

EN BANC

[G.R. No. 136861, November 15, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO LOPEZ Y MARCELLA @ OPRING, ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

Before us on automatic review is the decision dated November 12, 1998 of Branch 42, of the Regional Trial Court of the First Judicial Region stationed in Dagupan City, in its Criminal Case No. 98-02265-D, finding accused-appellant Bonifacio Lopez guilty of murder complexed with abortion and sentencing him to suffer the supreme penalty of death.

Accused-appellant's conviction for said crime arose from an Information reading as follows:

That on or about the 19th day of July, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, BONIFACIO LOPEZ y MARCELLA @ Opring, being then armed with a bladed weapon, with treachery, abuse of superior strength and with intent to kill one GERARDA ABDULLAH @ Gina, full term pregnant, did then an there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by stabbing her several times, hitting her on the stomach, thereby causing her death, shortly thereafter due to "Hypovolemic shock, Hemorrhage massive. Secondary to multiple stab wound, penetrating, multiple organ perforation (Lung, Liver, Small Intestine, Pregnant Uterus, Fetal death, full term, female, secondary to stab wound right parietal area with brain tissue, damage", thus resulting also to the death of the fetus, as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, Rural Health Physician, this City, to the damage and prejudice of the legal heirs of said deceased, GERARDA ABDULAH @ Gina, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine Currency, and other consequential damages.

Contrary to Article 248 in relation to Article 256 of the Revised Penal Code.

(p. 6, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty. Trial ensued thereafter.

On April 23, 1996, the trial court, the Honorable Luis M. Fontanilla presiding,

rendered the decision now under review, disposing:

WHEREFORE, premises considered, accused BONIFACIO LOPEZ is hereby found guilty beyond reasonable doubt of the crime of Murder complexed with Abortion. Thus, he is hereby sentenced to suffer the extreme penalty of DEATH. He is further ordered to indemnify the heirs of the victim in the amount of P50,000.00 and also to pay to the said heirs P25,000.00 as actual and compensatory damages, and another P50,000.00 as moral damages for the pains suffered by the mother of the victim, if not her children. The accused is also ordered to pay costs.

(p. 26, Rollo.)

The case for the prosecution is woven mainly on the testimony of Librada Ramirez, mother of the victim, and John Frank Ramirez, brother of the victim. Librada testified that on July 19, 1998, at around 2:30 o'clock in the afternoon, she heard a commotion inside their house. Alarmed, she rushed towards their house and there she saw accused-appellant attacking his son John Frank, who was already bleeding, with a knife. After seeing blood already oozing from her son's neck, Librada went near accused-appellant to calm him down but instead, the latter sneered and poked his knife at her. Accused-appellant grabbed her head by the hair and pulled and pushed violently from one side to another, while John Frank continued to wrestle with accused-appellant for the possession of the knife. When finally Librada was able to free herself from accused-appellant's hold, her son told her to escape and seek help. Librada ran away from the scene and sought the help of their policeman neighbor whose house was about 10 to 15 meters away.

We pick up the story now from John Frank who narrated that with the help of a neighbor he was able to pull accused-appellant outside of their house and locked him out by closing the front and the back doors. Not long after, he saw accused-appellant jumping off the fence and barging inside the bathroom where John Frank's pregnant sister Gina was taking a bath. John Frank stood on top of their sink and peeped through the bathroom window to see what was happening. There he saw accused-appellant violently stabbing Gina who fell on her back to the ground. Gina somehow managed to get up, forcing her way out by tearing down a GI sheet which served as part of the enclosure of the bathroom.

Librada recalled that when she returned she saw Gina running out from the bathroom. Accused-appellant was about to leave when he saw Gina being lifted into a parked jeep. Accused-appellant rushed towards Gina, dragged her out of the jeep, kicked her, and again mercilessly stabbed her and he thence fled. Thereafter, Gina was brought to the Pangasinan Provincial Hospital where she expired.

John Frank's and Librada's account of what happened to Gina while being lifted inside the jeep finds support in Esteven Basi's story, a mere passerby who witnessed that accused-appellant was kicking and stabbing a pregnant woman he later found out to be Gina.

The autopsy report issued by Dr. Benjamin Bautista, Rural Health Physician of Dagupan City who conducted an autopsy on the cadaver of Gina, is to the following

effect:

EXTERNAL FINDINGS

Cadaver is in Rigor Mortis and pregnant, full term, lacerated wound, 8 cm. Left anterior M/3rd Linear Abrasion, 3 cm. Left medial M/3rd Forearm.

Linear Abrasion, 4 cm. Left, lateral M/3rd Forearm.

Stab wound, 3 cm. Left, mid axillary line, level 3rd ICS penetrating and perforating, 8 cm. Deep downward direction, one end shar.

Stab wound, 3 cm. Left, mid clavicular line, level 6 cm. Below the xiphoid process, penetrating and perforating, very deep downward direction, prelapse mesentery, one end sharp.

Stab wound, 3 cm. Left aneterior axillary line, level 4 cm above the umcilicus, penetrating and perforating, very deep downward direction, prelapse mesentory, one end sharp.

Confluent skin abrasion left leg anterior M/3rd

Lacerated wound 4 cm. Right, thigh, lateral D/3rd

Stab wound, 3 cm. right, anterior axillary line, level 2nd ICS, penetrating and perforating, one end sharp, downward direction, 11 cm. deep.

Stab wound, 5 cm. left, para vertebra, level thorasic lumbar, one end sharp, 3 cm. deep, non-penetrating.

Stab wound, 3 cm. right mid scapular line, buttocks, level sacral 2-3, penetrating and perforating, one end sharp, slightly upward direction, 12 cm. deep.

Stab wound, 3 cm. right, sygematic lateral, straight direction, 5 cm. deep, one end sharp.

INTERNAL FINDINGS

Intrathorasic Hemorrhage, moderate

Penetrating and perforating, right lung middle lobe and left lung lower lobe

Intra abdominal hemorrhage, massive

Penetrating and perforating, liver, middle lobe

Small intestine, and multiple perforation

Accused-appellant testified in his behalf, and presented his daughter Josephine Lopez Almonte to corroborate his story.

Accused-appellant's version of the incident dates back to May 25, 1998 when his daughter Marilyn was missing. Four days later, he saw the victim Gerarda "Gina" Abdullah, Librada (his own sister), and her other daughters Vicky and Emily quarrelling with his wife. He heard Gina tell his wife that their daughter was a flirt.

On June 3, 1998, accused-appellant's daughter Marilyn returned home. He noticed that she appeared pale and was always suffering from dizziness, such that on one occasion, due to said dizziness, she fell down the stairs. This occurrence aroused his suspicion and so he inspected Marilyn's personal belongings. He found a letter prepared by Marilyn for one Jeffrey stating the he had her baby aborted. Accused-appellant confronted his daughter and according to him she confessed that it was Librada who maneuvered the abortion.

On July 19, 1998, that fateful afternoon, accused-appellant recounted that he was in his house having lunch with his children and some friends. Thereafter, he went to the house of his sister Librada and asked her about the abortion incident. Librada answered back by calling him a devil. Upon hearing the altercation, John Frank took a knife from the kitchen and stabbed him in the abdomen. Gina then gave assistance by covering his face with a towel while Librada held his left hand. He and John Frank fought for possession of the knife. Feeling already dizzy because of his wound in his abdomen, he was not aware if any one was injured in the course of the scuffle. When he was able to get out of the house, he decided to report the incident to a certain retired captain by the name of Rosendo Maramba whom he was, however, unable to locate. Nonetheless, when the police officers arrived, he gave himself up and surrendered.

Accused-appellant did not present any medical certificate to prove his claim of having been stabbed by John Frank. Likewise, he was unable to present any other witness to corroborate his narration, except his own daughter, Josephine Lopez Almonte. Her testimony was limited to what allegedly occurred on that afternoon of July 19, 1998 which substantially was the same as that of accused-appellant.

Giving full faith and credence to the eye witness accounts of Librada, John Frank, and Esteven Basi, the trial court, in its November 12, 1998 decision, found accused-appellant guilty of murder with abortion and imposed on him the penalty of death.

Hence, the instant review and appeal wherein accused-appellant argues that the trial court erred: (a) in the application of Article 63 of the Revised Penal Code; (b) in imposing the penalty of death; and (c) in convicting him of the crime of murder since the case was not attended by any of the qualifying circumstances.

Accused-appellant's contentions lack merit.

Treachery is considered present when there is the employment of means of