

SECOND DIVISION

[CA-G.R. CR. HC No. 04041, December 12, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERLINDO BALUAN Y LAGUTAN, ACCUSED-APPELLANT.**

DECISION

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated February 27, 2009 of the Regional Trial Court, First Judicial Region, Branch 49, Urdaneta City, Pangasinan, in Criminal Case No. U-10719 for Murder entitled "People of the Philippines, *Plaintiff*, vs. Erlindo Baluan y Lagutan, John Doe and Peter Doe, *Accused*.", the dispositive portion of which reads:

"**WHEREFORE**, the prosecution having satisfactorily proved beyond reasonable doubt the guilt of the accused **ERLINDO BALUAN y LAGUTAN** as charged, the Court hereby convicts him for the crime of **MURDER** qualified by cruelty and abuse of superior strength and sentence him to suffer the extreme imposable penalty of **RECLUSION PERPETUA**, to indemnify the heirs of the deceased **JUVELYN CABICO** in the following amounts: Php32,860.00 for actual damages, Php50,000.00 for the death and P50,000.00 for moral damages; and to pay the costs.

SO ORDERED.^[2]"

The facts are:

On August 22, 2000, an Amended Information^[3] was filed charging accused-appellant Erlindo Baluan y Lagutan (Baluan for brevity) together with two (2) unidentified men who are still at large, for Murder of Juvelyn Cabico, a minor, the accusatory portion of which reads:

AMENDED INFORMATION

"xxx That on or about January 23, 2000 at or along the banks of the Mitura Creek at Brgy. Camantiles, Urdaneta City and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery, cruelty and abuse of superior strength conspiring with one another, did then and there willfully, unlawfully and feloniously hold, box and tie around the neck a plastic belt and submerged/drowned

JUVELYN C. CABICO, a minor, 13 years old^[4], in the Mitura Creek by tying said plastic belt to a staked piece of bamboo which caused her instantaneous death, to the damage and prejudice of her heirs.

CONTRARY to Art. 248, Revised Penal Code, as amended by R. A. 7659.
xxx”

On December 4, 2001, accused-appellant Baluan filed a Motion for Bail^[5] which the lower court granted.^[6] He was allowed to post bail in the amount of Php200,000.00.
^[7]

Accused-appellant Baluan's arraignment was deferred^[8] until after the resolution^[9] of his Motion for Reinvestigation.^[10] On February 22, 2001, he was finally arraigned and pleaded “not guilty” to the offense charged.^[11] At the Pre-trial Conference held on February 28, 2001, the parties did not enter into any stipulation, thus upon joint motion of the counsels, the pre-trial conference was terminated.

Thereafter, trial ensued.

The prosecution presented Cipriano Cabico, Jr., NBI Special Investigator Deogenes Norlo T. Galang, Jonathan Cabico, Jerry Cabico, SPO3 Nicomedes Antonio, Jr., Dr. Ramon Gonzales, Jr. and Dr. Ronald R. Bandonill, as witnesses.

Cipriano Cabico, Jr. (Cipriano for brevity) testified^[12] that: he is the father of the victim, Juvelyn Cabico (Juvelyn for brevity); he knows accused-appellant Baluan because he passes by Roel's Pancit Canton, a noodle factory, “*pansitan*” in Barangay Camantiles, Urdaneta City, Pangasinan, where the accused-appellant Baluan works; on January 23, 2000, he was in the farm located at the south of Urdaneta City, which is about four (4) kilometers away from his house in Barangay Camantiles; when he arrived home at around 5 o'clock in the afternoon he learned from his mother that his daughter, Juvelyn, had not been back from Mitura river where she was gathering “*bennek*” (fresh shell fish); Juvelyn was accompanied by her cousin, Benny Flores, so he looked for him in the neighborhood to ask him where his daughter was; when he could not locate Juvelyn, he asked his nephews and other neighbors to help him look for her at the Mitura river; while looking for Juvelyn at around 6 o'clock in the evening, he saw his son Jonathan Cabico (Jonathan for brevity) crying, he could not talk and appeared to be very frightened; they continued to search for Juvelyn until they found her beside the riverbank; the water in the river was breast deep; when he saw her, she was in a lying position with both of her arms raised and her chin up; a black plastic belt without a buckle, which was around half a meter long, was tied to her neck; his nephews, Joel Cabico (Joel for brevity) and Jerry Cabico (Jerry for brevity), were the first ones who saw her in the river; when they saw her, he called for the Barangay Officials but they did not want to see her, so he went to the police; a policeman named Peralta examined his daughter's body and took the belt, while Dr. Ramon Gonzales did the autopsy; thereafter, he went to the police station everyday to follow up on the autopsy report,
^[13] but he was unable to secure a copy until his cousin, a Kagawad, obtained a copy for him; he did not believe the results of the initial autopsy, thus he referred the

case to the National Bureau of Investigation (NBI) in Dagupan for further investigation; when the NBI investigated the case they went to the crime scene and the noodle factory; the NBI asked the witness to point to the suspect, and another autopsy on the body of the victim was conducted; the Autopsy Report^[14] of the NBI concluded that his daughter was still alive when she was submerged in water; all of his statements were reduced in writing through an affidavit which he executed; the wake of his daughter lasted for thirteen (13) days; he spent a total of Php 30,860.00 for the wake and funeral services; the total funeral services cost around Php11,000.00; he paid an additional Php2,000.00 for the embalming of the corpse; the other expenses incurred during the wake are enumerated in the list of expenses prepared by his sister Remedios; the death of his daughter caused him extreme pain, and it is up to the court to determine an amount sufficient to compensate for such loss.

In the course of his direct examination, witness Cipriano was able to identify accused-appellant Baluan in open court.^[15] He presented and identified^[16] the Birth Certificate^[17] of Juvelyn. He identified^[18] the Sworn Statement^[19] he executed before the Office of the NBI in Dagupan. Lastly, he presented the receipts^[20] and list of expenses^[21] to support his claim for the expenses which he incurred during the wake and for the funeral services of his daughter Juvelyn.^[22]

During his cross-examination, he confirmed^[23] that: he was in the farm when the incident happened; his statements on the actual incident were gathered from his son, Jonathan, the eyewitness in this case; his description of his daughter's appearance was based on what he saw after she was lifted from the water; the body of his daughter was discovered on January 23, 2000; on the same date, police officers from Urdaneta City came and investigated the case; he neither executed a sworn statement before the police in Urdaneta City nor before any Barangay Official because they did not write down his statements, but he reported the incident; he only gave his sworn statement on January 30, 2000 before the NBI; he was unable to talk to his son Jonathan regarding the incident on January 23, 2000, in fact they only talked about it three (3) days after it happened; the list of expenses incurred during the wake was prepared by his sister; the receipt for the embalming fee in the amount of Php2,000.00 was belatedly obtained to show proof that he paid said additional amount.

On re-direct examination, he alleged^[24] that: he paid the additional embalming fee in the amount of Php 2,000.00 after his daughter's funeral; he reported the incident to the police and the Barangay Officials, but he did not execute any sworn statement before them because he was still following up the release of the autopsy report of his daughter.

During his re-cross examination, he reiterated^[25] that: he was following up the release of his daughter's autopsy report and when he was able to secure a copy, he brought it to the NBI; he reported the incident to the police and the Barangay Officials because he knew that they were the proper authorities who could help him file the necessary charges against the one responsible for his daughter's death; however, he did not give his sworn statement to them because they were not paying attention to him when he was requesting for the autopsy report of his daughter.

NBI Special Investigator Diogenes Norlo T. Galang (SI Galang for brevity), the investigating officer from the NBI Dagupan who was assigned to the case, testified^[26] that: he has been SI at the NBI since 1992 and assigned at the NBI, Dagupan since 1997; one of his functions/duties as a SI is to investigate cases assigned to him by his immediate chief; on January 30, 2000, he received a report from private complainant Cipriano Cabico regarding the incident as indicated on the Complaint Sheet^[27] duly executed by the latter; initially, private complainant Cipriano made a report about an alleged rape with homicide committed against his daughter, Juvelyn; after the case was assigned to him by their Provincial Chief, he proceeded to the crime scene near the Mitura Bridge in Barangay Camantiles, Urdaneta City; he was accompanied by their former Chief, personnel and technical people; upon arrival at the crime scene, Dr. Bandonill conducted an autopsy on the body of Juvelyn at the latter's residence; their technical people on the other hand, proceeded to the crime scene to gather physical evidence and found only a "suspected pubic hair" which they documented and photographed;^[28] simultaneously, while the technical people were gathering physical evidence, they were conducting interviews with the witnesses; they interviewed the brother of the victim, Jonathan, who narrated to them that he saw two (2) men carrying his sister across the bank of the river while another, a much older man, was trying to help his companions to bring his sister out of the water, and when the older man saw him, he chased him and threatened to kill him; Jonathan also told them that he can identify this old man because he usually sees him on his way to and from school; after taking the statement of Jonathan^[29], they also took the statement of the victim's father, Cipriano^[30], and the statement of the brothers, Joel and Jerry^[31]; it was at this time when they were gathering information and conducting interviews with the relatives of the victim and other potential witnesses, when one of the persons who fished out the victim from the water, handed him the "dired kogon" or the alleged peg on which the belt around the neck of the victim was tied; this peg was then placed in their evidence room and was marked accordingly; when they finished their investigation, they coordinated with the Philippine National Police (PNP) in Urdaneta City and wrote them a letter requesting^[32] for the turnover of the other physical evidence which they gathered relative to the case; as per their request, the PNP in Urdaneta City submitted photos of the crime scene, the rope found/tied on the neck of the victim, the Police Report, and other related documents to the case; after gathering all the evidence, they conducted a record check^[33] on all those persons suspected to have committed the crime; the result of the record check^[34] was forwarded to their command office, which was later on filed in the case folder; thereafter, when they received the result of the autopsy^[35] from their Medico-Legal, the case was filed with the Office of the Prosecutor.^[36]

On cross-examination, he explained^[37] that: the alleged peg which was handed to him was noted in the statement on record of the case; the statement referring to the peg was the word "*nakapadol*" but the fact that the peg was actually handed to him was not expressly mentioned in the records of the case.

During the course of his direct examination, Jonathan identified^[38] his Sinumpaang Salaysay^[39] and identified accused-appellant Baluan in open court.^[40] He testified^[41] that: Juvelyn was his older sister who died on January 23, 2000; he knows accused-appellant Baluan because he often saw him at the "miki" (noodle)

factory located beside the Mitura river when he passed by on his way to school; on January 23, 2000, at around 2 o'clock in the afternoon he was in their house watching T.V.; around the same time, his sister Juvelyn, together with their cousin Benny Flores, was at the Mitura river to gather "bennek" (shellfish); said river was around 200 meters away from their house; at around 3 o'clock in the afternoon, their grandmother, Nanay Hipolita, sent him to fetch his sister at the Mitura river; when he arrived at the Mitura river, he saw two (2) men pulling Juvelyn near the bank of the river going towards the bamboo trees; while the two (2) men were pulling Juvelyn, he saw accused-appellant Baluan mauling her, hitting her stomach, lips, and the left side of her head, which caused her to fall down on the ground; after his sister fell down, the two (2) men tied a black belt without a buckle around her neck; after the belt was tied around his sister's neck, he ran because accused-appellant Baluan started chasing him; when accused-appellant Baluan did not catch him, he hurled mud at him and threatened to kill him if he revealed what happened; when he arrived home he did not tell anyone about the incident because he might be killed if he reported the same; he saw his dead sister at the river that evening, lying down with her two (2) hands bent towards her; the next day, January 24, 2000, at around 2 o'clock in the afternoon, police came and he told them what he saw; the police accompanied him to the noodle factory so he can point to them accused-appellant Baluan; at the factory, he failed to point to the latter because he (Jonathan) ran to the police vehicle when he saw that accused-appellant Baluan was staring at him; and, when they called for him, he went back and pointed to him.

On cross-examination he admitted^[42] that: he only went back to the river when the body of his sister was recovered; after the incident, he was able to take his dinner, slept and woke up at the usual time he sleeps and wakes up, and he still went to school; his narration in court is not the same as those found in his Sinumpaang Salaysay; the NBI showed him only the picture of accused-appellant Baluan for identification of the suspect; at the noodle factory, no one told or instructed him to point to accused-appellant Baluan; when he pointed to accused-appellant Baluan, the latter was not alone; he was thirteen (13) years old at that time and he already knew what is right and what is wrong; he knows that being obedient to his parents is good and he does not want to disappoint them, when they ask him to do something, like testifying the way his parents want him to testify.

On re-direct examination, he stated^[43] that: he only recognized one of the men and that is accused-appellant Baluan because he was the one who boxed his sister; the statements that are not found in his Sinumpaang Salaysay were mentioned to the investigator; when he went to the noodle factory with the police, he pointed to accused-appellant Baluan because he was the one who really boxed his sister; and, when he testified, his father did not tell him what to say.

On re-cross examination, he stated^[44] that: his statements in his Sinumpaang Salaysay were prepared at the NBI office in Dagupan; as he was giving his statements, they were being written down but not all of his statements were included in the Sinumpaang Salaysay; he did not complain even if not all his statements were included; it was not the NBI but the police who did not include all his statements.

Jerry identified^[45] the "*Pinagsamang Salaysay*"^[46] he executed together with his brother Joel and testified^[47] that: he knows the victim, Juvelyn, because they were