

FIRST DIVISION

[G.R. No. 153213, January 22, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO LATAG
ALIAS "CARDO", APPELLANT.**

DECISION

PANGANIBAN, J.:

Treachery as a qualifying circumstance must be proven as clearly and as convincingly as the killing itself. In the present case, since no qualifying circumstance was proven beyond reasonable doubt, the crime is homicide, not murder.

The Case

Ricardo Latag alias "Cardo" appeals the February 27, 2002 Decision^[1] of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case No. 0083-2000, finding him guilty of murder and sentencing him to *reclusion perpetua*. The dispositive part of the RTC Decision is worded thus:

"WHEREFORE, the Court finds the accused, RICARDO LATAG alias 'CARDO', guilty beyond reasonable doubt, as principal by direct participation, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, without any modifying circumstance, and sentences him to suffer the penalty of RECLUSION PERPETUA, with all its accessory penalties, and to pay the costs of this suit.

"The accused is also ordered to pay to the heirs of Judie Acosta the sums of P50,000.00, as indemnification for his death, and P80,000.00, as actual damages."^[2]

The Information^[3] dated February 7, 2000, charged appellant as follows:

"That on or about the 31st day of December, 1999 at about 8:00 o'clock in the evening at Brgy. Tanguay, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a firearm (cal. 22), with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the use of said firearm (cal. 22) suddenly and without warning one Judie Acosta thereby inflicting upon the latter gunshot wound on his body which directly caused his death."^[4]

Upon his arraignment on September 6, 2000,^[5] appellant, assisted by his counsel,^[6] pleaded not guilty. After trial in due course, the court *a quo* rendered the

assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"On December 31, 1999, at 7:00 in the evening, prosecution witness Alejandro Atienza, Armando Lumbea, Norberto Africa, Alfredo Lumbea, Angelito Africa, a certain Ka Nardo and Ka Efren, together with victim Judie Acosta were celebrating New Year's eve at the back of the house of a certain Carlos Librea at Barangay Tanguay, Lipa City. The group was in a long table and happily drinking Gilbey's gin to welcome the new year. Victim Judie Acosta was at the left side of the long table and was seated between prosecution witness Alejandro Atienza and Jun Africa, at the far end left of the long table.

"While they were celebrating in a festive mood, a gunshot was heard coming from the direction of the left side of the long table they were occupying. Thereafter, prosecution witness Alejandro Atienza looked towards the direction where the gunshot was heard and saw accused-appellant Ricardo Latag holding a firearm (caliber .22) and standing behind the San Francisco shrubs which served as 'fence' of the yard of Carlos Librea's house.

"In the aftermath of the gunshot report, the victim Judie Acosta shouted 'Kuya Caloy, may tama ako.' He was later found to have been hit at the left back portion of his armpit. Accused-appellant Ricardo Latag, while still holding a firearm fled towards the east. The victim was later brought to the hospital by his father but later succumbed to the gunshot wound.

"The autopsy report dated December 31, 1999 showed the following findings:

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'A. EXTERNAL FINDINGS:

1. Gunshot wound, entrance, measuring 0.5 x 0.5 cm., at the level of the 7th intercostal space, postaxillary area, left
2. No exit wound but bullet was found embedded at the skin, lumbar area, posterior right

'B. INTERNAL FINDINGS:

1. Hemothorax – liters
2. (+) Perforation – Lower lobe of the left lung
3. (+) Perforation – Diaphragm, left
4. (+) Perforation – Fundus of the stomach
5. (+) Perforation – Descending Thoracic Aorta

'CAUSE OF DEATH:

CARDIORESPIRATORY ARREST SECONDARY TO HYPOVOLEMIA SECONDARY TO GUNSHOT WOUND.”^[7] (Citations omitted)

Version of the Defense

The defense states its version of the facts in the following manner:

“**Ricardo Latag alias ‘Cardo’** averred that on December 31, 1999 at around 6:00 o’clock in the evening, he was at the house of Cristino Kalaw looking for Romeo Kalaw to seek the latter’s help in applying for a job with a certain Mr. Puno. Since Romero was not home, Cristino accompanied him to the place where Romeo was. Upon seeing Romeo, he informed him of his intention. Cristino and he left at around 7:00 o’clock in the evening. After parting ways with Cristino, he met his ‘barkada,’ Jay Tolentino, who invited him to drink at the latter’s house. Jay Tolentino, Simeon Tolentino (Jay’s father) and he finished drinking three (3) bottles of gin at around 10:00 o’clock in the evening. After which, Jay accompanied him to the tricycle station. He got home at 11:00 in the evening.

“He is not on speaking terms with Alejandro Atienza because the latter stabbed him on August 22, 1999. He believes that Alejandro Atienza testified against him to place him behind bars so that he could not file a case against the latter.

“**SPO1 Mario Magnaye** conducted the investigation regarding the killing of Judie Acosta. On December 31, 1999, at around 8:30 o’clock in the evening, he, together with other policemen, proceeded to the Mary Mediatrix Hospital where the victim was brought. The victim was shot to death. Then, they proceeded to the house of Carlos Librea where the victim and his friends had allegedly drunk earlier. Upon inquiries, they learned that the assailant allegedly positioned himself at the back of the thick shrubs from where he fired at the victim. The San Francisco shrubs are seven to ten meters away from the table. The place was illuminated only with a single electric bulb which was not so bright. With the use of a flashlight, he searched around the shrubs but failed to find any empty shell.”^[8] (Citations omitted)

Ruling of the Trial Court

The RTC found that Prosecution Eyewitness Alejandro Atienza’s testimony positively identifying appellant as the gunman was sufficient to convict him of murder. Moreover, he failed to show that Atienza’s testimony was ill-motivated.

Appellant anchored his defense on bare denials and alibi. When unsubstantiated by clear and convincing evidence, however, such defenses are self-serving, deserving of no weight in law, and of no greater evidentiary weight than the positive testimony of a credible witness. Appellant admittedly took only a half-hour or at most an hour to traverse by tricycle the distance from where he claimed he was to where the killing had taken place. Considering this admission, the trial court held that it was not

impossible for him to have been at the crime scene at the time.

Hence, this appeal.^[9]

Issues

In his Brief, appellant raises the following alleged errors for our consideration:

“I

The trial court gravely erred in its finding that the qualifying circumstance of treachery attended the commission of the crime charged.

“II

The trial court gravely erred in giving credence to the alleged positive identification of the accused-appellant by alleged eyewitness Alejandro Atienza.”^[10]

For clarity, we shall discuss these issues in reverse order.

The Court’s Ruling

The appeal is partly meritorious. The qualifying circumstance of treachery cannot be appreciated against appellant. He should be convicted of homicide, not murder.

First Issue: **Positive Identification**

Appellant contends that Atienza could not have identified the assailant, because the shooting had occurred at night in a place dimly lit by a single light bulb. That it was dark was corroborated by the investigating policeman, SPO1 Mario Magnaye, who testified that there had indeed been not much illumination from that single light bulb.^[11] It is further alleged that since Atienza had been drinking gin for an hour, then his vision might have been obscured by his alcohol intake.

Appellant alleges a history of hostility between him and Atienza, who supposedly stabbed him after an altercation sometime in 1999. Surmising that, in order for Atienza to evade the case that appellant might file against him, it would not be farfetched for the former to pin this murder case on the latter.

We are not convinced.

First, Atienza’s testimony disproves the “poor illumination” claim of appellant, who testified thus:

“Q: And what was the lighting condition at that place, the reason why you were able to see Ricardo Latag considering that it was already about 8:00 o’clock in the evening?

A: A bulb, sir.

Q: Where was that electric bulb located that illuminated the