

EN BANC

[G.R. No. 130507, July 28, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO GONZALES Y MENDOZA ALIAS "BOBBIT", ACCUSED-
APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from the Decision^[1] dated April 8, 1997 of the Regional Trial Court of Danao City, Branch 25 in Criminal Case No. DNO-1385 finding accused-appellant Roberto Gonzales y Mendoza alias "Bobbie" guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of death.

On January 17, 1995, accused Roberto Gonzales y Mendoza alias "Bobbie" was charged with the crime of Multiple Murder in an Information which reads, to wit:

"That on November 20, 1994 at about 10:00 o'clock in the evening, more or less, at sitio Mahawak, Barangay Damolog, Municipality of Sogod, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously slash the necks of Yolen Hortezano, 16 years old, Josel Hortezano, 9 years old and Aileen Hortezano, 5 years old, with the use of an 8" kitchen knife, while asleep, causing their instantaneous death.

CONTRARY TO LAW."

Upon arraignment, accused, assisted by counsel *de officio*, entered a plea of not guilty to the crime charged.^[2]

Trial ensued. The prosecution presented the following witnesses: (1) Dr. Ariel C. Roque, the Municipal Health Officer who conducted the autopsy of the victims' corpses; (2) Mary Iris Hortezano, the eight-year old eyewitness and sister of the victims; (3) PO3 Elvis M. Arche, the police officer who facilitated the arrest of the accused-appellant; and (4) Yolanda Hortezano, the mother of the victims who was presented to prove the civil aspect of the case.

Only the accused was presented as witness for the defense.

Dr. Ariel C. Roque is the Municipal Health Officer of Sogod, Cebu whose duties include, among others, conducting autopsy examination and other medico legal cases. He testified that he examined the three (3) dead bodies of the children of Mr. Hortezano in their house at 10:30 p.m. on November 20, 1994. He first examined

Yolen, 16 years old; then Jocelle, 9 years old; and finally, Aileen, 5 years old.[3]

He submitted the following *Post Mortem* Reports:

"I have the honor to inform you that Hortezano, Yolin Damolog, Sogod, Cebu; a medico-legal case has been attended in this office on 11-21-94 at 8:30 am for the following findings: DOI = 11-20-94

TOI = 10:30 pm

POI = Victims House

POSTMORTEM FINDINGS:

1. Deep incised wound (9-10 cm deep) 21 cm in length from left to right transverse in direction severing the trachea, neck muscles, major vessels of neck both (R) and (L) (carotid artery & jugular vein) anterior aspect
 2. Superficial incised wound 5 cm in length 3 cm below no. 1
 3. Superficial incised wound 1 cm in length lateral aspect distal 3rd (R) forearm
 4. Superficial incised wound 2 cm in length middle 3rd posterior aspect (R) forearm
 5. Cadaveric position showing resistance
 6. Blood stain found all over the body
 7. Pelvic exam - panty intact with napkin
- no bruises on thigh & legs
- hymen intact"[4]

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"I have the honor to inform you that HORTEZANO, JOCELLE 9 y.o., Male, Mahawak, Damolog, Sogod, Cebu; a medico-legal case has been attended in this office on 12-21-94 at 8:30 AM for the following findings:

DOI = 11-20-94

TOI = 10:30 PM

POI = Victims House

POSTMORTEM FINDINGS:

- 1) Deep incised wound (6 cm deepness) 14 cm in length anterior neck

directed left to right transverse in direction severing the trachea, major vessels of (R) side of neck, Neck muscles (R) w/ chip cervical bond fracture (R) lateral aspect."^[5]

X X X X X X X X

"I have the honor to inform you that HORTEZANO, AILEEN 5 y.o., Female, Mahawak, Damolog, Sogod, Cebu; a medico-legal case has been attended in this office on 11-21-94 at 8:30 am for the following findings:

DOI = 11-20-94

TOI = 10:30 PM

POI = Victims House

POSTMORTEM FINDINGS:

1) Deep incised wound (4 cm deep) 12 cm in length left lateral aspect anterior neck severing the deep muscles of the neck, major blood vessels of left side of the neck."^[6]

Dr. Roque further testified that the wounds suffered by the three (3) children were all caused by slashing of the necks with a knife cutting the carotid arteries and veins which caused the instantaneous death of the children. Their eyes were closed and somewhat swelling; their bodies were already in rigor mortis at the time of the examination. The body of Yolen, the eldest, was in a position "which could be described as struggling with her hands in half raised frontal position like an L." Their bodies were all bathed with blood. The instrument used in slashing the children was a sharp bladed instrument.^[7]

Mary Iris Hortezano, eight (8) years old and sister of the victims, was presented as an eyewitness to the incident which happened in their house on November 20, 1994 at about 10:00 o'clock in the evening. She testified that she was asleep with her brothers and sisters Yolen, Jocelle, Aileen and Junjun. On the date of the incident, their parents were not at home because they were at the fiesta at Lapulapu City. At around midnight of November 20, 1994, while sleeping with her brothers and sisters, she was awakened by the entry of Noy Bobbit, their neighbor, who barged into their house through the window.^[8] Noy Bobbit immediately placed ("patong") his body over that of her sister Yolen, whose stomach was being pressed by Noy Bobbit; when Yolen kept on resisting, Bobbit slashed her sister's neck with a knife.^[9] Her brother Jocelle, who was beside Yolen, was also awakened by the entry of the accused into their house. Jocelle fainted but accused also slashed his neck; then, accused slashed the neck of Aileen who was then sleeping beside Mary Iris because she had fever at that time.^[10]

Prosecution witness Mary Iris further testified that she was not killed because her body was already stained with blood and accused probably thought she was already dead.^[11] After accused killed Aileen, he stood up, placed his hands in akimbo and left passing the main door of the victim's house.^[12] After accused left the house,

Mary Iris went downstairs to go to the house of Noy Eleazar.^[13]

On cross-examination, prosecution witness Mary Iris testified that when the incident happened, she was 7 years old and in Grade I.^[14] On the night of the incident, she slept at 6:00 o'clock in the evening, ahead of her sister Yolen. They slept in one room and in one line. Aileen was at her right while Junjun was beside Aileen. To her left were Jocelle, then Yolen. At the time, the house was lighted by a lamp. Accused was wearing a white t-shirt.^[15] She further testified that when accused "attacked" her sister, Yolen pleaded "Please Noy Bobbit, it's enough, it is very hurt"; that her sister's shouting was loud which awakened her and Jocelle; and that when she saw accused slashed her sister Yolen's neck, she fainted.^[16] When she regained consciousness, she saw accused slashing the necks of Jocelle and Aileen.^[17] Junjun, who was then sleeping, was not harmed.^[18]

Prosecution witness PO3 Elvis Arche, who went to the victims' house at midnight immediately after the report of the incident, saw three (3) bodies lying down and already dead.^[19] He testified that he saw a pair of slippers and footsteps of blood leading to the house of the accused and thereafter arrested the latter. He found the slippers at a distance of around three (3) meters outside the house of the victims^[20] but there was no blood.^[21] In the cemented pathway from the entrance of the fence to the house of the accused were more than ten (10) bloodied footprints. The bloodied footprints ended at the entrance of the house of the accused.^[22] Witness called out at the accused at the latter's house who responded "Don't shoot me, I will go out."^[23] Accused went out and looked for some slippers but he could not find any because it could not fit his feet.^[24] Witness further found a knife under three layers of hollow blocks located at the left corner inside the house of the accused.^[25] This knife was clean but was still wet.^[26] Witness further testified that when he searched the body of the accused, he found some scratches on his body, "as if he is coming from the bushes."^[27]

On cross-examination, PO3 Arche testified that when he was searching for evidence at the crime scene, he saw a pair of blue slippers with shoetack protruding, about 11 inches in size.^[28] The house of the accused was about 150 meters from the place of the incident.^[29]

Yolanda Hortezano was presented to testify on the matter of civil damages. She testified that when she heard that her children were killed, she "felt sad" and she prayed for moral damages in the amount of P50,000.00 and attorney's fees in the amount of P50,000.00 as she engaged the services of counsel in prosecuting this case.^[30]

The defense presented accused himself as sole witness. Accused, a welder, denied the allegations in the complaint.^[31] The version of the defense, as narrated in the accused-appellant's brief is as follows:

"The defense presented as its only witness, the accused-appellant himself, Roberto Gonzales, to refute the imputations marshalled by the prosecution. He swore that he did not know anything about the killing of the victims as he was sleeping alone in his house located at Damolog,

Sogod, Cebu during the evening of November 20, 1994 since 9:30 p.m.

He stressed that he was all alone that fateful night as his wife and children were in Mindanao. He recalled being rudely awakened by the barking of the dog and the loud voices of two persons, who were later on identified as policeman Elvis Arche and a certain Ilao, who were calling out his name in the night and ordering him to step out of his house. He narrated that he initially peeped through the window to see who was summoning him and when he saw the effigies of the two persons outside pointing their firearms at him, he asked them politely what his fault was and why they wanted him to get out of his house. To this, they responded by asking him where his .38 revolver was to which he replied that he had no weapon on him. In fear that they might shoot him, he did as he was ordered and went out. As soon as he was about to unlock the padlock of the door of his fence though the two persons immediately grabbed him and dragged him outside of his fence and then frisked him.

He accentuated the fact that since the two persons were unable to find anything on him, they tied his hands with a rope and searched his house although they were not armed with a search warrant. He recounted that they were looking for a firearm and having been unable to find one, they accosted him and brought him to the police headquarters in Sogod, Cebu where he was incarcerated.

While in jail, the policemen, PO3 Elvis Arche and his companion approached him at around 11:00 o'clock that same night to force him to admit that he is the owner of a pair of red slippers. When he refused to admit the same, he was struck on the head by them with one of the slippers. The following morning at around 8:00 a.m. of November 21, 1994, his incarcerators brought him again to his house which they searched for a second time. Considering that they were still unable to find anything useful to pin him down, they got a knife from the spoon and fork tray. Following this incident, he was again detained at the police station.

Later on, the policemen presented him before the Provincial Prosecutor. During that time, he was surprised to learn that they offered the knife which they took from his tray and a pair of blue slippers as evidence to establish his connection to the crime. He informed the court *a quo* that he was astonished when the pair of blue slippers was given as evidence to the prosecutor instead of the pair of red slippers which he was earlier being forced to admit ownership of. When asked to explain the ten (10) bloody footprints found by policeman Arche on the cemented pathway from the entrance of the house of the accused-appellant, he replied that the same were nothing more but traces of floorwax which he (i.e. the accused-appellant) applied while cleaning his house earlier. He further propounded that he did not have any grudge with policeman Elvis Arche prior to the incident."^[32]

After trial, the court *a quo* rendered judgment on April 8, 1997, the dispositive portion of which reads: