

SECOND DIVISION

[G.R. No. 113710, March 07, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND JUAN Y VIDAD, GIL MIGUEL Y CUDAL, ACCUSED-
APPELLANTS. JOHN DOE (AT LARGE), ACCUSED.**

D E C I S I O N

PUNO, J.:

In an Information, dated February 25, 1991, appellants **FERDINAND JUAN Y VIDAD AND GIL MIGUEL Y CUDAL**, together with John Doe, were charged with **MURDER** for the death of **FRANKLIN BALLESTEROS**.^[1] The crime was allegedly committed as follows:

"That on or about the 22nd day of February, 1991, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, treachery, superior strength and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of FRANKLIN BALLESTEROS y DE GARCIA, by then and there stabbing the former with the use of a fan knife, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said FRANKLIN BALLESTEROS Y DE GARCIA, in such amount as may be awarded to them under the provisions of the Civil Code.

"Contrary to law."

When arraigned, appellants pleaded 'not guilty' to the crime charged. Trial on the merits ensued against them while their cohort has remained at large.

The prosecution evidence^[2] reveals that, at around midnight, on February 21, 1991, Franklin Ballesteros, his brother Constantino, and their neighbor, Joel Pagco, went to Markfoods *Ihaw-Ihaw* Restaurant, a beerhouse located at E. Rodriguez Avenue corner Quezon Avenue, near Welcome Rotonda in Quezon City. They consumed a few bottles of beer until the restaurant closed at about 4:00 a.m. the following day, February 22, 1991.

When they were prepared to go, Constantino Ballesteros and Joel Pagco proceeded to the exit door fronting Quezon Avenue. They waited for Franklin at the door as the latter was still talking to Karina Susano, one of the restaurant's waitresses. Joel and Constantino noticed three (3) men hanging around a few meters away from the restaurant. Two of them were later identified as appellants Ferdinand Juan and Gil Miguel. In no time, Franklin stepped out of the restaurant and followed his

companions.

Franklin's group had barely left the restaurant when accused-appellants' group followed them. Constantino became apprehensive and suggested to Joel that they pass by near the Welcome Rotonda police detachment. The suggestion came too late. Gil and an unidentified cohort suddenly grabbed Franklin's arms. At that time, Franklin was about three (3) meters behind his companions.

Constantino tried to help his brother Franklin, but he was boxed by Gil. It was Ferdinand who drew a knife and stabbed Franklin. Constantino heard his brother scream: "*May tama ako.*" He shouted to his wounded brother to seek succor in the nearby United Doctors Medical Center. Too weak, Franklin slumped on the ground.

Joel also failed to come to Franklin's aid as he was startled by the sudden attack. He recounted that Ferdinand went in front of Franklin and stabbed the latter with a fan knife. He tried to help the fallen Franklin but someone hit him at the back. People then started to gather at the scene and Ferdinand, Gil and their companion fled on board a tricycle.

With the help of some tricycle drivers, Franklin was rushed to the hospital. The effort was futile. He died as a result of "cardio-respiratory arrest due to shock and hemorrhage secondary to a stab wound in the trunk."^[3]

Constantino remained with his brother at the hospital while Joel reported the incident to the police detachment beside the hospital. On duty were SPO3 Romeo Catolin and defense witness PO3 Salvador Camacho. PO3 Catolin investigated the incident. While Joel was narrating the incident, someone shouted that one of the suspects was at the "*Palabok King*," an eatery adjacent to the police station, about seven (7) meters away.

PO3 Catolin and Joel rushed to the eatery. True enough, they saw Ferdinand sitting on a stool. Joel immediately pointed to Ferdinand as the one who stabbed the victim. Ferdinand was brought to the police station for investigation.

Curiosity seekers watched as Ferdinand was being investigated. Gil mingled with the crowd outside the detachment. He caught the eye of Joel who immediately informed the police. Sensing he had been recognized, Gil ran. Joel and PO3 Catolin chased and nabbed him near the PLDT Office along España Street. Gil was also brought to the police station.

During the investigation, Ferdinand and Gil did not disclose their kinship and pretended they did not know each other.^[4] Constantino followed Joel at the police station. He lost his temper when he saw Ferdinand. He boxed Ferdinand three (3) times until cooler heads pacified him. Ferdinand's nose bled and he was brought to the hospital for treatment.

Franklin's death deeply saddened the Ballesteros family, particularly his mother, Virginia Ballesteros. Her son just passed the Civil Engineering licensure examination. She was expecting him to help her support his brothers and sisters.

Accused-appellants offered a different version of the incident.

Ferdinand claimed that in the evening of February 21, 1991, he went to the house of Efren Arellano, in San Andres Bukid, Manila, to study. He stayed at his friend's house until 1:00 a.m. of February 22, 1991. He then proceeded to Quiapo and had a snack. Thereafter, he took a jeepney and alighted at the corner of Quezon Boulevard and E. Rodriguez Avenue, Quezon City at 3:40 a.m.

Upon alighting from the jeepney, someone suddenly hit him on the face. He suffered a cut above the left eyebrow and felt dizzy. He did not recognize his attacker. He hurriedly took a tricycle and went home.

Ferdinand was treated by his sister, Estrellita Araza, who also advised him to report the incident to the police. It was then 4:00 a.m.

Ferdinand, accompanied by his nephew Gil, proceeded to the police station. When they saw a crowd gathered outside the station, they went instead at the nearby "*Palabok King*" where they heard sketchy accounts of the stabbing incident. Ferdinand told Gil to go to the station and find out what happened.

Ferdinand was waiting for Gil when Joel and PO3 Catolin arrived at the "*Palabok King*." Joel pointed to Ferdinand and said: "*Ayan po, isa 'yan sa sumaksak. Sinuntok ko pa nga iyan.*" Ferdinand recognized Joel as the one who boxed him when he alighted from the jeepney. Forthwith, PO3 Catolin brought Ferdinand to the police station for investigation.

Constantino also arrived at the police station. Upon seeing Ferdinand, Constantino allegedly exclaimed: "*Ikaw pala ang sumaksak sa kapatid ko.*" Thereafter, Constantino threw a punch at his nose.

On his part, Gil averred that, while he was snooping around outside the police station, he saw Joel talking to PO3 Camacho. Joel mistook him as one of the assailants, saying: "*Isa ka pa.*" Later on, Joel retracted and PO3 Camacho allowed him to leave.

Gil did not return to the eatery but headed for home. To his surprise, Joel went after him. The police, led by PO3 Catolin, also chased him. He was collared near the PLDT Building along España Street.^[5] Upon his arrest, Joel accused him as one of the assailants. PO3 Catolin then ordered him to board a Ford Fiera. PO3 Camacho who was on board the Fiera did not bother to inquire why he was arrested.^[6] In the precinct, he found his uncle Ferdinand in police custody.

PO3 Salvador Camacho testified for the defense. He claimed that he and PO3 Catolin were in front of the detachment when they noticed a man (the victim) slump on the ground. Joel came and reported the stabbing incident.

After the investigation, PO3 Camacho and Joel tarried outside the detachment. Gil passed by. Looking at Gil, Joel said: "I think you are one of them." Gil denied the accusation. Joel retracted his accusation, thus, Gil was allowed to leave.

The trial court gave greater credence to the prosecution evidence. It declared accused-appellants guilty of murder as the killing was attended by treachery and

evident premeditation. The dispositive portion of the trial court decision, dated January 27, 1991, reads:

"WHEREFORE, premises considered, accused FERDINAND JUAN (Y VIDAD) AND GIL MIGUEL Y (CUDAL) are hereby found guilty beyond reasonable doubt of the crime of murder and sentenced to serve the penalty (of) *reclusion perpetua* and to (sic) pay the heirs of deceased FRANKLIN BALLESTEROS the sum of fifty thousand (P50,000.00) pesos for and as moral damages, fifty thousand (P50,000.00) pesos as indemnity, fifty thousand (P50,000.00) pesos as actual damages plus costs.

"SO ORDERED."

Hence, this appeal. Accused-appellants contend that:

I

THE TRIAL COURT ERRED IN NOT RECOGNIZING THE ACCUSED-APPELLANTS' SUBMISSION THAT THEY WERE SOMEWHERE ELSE AT THE TIME OF THE COMMISSION OF THE CRIME AND THAT THEY WERE NEVER AT THE SCENE OF THE CRIME.

II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE WITNESSES FOR THE DEFENSE, AS COMPARED TO THE BIASED CONTRADICTORY AND INCONSISTENT TESTIMONIES OF THE PROSECUTION'S WITNESSES WHO ARE RELATIVES OF THE VICTIM.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANTS HAD PARTICIPATED OR CONSPIRED IN THE STABBING OF THE VICTIM.

IV

THE TRIAL COURT ERRED IN HOLDING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT IN THE INSTANT CASE WHICH QUALIFIED THE CRIME TO MURDER CONSIDERING THAT THE BIG (sic) HEIGHT AND BIG BODY OF THE VICTIM CANNOT COMPARE WITH THE SMALL (sic) HEIGHT AND SMALL BODY OF THE ACCUSED-APPELLANTS, ALLEGED ATTACKERS OF THE VICTIM.

V

THE TRIAL COURT ERRED IN EXHIBITING MANIFEST BIAS AND PARTIALITY IN FAVOR OF THE PROSECUTION IN FREQUENTLY INTERRUPTING DEFENSE COUNSEL FOR ALLEGEDLY ASKING LEADING QUESTIONS FROM THE PROSECUTION AND DEFENSE WITNESSES SUCH THAT APPELLANTS WERE NOT ABLE TO GET A FAIR TRIAL OF THEIR