

## EN BANC

**[ G.R. No. 127840, November 29, 1999 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLAND PARAISO, DEFENDANT-APPELLANT.**

### DECISION

#### PER CURIAM:

For automatic review is the Decision dated November 26, 1996 of the Regional Trial Court<sup>[1]</sup> of Cebu City, Branch 14 in Criminal Case No. CBU-41141 finding accused Roland Paraiso guilty of special complex crime of Robbery with Homicide and sentencing him to suffer the penalty of death.

An Information<sup>[2]</sup> was filed charging accused Roland Paraiso and John Doe of the crime of Robbery with Homicide as follows:

"That on or about the 11th day of June, 1995, at 1:30 o'clock in the afternoon, more or less, in Barangay Lipata, Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating and mutually helping one another, with intent to gain, and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously enter the house of Lolita Alipio Tigley, and once inside, take, steal and carry away one (1) Rolex watch, assorted jewelries, P200.00 cash and a telescope, all valued at P180,000.00 and on the occasion thereof, with intent to kill, dragged said Lolita Alipio Tigley inside a room, and thereafter assaulted, attacked and stabbed the latter on the different parts of the body which caused her death shortly thereafter."

No bail was recommended. Upon arraignment, accused Paraiso, assisted by counsel, pleaded not guilty to the crime charged.<sup>[3]</sup> Hence, trial ensued.

The prosecution presented the following witnesses: Sheila Marie Alipio, 18 years old; Ferdinand Tigley, 17 years old; Epifanio Tigley, Jr., 15 years old; Kim Tigley, 13 years old; cartographer Ligaya Agbay; Dr. Juan Zaldarriaga, Jr.; and Adelaida Alipio.

Prosecution eyewitness Sheila Marie Alipio, then 18 years old, is the niece of the victim. Her father Medelino is the brother of the victim Lolita. Their house is located some 50 meters away from the house of the victim. Sheila testified that at around 1:30 in the afternoon of June 11, 1995, she went to the house of the victim to deliver a one-gallon water container. At the main door of her aunt's house, she saw two (2) men, including accused herein, standing about a meter away from her. She rang the doorbell and after a while, her aunt opened the door. All of a sudden, one of the two men pushed her inside the victim's house. She stumbled and when she looked back, she saw one of them pointing a gun, about 8 to 10 inches long, at her

aunt's right temple. He allegedly wore navy blue maong pants, a round-neck t-shirt colored sky blue, red rubber shoes and a black cap over his head; he was fair-complexioned with somewhat sunken cheeks. Sheila later identified this man in court as the accused-appellant Paraiso.<sup>[4]</sup>

Sheila further testified that the other man was armed with a Batangas fan knife which he poked at her right side. They were herded upstairs into one of the rooms, together with the victim's children, Epifanio, Jr., Ferdinand and Kim. Paraiso was allegedly holding the victim Lolita and asked for the key; he likewise ordered the victim to open the cabinet and ransacked and searched the same. He asked where the money was placed but Lolita took from her pocket the amount of P200.00 which she handed to Paraiso saying that it was all that she had. Paraiso likewise took jewelries, wristwatch and video camera. Paraiso and his male companion brought the victim to the bathroom and ransacked the cabinet. Paraiso later ordered his companion to cover Sheila and her cousins with pillows. Sheila peeped through the pillows and saw Ferdinand being tied up. Her aunt pleaded with the perpetrators not to harm the children. Later, Sheila saw her aunt being taken to the children's room but her aunt came back bloodied and clutching her breast. Lolita collapsed after looking at each one of them. The accused and his companion were no longer there.<sup>[5]</sup>

Sheila described the man holding the Batangas knife as dark-skinned, with protruding Adam's apple and his face and forearms bore so many scars and sporting a flat top haircut, somewhat regular nose.<sup>[6]</sup>

Another witness for the prosecution was Epifanio Tigle, Jr., then 15 years old, who is the son of the victim. In the courtroom, he pointed to accused-appellant Paraiso as one of the two (2) men who robbed and killed his mother.<sup>[7]</sup> He testified that on June 27, 1995, he, together with his siblings, went to the office of the NBI wherein a cartographic sketch was drawn of one of the suspects (since he was present when his mother was robbed and killed); that he, together with his brothers, Ferdinand and Kim and his cousin Sheila went to the Chief of Police at the Municipal Building of Minglanilla on April 19, 1996 to inform him that the suspects in the robbery case in Argao were not the ones who robbed and killed his mother.<sup>[8]</sup> He further testified that he, his mother and brothers were inside their house at their mother's room when Sheila, who was at the main door, was ordered to enter their house; and that the robbers ordered them to stay inside their mother's room.<sup>[9]</sup> Upon demand, his mother gave accused Paraiso only P200.00, which was in her pocket, because she has not yet received her allotment from her husband. Thereafter, accused Paraiso asked for the key to the box and took out some jewelries, such as wrist watch and necklace.<sup>[10]</sup>

Ferdinand Tigley, 17 years old, testified to corroborate the testimonies of eyewitnesses Sheila and Epifanio, Jr., as he was likewise at the house of the victim during the incident. He was hogtied by the companion of appellant Paraiso with a t-shirt which was taken from the victim's cabinet.<sup>[11]</sup> He was also presented to prove actual and moral damages. He stated that the robbers took a wristwatch, necklace, telescope and video camera aside from the P200.00 which the victim handed to Paraiso; that the total value of the items taken was P179,800.00, as shown in the list marked as Exhibit "F"; this list was made by his father who came home for the

burial. The burial expenses likewise amounted to P47,600.00 as evidenced by a list marked as Exhibit "G". Ferdinand further testified that when his mother was killed, he felt anguish and pain. When asked if his worries and feelings could be translated into cash, he stated that "(G)rief and anguish is not a business proposition to be given monetary value, not even a million will suffice."<sup>[12]</sup>

Kim Tigley, then 13 years old, is the youngest son of the victim. Upon identifying in court appellant Paraiso as one of the persons who entered their house, he exploded in anger and banged his fist on the armchair of the witness box.<sup>[13]</sup> He recalled that after appellant took out the jewelries, wristwatch, telescope and camera, and while his older brother Ferdinand was hogtied by appellant's companion, his mother pleaded with robbers to just take all the things they wanted but not to harm Ferdinand; and that with the gun pointed at his mother's head and the knife poked at her, the two robbers held his mother and brought her into the other room where she was killed.<sup>[14]</sup>

Adelaida Alipio, the sister-in-law of the victim, testified that appellant came to the house of the victim on June 6, 1995 to apply as a driver but the victim allegedly declined because her jeepney had many defects.<sup>[15]</sup>

Dr. Juan Zaldarriaga was presented by the prosecution to identify the Necropsy Report of the victim. He testified that the cause of death was "Hemorrhage, severe, secondary to stab wounds of the chest" with the following post mortem findings:

"Cyanosis, lips and nailbeds.

Contusion, greenish-purple, 2.0 x 4.0 cms., lateral aspect, middle third, arm, right.

Contuse abrasion, 0.5 x 0.5 cm., sternal region, right side.

Wounds, incised: 2.0 cms., dorsal aspect, hand, left; 4.0 cms., dorso-palmar aspect, between ring and middle fingers, hand, left.

Wounds, stabbed:

(1) Elliptical shaped, edges clean cut, running horizontally, 1.6 cms., with lateral extremity sharp and medial extremity blunt; located at the anterior aspect, chest, right side, 4.0 cms. from the anterior median line and level of the 3rd rib; directed backward, downward and medially; involving the skin and soft tissues, non-perforating, with the depth of 3.0 cms.;

(2) Elliptical shaped, edges clean cut, running downward and medially, 1.8 cms., with the upper extremity blunt and lower extremity sharp; located at the anterior aspect, chest, left side, 2.5 cms. from the anterior median line and level of the 3rd intercostal space; directed backward, downward and laterally; involving the skin and tissues, perforating the heart, with the depth of 8.5 cms.;

(3) Elliptical shaped, edges clean cut, running horizontally, 1.8 cms., with

the medial extremity sharp and lateral extremity blunt; located at the anterior aspect, chest, left side, 9.0 cms. from the anterior aspect, chest, left side, 9.0 cms. From the anterior median line and level of the 3<sup>rd</sup> intercostal space; directed backward, downward and medially; involving the skin and soft tissues, perforating the lung, left side, with the depth of 13.0 cms.;

(4) Elliptical shaped, edges clean cut, running almost vertically 2.0 cms., with the upper extremity sharp and lower extremity blunt; located at the postero-lateral aspect, chest, left side, 15.0 cms. From the posterior median line and level of the 8<sup>th</sup> intercostal space; directed forward, downward and medially; involving the skin and soft tissues, perforating the lung, diaphragm, left side and stomach, with the depth of 14.0 cms.

Hemopericardium, 300 cc.

Hemothorax: left side, 700 cc.; right side, 500 cc.

Lungs, congested and edematous; cut sections show reddish congested cut surfaces.

Brain and other visceral organs, moderately congested.

Stomach, full of clear fluid and partially digested rice and other food particles.

CAUSE OF DEATH: Hemorrhage, severe, secondary to stab wounds of the chest."

For the defense, the following witnesses were presented: Estacio Sayson, Lilia Abellana, Thelma Moneva, Rodliza Alforque, Raul Pable, Eric Pasilan, Rosita Paraiso and accused himself. The theory of the defense is alibi and denial.

After trial, the court *a quo* rendered judgment on November 26, 1996, the dispositive portion<sup>[16]</sup> of which reads:

"WHEREFORE, premises considered, the Court hereby finds the accused Roland Paraiso guilty beyond reasonable doubt as a co-principal by direct participation of that certain John Doe of the special complex crime of robbery with homicide as now defined and penalized by Section 9 of Republic Act No. 7659. The felony at bar was attended by three aggravating circumstances, to wit: that the act was committed in disregard of the respect due the offended party on account of her sex, that the act was committed in the dwelling of the offended party (morada) without the offended party having given any provocation therefore, and that advantage was taken by the accused and of his companion of their superior strength -- without any mitigating or extenuating circumstance to neutralize or offset any of these aggravating circumstance. He is accordingly sentenced to the supreme penalty of death by lethal injection as mandated by law.

The accused Roland Paraiso is also sentenced to restore unto the heirs or

family of the late Lolita Tigley the sum of P200.00 in cash and the assorted jewelries, wristwatch and Video camera valued at P179,800.00, which he and his companion stole from Lolita Tigley that afternoon of June 11, 1995 at her dwelling at Lipata, Minglanilla, Cebu. The accused is also ordered to pay moral damages in the sum of P200,000.00 and exemplary damages in the sum of P100,000.00 to the heirs of the late Lolita Tigley.

Costs shall also be taxed against the accused.

May God have mercy on your poor soul, Roland Paraiso."

Hence, this automatic review.

Accused-appellant Paraiso raised the following assignment of errors in his brief:

"THE LOWER COURT ERRED IN OVERLOOKING AND FAILING TO CONSIDER CERTAIN FACTS AND CIRCUMSTANCES OF WEIGHT AND VALUE, WHICH IF CONSIDERED WOULD HAVE MATERIALLY ALTERED THE RESULT OF THE CASE.

"THE LOWER COURT ERRED IN MAKING CONCLUSIONS OF FACT WHICH ARE NOT SUPPORTED BY THE EVIDENCE ON RECORD.

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FLIMSY AND UNRELIABLE EVIDENCE PRESENTED BY THE PROSECUTION.

"THE LOWER (COURT) ERRED IN FINDING THE GUILT OF THE ACCUSED-APPELLANT OF THE CRIME OF ROBBERY WITH HOMICIDE BEYOND REASONABLE DOUBT."

The assigned errors are interrelated and the present case hinges on the credibility of witnesses.

Appellant contends that his guilt was not proven beyond reasonable doubt because there were facts and circumstances that the court *a quo* did not consider in his favor and that the evidence presented by the prosecution is flimsy and unreliable.

In this connection, it bears emphasis that where the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court unless some facts and circumstances may have been overlooked that may otherwise affect the result of the case. For, it is the peculiar province of the trial court to determine the credibility of the witness because of its superior advantage in observing the conduct and demeanor of the witness while testifying.<sup>[17]</sup> As this Court has invariably held, the opinion of the trial court as to who of the witnesses should be believed is entitled to great respect. The oft-repeated rationale born of judicial experience is that the trial judge who heard the witnesses testify and had the occasion to observe their demeanor on the stand was in a vantage position to determine who of the witnesses deserve credence.<sup>[18]</sup> Only the trial judge can observe the "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath -- all of