

## THIRD DIVISION

[ G.R. No. 134568, February 10, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EULOGIO IGNACIO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

There is treachery when the accused unexpectedly and deliberately shoots an unarmed minor who is thus not in a position to put up a defense or to inflict harm on the former. Voluntary surrender is not appreciated even if the accused submits himself to the members of the barangay tanod who, by their presence in his house, precluded his escape.

#### *The Case*

Before us is an appeal of the May 18, 1998 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Masbate, Masbate (Branch 44), convicting Eulogio Ignacio of murder in Criminal Case No. 8385. The RTC disposed of the case as follows:

"WHEREFORE, premises considered, the guilt of accused EULOGIO IGNACIO alias 'LOLOY' for the crime of MURDER having been established by proof beyond reasonable doubt for the killing of Jessie Lacson, and without the presence of any aggravating or mitigating circumstance, this court hereby sentences said accused to suffer the penalty of *RECLUSION PERPETUA* and to pay the heirs of the victim the sum of FIFTY THOUSAND (P50,000.00) PESOS, without subsidiary [imprisonment] in case of insolvency.

"Accused Eulogio Ignacio being a detention prisoner, the period of his detention shall be credited in his favor in the computation of his sentence.

"Finally, the Provincial Warden of Masbate is directed to ship the accused to the National Penitentiary, Muntinlupa City, within thirty (30) days from the finality of this decision and to report to this court within fifteen (15) days from compliance thereof."<sup>[2]</sup>

Second Assistant Provincial Prosecutor Alberto A. Alforte charged appellant with the murder of Jessie Lacson in an Information dated February 28, 1997, the pertinent portion of which reads:

"That on or about January 11, 1997, [o]n the morning thereof, at Barangay Divisoria, Municipality of Dimasalang, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery

did then and there wilfully, unlawfully and feloniously attack, assault and shoot with a 12 gauge homemade shotgun (riot) one Jessie Lacson, hitting him on the chest, thereby inflicting wound, which caused his death."<sup>[3]</sup>

With the assistance of Counsel Percival Castillo, appellant pleaded not guilty when arraigned on September 18, 1997.<sup>[4]</sup> After trial in due course, the RTC rendered the assailed Decision. Hence, this appeal.<sup>[5]</sup>

### ***The Facts***

#### *Version of the Prosecution*

In the Brief for the Appellee, the solicitor general narrated the facts as follows:

"On January 11, 1997, at Divisoria, Dimasalang, Masbate, at 9:00 a.m., the victim, Jessie Lacson, and Edwin Velasco were gathering shells by the seashore. This work had caused them to feel thirsty. The two decided to go to the fishpond and get young coconuts or 'butong.' This fishpond is owned by Cleto Cortes alias 'Milagrang' with appellant Eulogio Ignacio alias 'Loloy' as the caretaker. Inside the fishpond is a house where appellant sometimes stays.

"At the fishpond, Jessie got one young coconut. Then, Jessie walked ahead of Edwin in going to the dike, where he would break open the young coconut.

"Eulogio came out [of] his house and saw Jessie as he reached the dike. However, Eulogio did not see Edwin who was standing behind some coconut trees. Edwin heard Eulogio shout at Jessie to put down the young coconut, which the latter did. Then, Edwin saw Eulogio fire his homemade shotgun at Jessie who was hit on the left portion of the breast. At that time, Eulogio was standing forty (40) meters away from Jessie while Edwin was standing six (6) meters away from his friend. Edwin saw Jessie fall down on the ground. Then, Eulogio cranked his homemade shotgun, aimed it at Edwin but did not fire. Edwin immediately left said place to report the shooting incident to Jessie's parents.

"Edwin went to the house of Carlito Alcover, their Barangay Tanod and reported the shooting. Carlito went to Eulogio's house, failed to find him there, but waited. After three (3) minutes, Eulogio arrived, carrying his homemade shotgun. Then, Barangay Tanods Atel Lachica and Rodolfo Gulpan came by. Carlito asked Eulogio to surrender, which he heeded. Carlito asked Eulogio why he fired his long gun at Jessie. Eulogio answered that Jessie stole some young coconuts. Thereafter, they brought Eulogio to the police precinct. The homemade shotgun was surrendered to SPO3 Arturo Hernando.

"Meanwhile, Helen Alcovindas went to Dominador Lacson, Jessie's father, who was gathering coconut fruits in another plantation. She told Dominador that Eulogio shot Jessie. Dominador ran towards the fishpond,

saw Jessie's dead body, and brought it to the clinic of Dr. Alino. Per examination by Dr. Ernesto Tamayo, Municipal Health Officer of Dimasalang, Masbate, the victim suffered from a single gunshot wound fatally injuring the heart."<sup>[6]</sup>

#### *Version of the Defense*

Arguing that he had acted in defense of property with no intention to kill the victim, appellant countered:

"Appellant EULOGIO IGNACIO, caretaker of the fishpond of Cleto Cortes, testified that on January 9, 1997, he was informed by his neighbor, Gil Aristotles, regarding a theft incident in the fishpond that he administered. On January 11, 1997, while roaming around the fishpond, he saw Jessie Lacson and Edwin Velasco, coming out [of] his house with a basket. It so happened that in his house there were twenty-eight (28) pieces of crabs stocked. Upon seeing herein appellant, Jessie and Edwin fled. Appellant ordered them to stop. Since the two did not stop, appellant who was then fifty (50) meters away and without any intention to kill Jessie and Edwin, fired his gun. He left and informed Kagawad Gil Aritotles about the incident. Afterwards, he reported to Barangay Tanod Saratiel Lachica."<sup>[7]</sup>

#### ***Ruling of the Trial Court***

The trial court ruled that appellant failed to prove by credible, clear and convincing evidence that he had acted in lawful defense of the landowner's property. There was no legal reason for him to shoot the victim, an unarmed minor at the time of the incident. The said court qualified the killing to murder because of the presence of treachery.

#### *Assignment of Errors*

In his Brief, appellant submits the following:

"I. The lower court gravely erred in convicting accused-appellant of murder.

"II. The lower court gravely erred in finding that the qualifying circumstance of treachery [was] attendant in the case at bar.

"III. The lower court gravely erred in not appreciating the mitigating circumstance of voluntary surrender."<sup>[8]</sup>

#### ***This Court's Ruling***

The appeal has no merit.

#### ***First Issue:***

##### *Evidence of Appellant's Guilt*

In arguing that the trial court erred in convicting him of murder, appellant merely posits that the killing was not qualified by treachery, without challenging the ruling