

THIRD DIVISION

[G.R. No. 116524, January 18, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LYNDON FLORES Y MALARAYAP, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, J.:

Charged with murder in an Information reading as follows:

That on or about the 20th day of June 1993, at around 12:00 o'clock noon, in barangay Malusak, Municipality of Boac, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, with deliberate intent to kill, and with treachery, assault, attack, maim and violently kick the vital parts of the body of one Manuel Lazarte y Malvar, while he was lying dead-drunk and unconscious on the pavement, inflicting upon him the following fatal injuries:

*Ruptured Small Intestine (jejunum) with spillage of the Intestinal content
In trap er iton eally*

Cause of Death:

Ruptured Viscus, allegedly secondary to mauling

(p. 3, Rollo.)

Lyndon Flores, upon arraignment, entered a plea of not guilty, and after trial on the merits, he was found guilty by the court a quo in a decision which accordingly disposed:

In view of the above observations and findings, this Court found Lyndon Flores y Malarayap guilty beyond reasonable doubt of the crime of Murder without any mitigating nor aggravating circumstance attendant to its commission.

Under the rule on application of penalty and as enunciated in People vs. Muñoz, et al., G.R. No. L- 38969-70, February 9, 1989, 170 SCRA 107, reiterated in People vs. Sadia, Jr., G.R. No. 92633, Oct. 17, 1991, 203 SCRA 62-71, the proper penalty imposable is reclusion perpetua. Hence, Lyndon Flores y Malarayap is hereby sentenced to suffer the penalty of RECLUSION PERPETUA together with the accessory penalty thereof (People vs. Penilles, et al., G.R. No. 65673, 30 Jan. 1992; People vs. Catubig, G.R. No. 89732, Jan. 31, 1992).

The accused shall be credited with the full extent of his preventive imprisonment in accordance with the provision of the Revised Penal Code.

The accused is hereby ordered to pay the heirs of the victim the sum of P50,000.00 as and for death indemnity; the further sum of P30,000.00 for hospitalization and medicines and for the coffin and burial of Manuel Lazarte.

The body of the accused is hereby committed to the custody of the Director of Prisons, National Penitentiary, Muntinlupa, Metro Manila, thru the Provincial Jail Warden of Marinduque.

Let the mittimus be prepared for the accused's immediate commitment.

(p. 25, RoIlo.)

From said decision, the instant present appeal has been interposed, with accused-appellant putting up the general allegations or, shot-gun type of arguments that the trial court erred in finding him guilty of murder instead of simple homicide. In consequence, accused-appellant submits that the trial court erred when it imposed the penalty of reclusion perpetua. We find no merit in the first argument. With regard to the second argument, we sustain accused-appellant but on the basis of grounds other than those he proffers. But first to the background facts which were capsulized by the trial court in this wise:

Cesar Lanot pointed to the accused who is in court and declared that at 12:00 noon of June 20, 1993, while he was at the ground floor of their residence he saw Manuel Lazarte alias Ato being kicked by Lyndon Flores alias Jojo (accused). Ato was then opposite Rustico Malvar's house lying on the pavement seven arms length from him dead drunk. Thereafter, Ato Lazarte was brought to the hospital.

He explained that the accused hit Ato Lazarte at his stomach twice with the use of the right foot with Topsider leather shoes.

He relayed that on that noon Ato's mother Emperatriz Lazarte had an altercation with the accused due to a cassette belonging to the former. He was attracted by a commotion outside prompting him to go out so he saw Lyndon kicking Manuel Lazarte who had been lying on the pavement five (5) minutes before the kicking.

Of the persons present around he can remember only Popong Mendoza, Taba, whose exact name he does not know and Lydia Vargas. Thereafter, Ato Lazarte was brought to the hospital where he died two days after the incident. He even dissuaded Jojo, saying "that is enough because Manuel will not fight back as he remained lying," thereafter Flores left A to.

Dr. Dante Osmillo of the Marinduque Provincial Hospital attended to Manuel Lazarte on June 20, 1993 identifying Exh. B, explaining that there

was no swelling nor abrasion but found tenderness at the epigastric area. The exploration of the intestine was done by Dr. Edgardo Marquez (Exh. B-2) without his assistance.

That at the time of admission the patient Manuel Lazarte was positive of alcoholic breath complaining of epigastric pain. He did not see any abnormal physical appearance and no sign of external illness. The whole body appeared to be normal. However, in the afternoon of June 21, the victim complained of epigastric pain such that believing it to be merely gas pain he gave medicine for such. He endorsed the patient normally to another physician (Dr. Sevilla) there being no alarming sign and symptom.

Alfredo Alvarez declared that at 12:00 noon of June 20, 1993 after hearing a commotion outside their residence at Malvar and Madrigal Streets, Boac, Marinduque he went out and found Emperatriz Lazarte arguing with Lyndon Flores. Later he saw Lyndon kick Manuel Lazarte who was lying on the pavement dead drunk in front of Malvar's residence about 4 arms length away from him. Flores hit Lazarte three times at the breast and stomach with Lyndon's left and right feet wearing leather shoes. Chic-Chic, Lyndon's companion, held Manuel's breast shirt, slapped Manuel and dropped him. That it was Cesar Lanot who first pacified Lyndon while Chic-Chic was just looking. Police arrived and together with others carried (inusong) Ato upstairs of their residence, after which he went to the cockpit and did not know anything that transpired.

He described that the kicking was by dropping the feet on the stomach, first by the right foot which landed on the chest while the second and third at the stomach. He did not hear anything from Manuel Lazarte.

Emperatriz Lazarte, mother of the victim, claimed that at 12:00 noon on 20 June 1993 while watering her plants she saw people outside their residence with her son lying prostrate on the pavement but did not know why. She saw the accused Lyndon looking straight to her rubbing his hands. She recalled having lost her cassette and was able to trace it at Salvo's Pawnshop pawned by the accused in his name. When Mrs. Salvo refused to give it back she redeemed it for P20.00 and instructed Mrs. Salvo to inform anybody who will complain to see her. Confronting the accused, exchange of words ensued which made Lyndon mad. Accused Lyndon turned to her son and kicked him three times then pulled him by the shirt lifting his son then left him fall. She got nervous because she heard the head hit the pavement. The accused was with other man, one of whom was a certain

Chic-Chic. That the accused was pacified by Cesar Lanot up to the time her son was brought to her residence. Ato Lazarte was brought to the hospital that Sunday afternoon and died in the evening of the following day, Monday.

That the victim was married with six children. She allegedly spent P30,000.00 for the hospital, coffin, church and medicines.

Her son has no permanent occupation but earns. That the victim was not suffering from any illness before the death but did not know why he was lying on the pavement that day.

Dr. Edgardo Marquez was consulted on June 21, 1993 to evaluate Manuel's condition whose abdomen was distended and tender. There was no clear hematoma on the abdomen. X-ray showed presence of air intra-abdominally. Suspecting that there was ruptured viscus, they operated on and found ruptured intestines, duodenum, with two (2) ruptured areas intra-abdominally with the abdomen bloody (chocolate color) with alcoholic contents. He opined that it must have been caused by a strong blow, like repeated kicking on the abdomen. Before the surgery the patient can communicate. The proximate cause of loss of fluid was intestinal Infection. He did not find any ulcer on the small intestines since there was no perforation. However, the ruptures appeared to be about 2 or 3 days but there was no abscess.

(pp. 1-5, Decision; pp. 14-18, Rollo.)

Accused-appellant denies having kicked the victim. He asserts that he merely touched, with his right foot, the victim who was lying dead drunk on the pavement to wake him up so that the victim could explain the circumstances of the loss of Emperatriz Lazarte's cassette recorder. Emperatriz imputed to accused-appellant the loss of her cassette recorder which she eventually found in a pawnshop from where she redeemed it. Accused-appellant insists that it was the victim Manuel Lazarte who pawned the cassette recorder and so he was trying to wake up the victim so that the latter could inform his mother that it was he who pawned the cassette recorder.

Accused-appellant's denial that he kicked the victim runs counter to the evidence on record. Prosecution witness Cesar Lanot categorically testified that accused-appellant kicked the victim in the belly, thusly:

Q. *What happened to Manuel Lazarte when he was kicked by the accused Lyndon Flores alias "Jojo"?*

A. *He was brought to the hospital, sir.*

Q. *When the accused kicked Manuel Lazarte, do you know if he was hit?*

A. *Yes, sir.*

COURT:

Q. *in what part of the body was he hit?*

A. *On the stomach, sir.*

Q. *How many times?*

A. *Two (2) times, sir.*

Q. *With what foot?*

A. *Right foot, sir.*

A.

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