

EN BANC

[G.R. No. 132745, March 09, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMEO UGIABAN LUMANDONG, ACCUSED-APPELLANT.**

DECISION

DE LEON, JR., J.:

Before us on automatic review is the Decision^[1] in Criminal Case No. 96-106 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 19, dated February 2, 1998 finding Romeo Lumandong y Ugiaban guilty of murder for the killing of Analou Eduave and sentencing him to suffer the supreme penalty of death.

The lifeless and naked body of eight (8) year old Analou Eduave was found by the local residents of Sitio Bolihon, Taglimao, Cagayan de Oro City in the isolated and grassy portion of the Iponan River on December 1, 1995, at about 8:00 o'clock in the morning. She sustained multiple stab and hack wounds on different parts of her body. Her neck was slashed. There was no witness to the gruesome murder. However, the relentless efforts of the barangay officials of Taglimao resulted in the arrest of appellant Romeo Lumandong who allegedly confessed to the killing.

The Information^[2] dated January 12, 1996 charging appellant Romeo Lumandong with the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, as amended, reads:

"The undersigned Prosecutor accuses Romeo Ugiaban Lumandong of the crime of Murder, committed as follows:

That on or about November 30, 1995, at more or less 9:00 o'clock in the evening, at (sic) Bolihon, Taglimao, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bladed knife which he was then conveniently provided, with treachery, and abuse of superior strength, did then and there wilfully, unlawfully, and feloniously kill one Analou L. Eduave, an 8 year old child/girl, by then and there attacking her, stabbing and hitting her chest and different vital parts of her body several times with said bladed knife, seriously injuring the said victim, resulting to her sudden death.

That the commission of the above offense is attended by the aggravating circumstances of nighttime, and abuse of superior strength.

Contrary to Article 248 in relation to R.A. 7659 which took effect on January 1, 1994 and Article 14 of the Revised Penal Code."

The evidence of the prosecution shows that Rebecca Eduave and her four (4) children were in their house in Sitio Bolihon, Taglimao, Cagayan de Oro City in the evening of November 30, 1995. Her husband, Cruz Eduave, was not around as he stayed in the house of his elder brother in Bubao, Iponan. After studying her school assignment, the victim, Analou Eduave, then a grade two (2) student and second to the eldest, went to sleep. At about 8:30 in the evening, Rebecca retired beside her children.^[3]

At about 2:00 o'clock in the morning, Rebecca was awakened by the cry of her youngest child. She lit the lamp inside the house and noticed that Analou was missing.^[4]

Rebecca immediately went to the house of her parents-in-law which was just fifteen (15) meters away from her house to inquire about her daughter but she was told that Analou was not there. Initial search for Analou in the neighborhood, led by the barangay captain, proved futile. It was already 8:00 o'clock in the morning when the lifeless and naked body of Analou was found by a couple in the grassy portion of the village near the Iponan River.^[5]

The body of the victim was brought by a combined team of the police and NBI authorities to the funeral parlor where a post mortem examination thereon was conducted by Dr. Tammy Cruz, M.D., of the NBI medico-legal office in Cagayan de Oro City. The Autopsy Report^[6] which is signed by Dr. Tammy Cruz and noted by Atty. Sancho K. Chan, Jr., NBI Regional Director, Cagayan de Oro City, contains the following findings:

"Pallor, marked, generalized. Rigor mortis, lower legs and knee joints.

"ABRASIONS, with fresh scabs, confluent: 2x1.2 cms. And 2.2x1 cms., mid-aspect of the forehead; 3x1.1 cms., right temple region.

"INCISED WOUND, with clean-cut edges: 3.8 cms. long; located at the middle third of the left forearm, lateral aspect; with an approximate depth of 0.8 cm.; involving the skin and underlying soft tissues and muscles.

"STAB WOUNDS, non-penetrating: five (5) in number; elliptical in shapes; measuring 0.7 cm., 1 cm., 0.5 cm., 1.5 cms., and 1.4 cms. long; located at the right shoulder joint region, right infrascapular region, right subcostal region, left thigh, and left lumbar region; edges, clean cut; one (1) extremity is sharp, the other, blunt; involving the skin and underlying tissues and muscles; with approximate depths of 0.8 cm., 2.6 cms., 0.6 cm., 2.4 cms., and 1.5 cms., respectively.

"STAB WOUNDS, non-penetrating: two (2) in number; elliptical in shapes; measuring 2.5 cms. and 3.5 cms. long; located at the left lateral infrascapular region and antero-lateral aspect of the left thigh; edges, clean-cut; one (1) extremity is sharp, the other is blunt; involving the

skin and underlying soft tissues and muscles, with approximate depths of 3.4 cms. and 4 cms.

"STAB WOUNDS, four (4) in number; elliptical in shapes; one (1) extremity is sharp, the other is blunt; edges, clean-cut:

- measuring 2.6 cms., 3.4 cms., 2.5 cms., and 1.1 cms. long.

- located at the left side of the chest, lower inner quadrant; right side of the chest, inferior aspect; left upper quadrant of the abdomen; and left lower thoracic region of the back.

- involving, among others, the skin and underlying soft tissues and muscles.

- completely cutting the fifth left rib, piercing the left ventricle of the heart, the diaphragm, and the right lobe of the liver; with an approximate depth of 8.2 cms.

- partially cutting the upper border of the 7th right rib and piercing the lower lobe of the right lung; with an approximate depth of 9.5 cms.

- piercing the full thickness of the abdominal wall and perforating portions of the small intestines with intestinal evisceration; with an approximate depth of 5.5 cms.

- through the 6th left intercostal space and piercing the lower lobe of the left lung; with an approximate depth of 6.5 cms.

"HACK WOUND, neck, gaping; 14.5 cms. long; running from the right side to the left side of the neck; edges, clean-cut; the right extremity is 10 cms. below and 1.5 cms. in front of the right external auditory meatus, while the left extremity is 4 cms. below and 2 cms. behind the left external auditory meatus; directed backward; involving among others, the skin and underlying soft tissues and muscles, the blood vessels of the neck, including the left internal jugular vein and left internal carotid artery, completely cutting the thyroid cartilage, partially cutting the 4th cervical vertebra and the underlying spinal cord; with an approximate depth of 4.3 cms.

"HEMOTHORAX, right, about 100 cc.; left, about 50 cc.

"HEMOPERICARDIUM, about 50 cc. of dark fluid and clotted blood.

"HEMOPERITONEUM, about 200 cc. of dark fluid and clotted blood.

"Stomach, about $\frac{3}{4}$ filled with semidigested corn grits and other food particles.

"Heart chambers, empty of blood.

"Brain and other visceral organs, pale.

"CAUSE OF DEATH: Hemorrhage, severe, secondary to multiple stab wounds, and hack wound of the neck."

Dr. Uy explained that the victim suffered abrasion on her forehead which could have been caused by a violent contact against a hard surface. An incised wound which measures 3.8 centimeters was inflicted on the mid-section of her left forearm. Moreover, the body of the victim bore eleven (11) stab wounds mostly on the chest and abdomen. Four (4) of the stab wounds located on the chest and abdominal regions penetrated the vital organs and were, therefore, fatal. The gaping wound on the neck which completely cut through the left artery and the cartilage of the airway was also fatal. The weapon used by the assailant was a sharp object such as a knife or a bolo.^[7]

The prosecution presented in evidence a list^[8] of expenses, certified by Ruben P. Obsioma, Barangay Captain of Taglimao, Cagayan de Oro City, which were incurred due to the death of Analou Eduave.

Ruben Obsioma, Barangay Captain of Sitio Bolihon, Taglimao, Cagayan de Oro City instructed Kagawad Osias Pabilona to prepare a list of the persons who attended the birthday party of a certain Bonifacio Daang which was held in the same evening when Analou Eduave was killed. Appellant Romeo Lumandong was among the persons included in the list that was subsequently forwarded to the police. The investigation by the police of the said suspects yielded negative result. Later, however, Barangay Captain Obsioma received information that appellant Lumandong had knowledge about the crime.^[9]

Consequently, Barangay Captain Obsioma wrote a letter to Homer Paduga requesting the latter to bring the appellant to his house in the afternoon of December 17, 1995. At the appointed time and date, Homer Paduga and appellant Lumandong appeared before Barangay Captain Obsioma in his house. Homer Paduga remained at the terrace while the appellant proceeded to the backyard with the barangay captain. Obsioma asked the appellant what he knew about the killing of Analou Eduave. The appellant initially gave no answer and merely bowed his head. After having been asked for the third time, appellant admitted the killing of Analou Eduave allegedly because her parents withheld his past earnings in the farm. In addition, appellant revealed that it was actually Analou's father whom he intended to kill, but he was not in the house that fateful evening and that he stabbed Analou with a double bladed knife only five (5) times, the other wounds being mere exit wounds. He also said that he did not rape Analou and undressed her only to confuse the investigators about the motive for the killing.^[10]

In view of the admissions of the appellant, Barangay Captain Obsioma did not allow him anymore to leave his house that evening. On the following day, Obsioma accompanied the appellant to the Homicide and Arson Division of the Cagayan de Oro police for formal investigation.

At the police headquarters, SPO1 Agbalog apprised the appellant of his constitutional rights. Since the appellant had no lawyer, Agbalog suggested that he would be given a lawyer who could provide him legal services for free to which the

appellant agreed. Thus, the legal services of Atty. Emelgar Paasa of the Public Attorney's Office (PAO) was engaged by the police to assist the appellant during the investigation.^[11]

According to Atty. Paasa, the appellant accepted him to act as his counsel during the custodial investigation. After having been informed by Atty. Paasa of his rights under the Constitution, the appellant agreed to give a statement^[12] wherein he admitted stabbing Analou Eduave with a double bladed knife at around midnight of November 30, 1995 in the grassy portion of the Iponan river in Sitio Bolihon inasmuch as he harbored a grudge against her parents. Also in the presence of Atty. Paasa during the same investigation, the appellant executed a waiver^[13] for his continued detention. Both documents were acknowledged by the appellant before Atty. Anabel Carmen S. Casino, Branch Clerk of Court, RTC, Cagayan de Oro City, Branch 17.

Appellant Lumandong testified that he attended the birthday party of a certain Boni Daang in the afternoon of November 30, 1995. Among those who attended the birthday party were Homer Paduga, Isagani Pabilona, Wilfredo Eduave, Zaldy Eduave and Rubio Paduga. After eating and drinking Red Horse beer, appellant left the party at around 9:00 o'clock in the evening and proceeded to sleep in the house of Homer Paduga where he had been staying for eight (8) months.^[14]

Appellant vehemently denied in court that he killed Analou Eduave and claimed that he confessed to the crime before the barangay captain and the police for fear of his life. He stated that he and Homer Paduga were fetched on December 17, 1995 from the latter's house by a barangay tanod upon order of the barangay captain. Upon reaching the house of the barangay captain, the appellant was led to the back portion of the house while Homer Paduga was instructed to remain at the terrace in front of the house. In the presence of six (6) barangay tanods, the barangay captain asked the appellant three (3) times if he had anything to do with the killing of Analou Eduave on November 30, 1995, to which he replied in the negative each time. Apparently losing his patience, the barangay captain hit the appellant on the left side of his body with the butt of his shotgun. The barangay tanods kicked and mauled the appellant on the different parts of his body. Thereafter, appellant was handcuffed by the barangay captain and the same was attached to a live electric wire which caused the appellant to feel numb and loss consciousness. Upon recovering his consciousness and while still feeling the pain, appellant pleaded for his life as he acceded to admit killing Analou Eduave. That evening, appellant stayed in the house of the barangay captain inasmuch as he was not permitted to return home.^[15]

In the early morning of the following day, the appellant was brought by the barangay captain and the chief of the tanods to the police headquarters in Cagayan de Oro City. It was PO3 Agbalog who interrogated him about the killing of Analou Eduave in the presence of the barangay captain and the chief of the tanods. He recalled having confessed his guilt before Agbalog due to fear arising from the threat of the barangay captain that he will be killed by the police if he would not admit to the crime. Atty. Emelgar Paasa arrived only after the interrogation and informed him that he was going to be his counsel. Appellant denied that he admitted killing the victim before Atty. Paasa and Atty. Casino, who appeared to have administered the oath to him, inasmuch as they did not talk to him anymore.^[16]