

SECOND DIVISION

[G.R. No. 118076, November 20, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR GAVINA Y NAVARRO, ACCUSED-APPELLANT.

DECISION

REGALADO, J.:

Accused-appellant Cesar Gavina y Navarro argues in this appeal that, for lack of the requisite element of *animus lucrandi*, the Regional Trial Court, Branch 41, of Dagupan City should have found him guilty in Criminal Case No. D-11417 of only the lesser offense of homicide and not the special complex crime of robbery with homicide. The evidence for the prosecution, however, indubitably established the contrary. The trial court stamped its imprimatur thereon and rendered a condemnatory verdict. We affirm.

On February 20, 1993, accused-appellant was charged with the felony of robbery with homicide, the accusatory part of the corresponding information reading --

"That on or about the 19th day of February, 1993, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, CESAR GAVINA y Navarro, being then armed with a knife, with intent to gain and by means of violence against person, did then and there, wilfully, unlawfully and criminally, rob one CIPRIANO TANDINGAN of his cash in the amount of P70,800.00, by stabbing him on vital part parts (sic) of his body with the said weapon, thereby causing the death of the latter due to `Cardio respiratory arrest, Massive Intrathoracic and Mediastinal Hemorrhage, Multiple stab wound' as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this city, to the damage and prejudice of the legal heirs of said deceased, CIPRIANO TANDINGAN, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine currency, and other consequential damages."^[1]

At his arraignment on June 22, 1993, appellant with the assistance of counsel *de officio*, registered his negative plea to the indictment.^[2] Trial thereafter ensued and eventually, on September 27, 1994, the lower court rendered its adverse decision^[3] finding the accused guilty as charged. The penalty of life imprisonment was imposed upon appellant who was at the same time ordered to indemnify the heirs of Cipriano Tandingan in the amount of P100,000.00, to restitute to Ruben Go, the victim's employer, the amount of P89,200.00, and to pay the costs of the suit.^[4]

Prosecution eyewitness SPO1 Esteban Martinez narrated on the witness stand that on February 19, 1993, he was on duty and was posted along the junction of A. B. Fernandez Avenue and Nable Street in Dagupan City. At a little past noon of that

day, he noticed from across the street where he was standing that two men were grappling for possession of a black bag. Sensing trouble, he forthwith ran to where the two men were thus preoccupied and, as he was on his way, one of the men, whom he later identified as the appellant, pulled out a knife and stabbed the other three times.^[5]

As Martinez neared the duo, appellant who was by then in possession of the black bag, scampered away upon seeing the onrushing police officer and, in his haste, he dropped both the black bag and the knife. Appellant then boarded a passing jeepney and it was in said jeepney that SPO1 Martinez, still in hot pursuit, was able to pounce on and arrest him. Recovered at the crime scene were the black bag, which turned out to contain more than P70,000.00 in cash, and the knife which appellant had used in stabbing his victim, Cipriano Tandingan.^[6]

Another prosecution eyewitness, Angel Sarmiento, testified and corroborated the account of SPO1 Martinez that appellant tried to escape by boarding the public utility jeepney which he was then driving along A. B. Fernandez Avenue on the day and time in question.^[7] The employer of the victim, one Ruben Go, likewise appeared in court and recalled that on that particular day he instructed the victim, who was then employed as a cashier in Go's grocery store, to encash a check in the amount of P160,000.00 at the Dagupan City branch of Solidbank.^[8]

Cipriano Tandingan apparently was able to encash the same just before he was waylaid by appellant. Tandingan's sister, Eleanor Tandingan Penullar, confirmed that her brother was indeed an employee of Ruben Go at the time of his demise. She also testified as to her brother's income at that time, as well as the expenses they incurred for his funeral wake and burial which amounted to approximately P52,500.00.^[9] Dr. Conrad Cornel, a medico-legal and assistant city health officer in Dagupan City, informed the trial court that the victim suffered multiple stab wounds on the chest, all of which proved to be fatal.^[10]

While appellant admitted having killed the victim, he advanced an altogether different version of the incident. He claimed that on February 19, 1993, he left for and arrived at around noontime in Dagupan City. He was then in front of Covelandia, a commercial establishment located along A. B. Fernandez Avenue, when he chanced upon the victim and it was with the latter that he decided to have his P500.00 bill changed into smaller denominations. The victim agreed to do so and appellant, after receiving the bills, then hurriedly left as someone was waiting for him. At this point, he noticed that he had been shortchanged in the amount P10.00 and, for that reason, he had to go back.^[11]

Appellant met Tandingan along the way and he confronted the latter. To appellant's surprise, the victim retorted with fist blows which thus prompted him to kick Tandingan in retaliation. The victim then reached for a knife, but appellant beat him to the draw by pulling out his own knife which he used in stabbing the victim to death. He then immediately boarded a jeepney and it was there that he was accosted by SPO1 Martinez. Appellant vehemently denied having taken the clutch bag of the victim which contained cash and contended that he never intended to rob Tandingan whom he had met for the first time that day.^[12]