

## FIRST DIVISION

[ G.R. No. 123298, November 27, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO L. CALPITO ALIAS "FRANCIS," APPELLANT.**

### D E C I S I O N

**AZCUNA, J.:**

On appeal is the decision dated July 5, 1994 of the Regional Trial Court of Tacloban City<sup>[1]</sup> in Criminal Case No. 91-01-59 finding appellant Francisco Calpito alias "Francis" guilty of the crime of Murder, and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P50,000.<sup>[2]</sup>

Appellant was charged with the crime of Robbery with Homicide under an information which reads, as follows:

That on or about the 21<sup>st</sup> day of November, 1990, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent [to] gain did, then and there willfully, unlawfully and feloniously by means of violence and intimidation on the person of FLORENTINA VILLAS rob, take and carry away a shoulder bag containing cash in the amount of P15,000 and jewelries amounting to P30,000 belonging to Florentina Villas; that on the occasion of said robbery and by reason thereof and for the purpose of enabling him to take/rob and carry away the above-mentioned bag, taking advantage of superior strength with treachery and with intent to kill, said accused did, then and there willfully, unlawfully, and feloniously attack and stab with the said weapon Florentina Villas and Israel Montilla inflicting wounds on Florentina Villas which caused her death and [a] wound on Israel Montilla which necessitated medical attendance on him for a period of 5-7 days and [which] incapacitated him from performing his usual work for the same length of time.

Contrary to law.<sup>[3]</sup>

Initially, appellant entered a plea of not guilty and waived pre-trial.<sup>[4]</sup> Upon appellant's motion, a reinvestigation of the case was conducted.<sup>[5]</sup> However, the prosecution resolved to maintain the original information. <sup>[6]</sup> On January 15, 1993, appellant was re-arraigned, and after being appraised of the consequences of the nature of his offense, he changed his plea to one of guilty.<sup>[7]</sup> The court *a quo* thereafter received the prosecution's evidence to prove the nature and extent of appellant's culpability as to the crime charged.<sup>[8]</sup>

The prosecution presented its sole witness in the person of Israel Montilla, the grandson of the victim Florentina Villas. In his testimony,<sup>[9]</sup> he narrated that at around 2:00 a.m. of November 21, 1990, he was sleeping in the sala of the victim's residence when he was awakened by the victim's shout for help. He then rushed to the victim's bedroom which was just 2 ½ meters away from the sofa on which he slept. By the doorway, he met appellant who was holding a fan knife in his right hand and the victim's shoulder bag in his left. He grappled with appellant, who suddenly stabbed him on his left upper arm. While Montilla searched for something with which he could defend himself, appellant rushed out of the house through the kitchen door, the lock of which the latter had destroyed. Montilla looked inside the bedroom and saw his grandmother on the bed lying in a pool of blood, with stab wounds all over her body.

Montilla further declared that no other person was inside the bedroom when the incident happened. He was able to recognize appellant because of the fluorescent light. He testified that he could not be mistaken regarding the assailant's identity, since he had long known appellant, who resided near the victim's house. He also stated that appellant, in his haste, left a flashlight and a cap which had the latter's name written on its inside portion. He added that he had known appellant to be a drug user, and that at the time of the incident, the latter appeared to be under the influence of drugs.

The Medico-legal Report<sup>[10]</sup> submitted by Dr. Benjamin Ver disclosed that the victim suffered a total of 4 stab wounds and 7 incise wounds on different parts of her body. These wounds caused the victim's death, at the age of 74.

The court *a quo*, finding the charge of Robbery with Homicide unsubstantiated by evidence, convicted appellant of the crime of Murder. Appellant was thus sentenced, as follows:

WHEREFORE, in view of the plea of guilty of accused Francisco Calpito alias "Francis" to the crime charged in the information and considering the evidence adduced by the prosecution which sufficiently established the absolute culpability and degree of participation of the herein accused in the killing of the deceased, accused is hereby found guilty beyond reasonable doubt not of the crime of Robbery with Homicide, but of Murder, the prosecution having failed to prove with sufficient amplitude the existence of Robbery, [and] the Court hereby sentences accused to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the victim the sum of P50,000, and to pay the costs.<sup>[11]</sup>

Appellant, thereafter, filed a Motion for Reconsideration<sup>[12]</sup> arguing that the trial court erred in convicting him of Murder instead of Homicide, and in failing to apply the mitigating circumstance of minority.

Acting on the motion, the court *a quo* ordered the reception of evidence to prove appellant's minority. Appellant presented the testimony <sup>[13]</sup> of Paquito Ato, Civil Registrar of Butuan City who allegedly issued the former's birth certificate, the original of which was submitted as evidence. On this birth certificate, it was stated that appellant was born on May 31, 1974, thus indicating that he was only 16 on November 20, 1990 when the crime happened. Ato confirmed the authenticity of the

aforesaid document, and its late registration, as indicated thereon. He further declared that it was applied for by appellant's mother, who supplied to him all the details on appellant's birth. He, however, admitted that he was unable to verify the information given, as the hospital where appellant was born no longer existed, and as the named attending physician no longer resided in Butuan City.

In its Order dated September 15, 1995, the court *a quo* denied the motion and affirmed appellant's conviction for Murder. It further found the submitted birth certificate dubious and self-serving.<sup>[14]</sup>

Hence, the instant appeal. Appellant questions his conviction on two grounds:

I.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE THE ABSENCE OF ANY QUALIFYING CIRCUMSTANCE.

II.

THE COURT A QUO ERRED IN NOT APPRECIATING THE PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY INTERPOSED BY THE DEFENSE.<sup>[15]</sup>

Appellant disputes the court *a quo*'s finding of the attendance of qualifying circumstances in the commission of the crime. The information alleged the qualifying circumstances of treachery and abuse of superior strength. Although the assailed decision did not discuss which of these qualified the killing to murder, a perusal of the facts of the case readily reveals that abuse of superior strength attended the crime. In several cases, this Court has ruled that this circumstance depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which the latter selected or took advantage of in the commission of the crime.<sup>[16]</sup> In a recent case, it was held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes an abuse of the aggressor's superior strength.<sup>[17]</sup> The circumstance must apply with more reason in the present case, where the abuse of superior strength is evident from the notorious disparity between the relative strength of the victim, a 74-year-old unarmed woman, and the assailant, a young man armed with a knife.

With respect to treachery, this Court holds that it cannot be considered in the present case. This circumstance cannot be appreciated where the prosecution only proved the events after the attack happened, but not the manner the attack commenced or how the act which resulted in the victim's death unfolded.<sup>[18]</sup> It must be noted that in this case, the prosecution's lone witness only accounted for what transpired after the stabbing, as he did not see the actual attack on the victim.

Given the qualifying circumstance of abuse of superior strength, the court *a quo* therefore correctly convicted appellant for Murder.