the accused and also of the circumstances described in the information charging him of the crime of murder; that both SPO1 Benjamin Bacunata and Hector Domingo were not present at the scene of the alleged crime and that Hector Domingo was not even presented as a witness by the prosecution; that at the time of the arrest, the accused was not doing any act which would give the arresting officers any reasonable suspicion to cause his arrest and/or to detain him; and that since his arrest is illegal, the bladed weapon which was presented by the prosecution as the murder weapon, must have been seized as a result of an illegal arrest and illegal search and therefore can not be presented as evidence against the accused. In short, the court *a quo* allegedly never acquired jurisdiction over the person of the accused-appellant.

On the other hand, the Office of the Solicitor General in its appellee's brief, contends that the warrantless arrest of accused-appellant by SPO1 Benjamin Bacunata at about 9:45 p.m. of June 21, 1995 shortly after the stabbing incident of Rosanna

Honrubia was justified under Section 5 (b), Rule 113 of the 1985 Rules of Criminal Procedure. Based on the report made to the Navotas Police Station by eyewitness Hector Domingo, which was shown to arresting officer SPO1 Benjamin Bacunata, the latter, in effect, was vested with personal knowledge of the facts surrounding the stabbing of Rosanna Honrubia a few hours before the arrest on June 21, 1995 of accused-appellant. Hence, SPO1 Benjamin Bacunata and the other arresting officers with him, were validly compelled, in the performance of their official duties, to arrest accused-appellant without a warrant. Besides, even if the warrantless arrest was unlawful and the evidence obtained (*i.e.*, an improvised bladed weapon) inadmissible, the conviction of accused-appellant would still be in accordance with law and the evidence because eyewitness Arminggol Teofe positively identified him as the assailant of Rosanna Honrubia, and also identified the bladed weapon recovered in another place as the one used by accused-appellant in stabbing Rosanna.

We find no merit in the appeal.

Accused-appellant assails his conviction as improper and illegal asserting that the court *a quo* never acquired jurisdiction over his person because he was arrested without a warrant and that his warrantless arrest was not done under any of the circumstances enumerated in Section 5, Rule 113 of the 1985 Rules of Criminal Procedure.

Even granting that indeed there had been an irregularity attendant to the arrest of accused-appellant, it should, not having been raised at the opportune time, be deemed cured by his voluntarily submitting himself to the jurisdiction of the trial court. Not only did accused-appellant enter his plea during arraignment but also waived pre-trial and actively participated at the trial which constituted a waiver of any supposed irregularity in his arrest.^[5]

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived.^[6] We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment.^[7] And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court^[8] as was done by the accused-appellant in the instant case.

However, after a review of the entire records, we find that the trial court erred in finding accused Carlito Ereño y Ayson guilty of murder as charged. The crime committed is homicide.

The information filed against accused Carlito A. Ereño charged him with having wilfully, unlawfully and feloniously attacked, assaulted and stabbed with a bladed weapon one ROSANNA HONRUBIA thereby inflicting upon the victim stab wounds which caused her immediate death on June 21, 1995 and that the fatal stabbing of the victim was committed with the attendant circumstances of treachery and evident premeditation.^[9]