

SECOND DIVISION

[G.R. No. 119380, August 19, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO LOPEZ @ AMBOY LOPEZ, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Pangasinan (Branch 52), finding accused-appellant guilty of two counts of murder and one count of frustrated murder and ordering him to pay a total of P204,300.00 in damages.

The Information^[2] against accused-appellant charged:

That on or about the 15th day of November, 1991, in the evening, at Brgy. Nancalabasaan, municipality of Umingan, province of Pangasinan, New Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, whose identity has not yet been established, armed with a short firearm, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot ROGELIO SELDERA and RODOLFO PADAPAT which caused their immediate death and on the same occasion and with treachery and evident premeditation wound MARIO SELDERA on his breast to the damage and prejudice of the heirs of Rogelio Seldera and Rodolfo Padapat and also to the damage and prejudice of said Mario Seldera.

The prosecution presented evidence showing the following: At around 6:00 in the evening of November 15, 1991, Mario Seldera, 11, his father Rogelio Seldera, and his cousin Rodolfo Padapat worked in the riceland of a certain Lagula in Barangay Nancalabasaan, Umingan, Pangasinan. It was harvest time and the three were hired to bundle the palay stalks which had been cut. As it was a moonlit night, the three worked in the field until around 9:00 when they started for home taking a trail alongside the Banila river. The trail is about two feet wide only, and so the three walked along the trail single file with Rogelio, being the oldest, leading the way, followed by his son Mario and by Rodolfo who was last. As they reached a sloping portion in the trail, accused-appellant Federico Lopez appeared armed with a shotgun. Accused-appellant had a companion, a dark man. He was unarmed.^[3] Without uttering a word, accused-appellant fired at the three, who slumped forward, face down. Accused-appellant's companion went near the bodies of the victims and rolled them over with his foot. Satisfied that the victims were dead, accused-appellant and his companion left.^[4]

However, Mario, the youngest in the group, was not killed, although he had been wounded in the back. As soon as accused-appellant and his companion had left,

Mario stood up and, crying, he walked to the house of his uncle, Alfredo Padapat, the father of Rodolfo, and reported the matter. He decided not to go home as accused-appellant and his companion went in the direction of their house. Mario's mother was fetched from their house and told what had happened to Rogelio and Rodolfo. The three then reported the incident to the barangay captain who lost no time in accompanying them to the police in Umingan, Pangasinan.^[5]

Mario was investigated by CPL Jose Almerol. Afterwards, he was taken to the Umingan Medicare Hospital where he was treated by Dr. Suller-Santos. The boy suffered three gunshot wounds on the back, right side, each wound measuring about .5 x 1 cm. The wounds were located vertically, the first about three centimeters from the second and the latter about two centimeters from the third.^[6] Dr. Santos issued a medical certification (Exh. E) and referred Mario to the Eastern Pangasinan District Hospital for x-ray examination.

Mario positively identified accused-appellant as the assailant. He testified that accused-appellant wore a white, long-sleeved shirt, blue jeans and white slippers, while his companion had a black t-shirt, black jeans and brown slippers on.^[7] He was able to recognize accused-appellant and notice the type and color of the latter's clothes and those of the latter's companions because the moon was brightly shining. He knew accused-appellant very well, because the latter used to frequent their house in Nancalabasaan to play cards with his father. In addition, Mario used to buy cigarettes from accused-appellant's store. As to the gun used, he stated that it was similar to those used by security guards. When asked whether his father and accused-appellant had a quarrel on November 15, 1991, Mario said he did not know.^[8]

Dr. Thelma C. Busto, the rural health physician of Umingan, Pangasinan, examined the bodies of Rogelio Seldera and Rodolfo Padapat on November 16, 1991.

Dr. Busto described Rogelio's wounds as follows:^[9]

1. Gunshot wound frontal area of head as point of entrance with exit at the occipital area, . . . thru and thru.
2. Multiple gunshot wounds in the chest and neck (9).

Her post-mortem report on Rodolfo Padapat stated:^[10]

Gunshot wound in the head right parietal area of head as entrance, no exit.

According to Dr. Busto's reports, the cause of death of the victims was cerebral hemorrhage and cardiorespiratory arrest secondary to gunshot wounds. Testifying, she said that the gunshot wounds were alike in size and nature. Although she could not tell the type of firearm used nor determine the trajectory of the wounds, she said the wounds could have been caused by a shotgun.^[11]

Leonida Seldera, widow of the deceased Rogelio, and Alfredo Padapat, father of Rodolfo, testified on the civil aspect of the case. The prosecution was precluded from inquiring from these witnesses about events which transpired in the evening of November 15, 1991 because they were present during the testimony in-chief of

Mario Seldera. The defense counsel moved for their exclusion but the prosecution manifested that they would only testify with regard to the civil aspect of the case.

Accused-appellant's defense was alibi. He claimed that at around 5:00 in the afternoon of November 15, 1991, he was in the house of his uncle, Asterio Sonaco, in Caurdanetaan, another barangay of Umingan in Pangasinan, about three kilometers from Nancalabasaan. He had a round of drinks with four friends^[12] over a dish of dog meat. At 11:00 that night, the party broke up and accused-appellant went home. He claimed that it was dark that night and that during the party, they used a lamp for illumination.^[13]

Accused-appellant stated that he has no previous quarrel with the two deceased nor with Mario Seldera. Nor had he been to the house of Rogelio Seldera. As to the clothes he wore on the night of November 15, 1991, he claimed he had a pair of *maong* pants and a t-shirt on, though he could not remember the color of the latter.^[14]

On cross-examination, accused-appellant admitted that he was known as "Amboy" Lopez and that although a barriomate, Rodrigo Lopez, was also called "Amboy," the latter was known more as "Thunder" Lopez. He also said that he had a farm in Nancalabasaan but he allegedly had not gone to the barangay proper as he only pass by the eastern part thereof.^[15]

In his counter-affidavit,^[16] accused-appellant did not mention anything about cooking dog meat during the party in Asterio Sonaco's house on November 15, 1991 and that he went home at 8:00 in the evening. Accused-appellant gave no explanation why in his testimony in court he said he went home at 11:00 in the evening and that they killed a dog and made its meat into a dish.^[17]

The defense presented Daniel Fortunato and Mario Sonaco to corroborate accused-appellant's testimony on the events which transpired in the evening of November 15, 1991. Daniel Fortunato testified that he is a barangay councilman of Caurdanetaan, Umingan, Pangasinan. He claimed that from 4:00 in the afternoon to 11:00 in the evening of November 15, 1991, he was with accused-appellant in a party where there were about thirteen^[18] other people, drinking gin and eating cooked dog meat. Fortunato said he and Mario Sonaco helped accused-appellant home as the latter was too drunk. Accused-appellant was allegedly received by his wife.^[19]

On cross-examination Fortunato admitted that he was not always watching accused-appellant during the party and that it was possible that the latter may have slipped out. With regard to the distance of Caurdanetaan to the Banila river, where the incident happened, Fortunato estimated it to be about 1 $\frac{1}{2}$ kilometers, which can be covered in 20 minutes by walking and in about 11 minutes by running. Fortunato testified that accused-appellant had the same height and body build as Rodrigo "Thunder" Lopez although the latter was darker.^[20]

Mario Sonaco, for his part, claimed that there were less than ten^[21] people present in the house of his brother, Asterio Sonaco, in the evening of November 15, 1991. However, he corroborated Fortunato's testimony that he and Fortunato took

accused-appellant home at 11:00 o'clock that night because the latter was drunk.
[22]

On cross-examination, Sonaco admitted that accused-appellant is his nephew.^[23] He estimated that accused-appellant's house was less than two kilometers from the Banila river. He reiterated that by taking the barangay road, the distance could be covered in 30 minutes on foot but if one runs or uses the shorter route through the ricefields, the travel time would be less.^[24]

The defense also presented Juanito Costales, barangay captain of Caurdanetaan, who testified that around 12:00 midnight of November 15, 1991, three policemen went to his house to inform him that accused-appellant was a suspect in a killing in the neighboring barangay of Nancalabasaan. He said he accompanied the authorities to accused-appellant's house and that when the latter came out, he smelled of liquor. When asked by the policemen where he had been, accused-appellant allegedly answered he had been to a drinking party held that afternoon. Apparently finding nothing unusual, Costales and the policemen left.^[25]

Costales corroborated Mario Sonaco's testimony that accused-appellant's house is less than two kilometers from the scene of the crime. When asked about the condition of the night on November 15, 1991, he stated that it was so dark that the policemen had to use flashlights.^[26]

Corroborating accused-appellant's claim that it was pitch dark on the evening of November 15, 1991, Lorna Gonzales, a resident of Barangay Nancalabasaan, whose house is about 100 meters from the Seldera household, testified that at around 9:00 in the evening of that day, she heard some wailing and weeping in the house of the Selderas, and that she and her husband learned that Rogelio Seldera had died. However, they did not go out of their house because it was allegedly very dark, and she was afraid that her husband might be implicated in the killing. On cross-examination, Gonzales disclosed that her house is surrounded by big *camachile* trees. When asked whether these could obstruct the light from the moon, she only said: "It [was] dark, sir."^[27]

On January 20, 1995, the trial court rendered judgment, the dispositive portion of which reads:^[28]

WHEREFORE, in virtue of the foregoing disquisitions accused Federico Lopez @ Amboy Lopez is hereby declared GUILTY of the crime of Double Murder With Frustrated Murder beyond reasonable doubt and is hereby sentenced to a penalty of Reclusion Perpetua relative to the treacherous killing of Rogelio Seldera, and to pay the heirs of the late Seldera the sum of Fifty Thousand Pesos (P50,000.00) as compensatory damages, Thirty Thousand (P30,000.00) as moral damages, likewise sentences the same accused Amboy Lopez of the penalty of Reclusion Perpetua for the treacherous killing of Rodolfo Padapat, and to pay the heirs of the late Padapat the sum of Fifty Thousand Pesos (P50,000.00) as compensatory damages, and the sum of Thirty Thousand Pesos (P30,000.00) as moral damages, and to pay civil liability or actual expenses incurred during the wake and burial and other expenses incurred relative to the interment of both deceased in the amount of Fourteen Thousand Pesos (P14,000.00)

payable to the heirs of both victims, and finally sentences accused Amboy Lopez for the crime of Frustrated Homicide for the injuries sustained by victim Mario Seldera, with a penalty of Prison Mayor from six (6) years and one (1) day to twelve (12) years, and to pay the widow of the late Rogelio Seldera the sum of Twenty Thousand Pesos (P20,000.00) as moral damages, Ten Thousand Pesos (P10,000.00) exemplary damages, and P300.00 as actual damages in the form of medical expenses. With cost de officio. Bailbond cancelled.

SO ORDERED.

In this appeal, accused-appellant alleges that:[29]

ASSIGNMENT OF ERRORS

- (1) THE HONORABLE COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF MARIO [S]ELDERA;
- (2) THE HONORABLE [COURT] ERRED IN NOT CONSIDERING THE TESTIMONIES OF DEFENSE WITNESSES LORNA GONZALES AND BARANGAY CAPTAIN JUANITO COSTALES AS TO THE CONDITION OF THE NIGHT;
- (3) THAT THE HONORABLE COURT ERRED IN NOT CONSIDERING THE DEFENSE OF ALIBI PUT UP BY THE ACCUSED;
- (4) THE HONORABLE COURT ERRED IN NOT CONSIDERING THE EXISTENCE OF TWO PERSONS SPORTING THE NAME OF AMBOY LOPEZ.

First. Accused-appellant questions the credibility of Mario Seldera. It is unbelievable, he contends, that this witness observed even minute details, such as the length and color of the shirts worn by accused-appellant and his companion, the color of their slippers, and the type of firearm used by accused-appellant, considering that the shooting took place suddenly and unexpectedly.[30]

The contention has no merit. As the Solicitor General points out, Mario Seldera went through a harrowing experience. In fact, he suffered three gunshot wounds and was given up for dead by the assailant. The memory of the massacre was etched deeply in his memory. As this Court has many times held, the natural reaction of victims of criminal violence is to strive to notice the appearance of their assailants and observe the manner the crime was committed.[31]

Indeed, Mario's statement that accused-appellant used a shotgun in shooting him and his companions on November 15, 1991 is confirmed by the fact that the wounds suffered by the victims were similar to those caused by a shotgun fired at close range. Rogelio Seldera, who was less than three meters away from accused-appellant, had his head practically blown off. On his neck and chest were nine wounds, probably caused by pellets from the blast. Mario, who was behind his father, sustained three vertical, relatively small wounds on the right side of his back. The wound on Rodolfo's head, on the other hand, although without an exit, is similar in size to that suffered by Rogelio Seldera on the head.