

EN BANC

[G.R. No. 131808, February 06, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO CABILLAN @ "DODONG," AND MELVIN M. GARCIA @
ROMMEL GARCIA @ ROBIN GAMBOA @ "JR.," ACCUSED-
APPELLANTS, ROGELIO C. FELIPE @ "ATO," ACCUSED.**

DECISION

KAPUNAN, J.:

For automatic review is the decision of the Regional Trial Court of Cabanatuan City, finding accused-appellants Roberto Cabillan and Melvin Garcia guilty beyond reasonable doubt of Murder and sentencing them to suffer the death penalty.

The information charging appellants reads as follows:

That on or about the 21st day of August, 1996, in Cabanatuan City, Philippines and within the jurisdiction of this Honorable Court, said accused conspiring, confabulating and confederating with each other with evident premeditation and treachery, without any just cause and with intent to kill Jose Sta. Romana Sarmenta, did then and there, willfully, unlawfully and feloniously assault, attack and shoot said Jose Sta. Romana Sarmenta with a rifle in the head thereby inflicting upon the latter a fatal wound which directly caused his death.

CONTRARY TO LAW.^[1]

Originally charged with appellants was Rogelio Felipe, who was later discharged to be a state witness.

Upon arraignment on February 6, 1997, Roberto Cabillan pleaded "guilty," while Melvin Garcia pleaded "not guilty." Subsequently, on March 18, 1997, Cabillan withdrew his original plea and changed it to "not guilty."

Six (6) witnesses testified for the prosecution.

State witness Rogelio C. Felipe, 18, testified^[2] that he and appellants worked as helpers at Atty. Jose Sarmenta's poultry farm located in Macatbong, Cabanatuan City. Rogelio had been employed in said farm for less than a month prior to the lawyer's killing.

On August 19, 2001, or two days prior to the incident in question, Rogelio heard Dodong Cabillan ask Atty. Sarmenta if he could borrow his radio. Atty. Sarmenta refused, and told Dodong that he would give him money instead so Dodong could buy his own radio. Atty. Sarmenta never did, however. When Atty. Sarmenta arrived

later in the afternoon, he discovered that, contrary to his explicit instructions, Dodong was using his radio. Atty. Sarmenta berated Dodong. The lawyer's brother Juvaldo joined in the fray and boxed Dodong. Dodong asked permission to leave Atty. Sarmenta's employ but the lawyer refused.

At around 6:30 that evening, Rogelio overheard appellants say, "If they can get two million pesos they will tie-up somebody." Rogelio was then cooking as the two drank gin, about three meters away. He knew they were talking about Atty. Sarmenta because appellants were angry with their employer.

In the early morning of August 20, 1996, Dodong got Atty. Sarmenta's long firearm, which was equipped with a telescope, from the lawyer's cabinet. According to Rogelio, Melvin helped Dodong obtain the gun by destroying the *lawanit* of Atty. Sarmenta's room.

The next day, August 21, 1996, at around 6:30 p.m., appellants were again drinking gin near the kitchen. Rogelio was then cooking dinner for Atty. Sarmenta. Rogelio brought the food to Atty. Sarmenta's room, where the lawyer usually had his dinner. Atty. Sarmenta got the food from Rogelio, brought it inside, and then went outside the room to wash his hands. He then asked Rogelio to clean the toilet.

Rogelio had just finished cleaning the toilet when he suddenly heard a gunshot. Rogelio saw Atty. Sarmenta fall, his head bleeding. He rushed to their sleeping quarters, turned on the light and saw Dodong holding a .22 caliber gun, equipped with a telescope. Dodong was standing and aiming through the screen separating their sleeping quarters from the room where Atty. Sarmenta previously stood, just three meters away. Dodong had inserted the muzzle of the gun in a hole on the screen. The gun was still pointed towards Atty. Sarmenta.

Melvin pushed Rogelio to their bed and pointed a gun at him. Afraid, Rogelio did not dare run.

The killing of Atty. Sarmenta accomplished, appellants went to the victim's room and pulled the body near the bed. They took the money from his pocket, and his clothes and other personal belongings from the cabinet. Rogelio would later learn from appellants' friend that they had taken P12,000.00 in cash from the deceased.

Melvin warned Rogelio that they would kill him if he did not go with them. Appellants then hid the shotgun they got from the room and left the caliber .22 rifle with the telescope in the poultry house.

Dodong, Melvin and Rogelio then rode in Atty. Sarmenta's car, with Dodong driving. In their haste, the car hit a house post, causing a big dent on the right passenger side. The car later bogged down and had to be abandoned somewhere near a bridge in Sta. Rosa, Nueva Ecija. Appellants pushed the car to a fertilizer store nearby. Rogelio, who had remained inside the car, was then ordered to alight. Dodong called a tricycle driver and gave him P100 to watch over the car until their return. Dodong hailed a taxi and asked that they be taken to Pier 14 at the South Harbor, Manila.

At the pier, Dodong bought three tickets and they all took the boat to Cagayan de Oro City, Dodong's hometown. Rogelio, Dodong and Melvin stayed at the house of Dodong's relatives. Two weeks after their arrival, Dodong's aunt gave Rogelio P

1,500.00 and was ordered to leave immediately. Sensing that appellants were going to kill him, Rogelio departed at once. Rogelio bought a ticket for Manila.

After arriving in Manila, he contacted his brother-in-law, Kuya Ding. The latter accompanied him to Batangas City, where Rogelio surrendered to an Assistant Provincial Prosecutor. Rogelio divulged everything he knew about the killing of Atty. Sarmenta. Thereafter, he was taken to the provincial police headquarters at Camp Miguel Malvar, Camp Kumintang, Batangas City, where he executed a four-page sworn statement^[3] dated September 4, 1996 before P03 Oscar Melo Fernandez of the Philippine National Police. From Batangas, he was fetched by Cabanatuan policemen and was detained at Cabanatuan City, where he executed another sworn statement.^[4]

Rogelio denied that Dodong promised him a portion of the loot and that he was testifying against appellants for not fulfilling said promise.

Juvaldo Sarmenta, the victim's brother, corroborated Rogelio's testimony that in the afternoon of August 19, 1996, his brother berated Dodong for using his (Atty. Sarmenta's) radio without permission. Atty. Sarmenta even threatened to terminate Dodong's services and send him back to Manila. Juvaldo denied that he boxed Dodong on that occasion, claiming that his "hands hit [Dodong's] mouth" when he "pointed at [Dodong]."^[5]

Atty. Virgilio Mendez, Supervising Senior Agent of the National Bureau of Investigation (NBI) based in Cagayan de Oro City, was in charge of the surveillance of this particular criminal investigation and led the team that effected the arrest of appellants. Sometime in the first week of October 1996, one of his informants reported that a group of armed men in Initao, Misamis Oriental, were bragging about having killed a lawyer somewhere in Luzon. He deferred investigation on the raw information until the same informant subsequently presented him with a credit card supposedly obtained from the same group. The credit card was in the name of Jose S. Sarmenta, a lawyer and the supposed victim of his earlier report.

Atty. Mendez made inquiries regarding the matter. As he awaited further information, a certain Joel Sarmenta, son of Jose Sarmenta, went to his office to seek his assistance in the arrest of the persons responsible for the killing of his father. Atty. Mendez then instructed his informant to gather intelligence on the whereabouts of the group. Atty. Mendez was subsequently informed that Dodong had been spotted somewhere in Marawi City. On January 22, 1997, Dodong Cabillan and Melvin Garcia were arrested by the NBI, Dodong in Marawi City and Melvin in Pangantucan, Bulacan.^[6]

Dr. Jun Concepcion, Senior Medico-legal Officer of the Cabanatuan City Health Office, conducted the autopsy on the victim's body. His findings are contained in an Autopsy Report^[7] dated August 22, 1996, which is quoted herein:

FINDINGS (pertinent only)

Height: 175 cm. in length

Body was rigid state with several insect (ants) bites all through out.

- (+) Lacerated wound, linear, inverted V-shape on the mid-parietal area.
- (+) Gunshot wound on the right parieto-temporal area, 3-fingerbreath above the right ear as point of entry with trajectory towards the opposite side left superior portion of the left ear, 4-fingerbreath as point of exit, (through-through), brain substance coming-out from the point of exit.
- (+) Ecchymosis (L) peri-orbital area.

INTERNALLY

- (+) Multiple skull fracture with different directions occupying the entire skull.
- (+) Hematoma under the scalp.

CAUSE OF DEATH

Intracranial injuries, severe secondary to extracranial multiple injuries.

Approximate date and time of death:

August 21, 1996 between 7:00 to 8:00 P.M.

Negative for any other evidence of external physical injuries.

The doctor concluded that the assailant must have fired the fatal shot at close range from the victim. The absence of powder burns on the body indicates that the shot was fired at least 24 inches from the muzzle of the gun to the bullet's point of entry. From a sketch he drew, it was indicated that the bullet entered above the right ear and exited at the left superior portion of the left ear.^[8]

Samuel and Joel Sarmenta, Sons of the deceased, testified on matters relating to appellants' civil liability. Samuel testified that their father was 63 years of age at the time of his death. His untimely demise caused the family grief and anger.^[9]

The victim earned during his lifetime annual income consisting of P220,000.00 from the practice of law, and a gross of P380,000.00 from his poultry farm. Their father's wake, which lasted about 7 or 8 days, was held at the Funeraria Ilagan in Cabanatuan City and at the Funeraria Paz in Quezon City. He was buried on August 28, 1996 at the Loyola Memorial Park in Marikina. For the wake in Cabanatuan City, the family incurred expenses amounting to P10,000.00. For that in Quezon City, a memorial plan worth P16,000.00 covered the expenses. "Incidental expenses" amounted to P40,000.00. Finally, it was discovered that P30,000.00 in cash and a caliber .22 Magnum worth P20,000.00 were missing from the residence after the incident transpired.^[10]

Appellants testified on their own behalf. Both pointed to Rogelio Felipe as the killer of Atty. Sarmenta.

According to Dodong, 21, he had been working with Melvin and Rogelio at the farm

of Atty. Sarmenta for only four (4) days when the latter was shot. He claimed that on that fateful day he was ordered by Rogelio to turn off the light in their room. Atty. Sarmenta was then standing in front of the kitchen sink, washing dishes. Thereafter, he saw Rogelio shoot Atty. Sarmenta with a caliber .22 rifle. Rogelio threatened him and Melvin with the same rifle. He ordered Dodong to go to the kitchen and get the victim's money. Rogelio then pulled the dead body of Atty. Sarmenta into the latter's room. He instructed Melvin to enter the room and get their employer's clothes from the cabinet. Next, he ordered the two to board the car and directed Melvin to drive. When Dodong told his companions he wanted to go home, Rogelio and Melvin said they would come with him. Rogelio said that Cagayan de Oro City was a faraway place and that they will not be arrested there. Rogelio thus purchased tickets for the boat to Cagayan de Oro City with the money taken from the body of Atty. Sarmenta.

Dodong claimed that he wanted to surrender to the authorities but his uncle reminded him that he could be killed. One week after their arrival in Cagayan de Oro City, Rogelio left them. Another week later, Dodong and Melvin parted ways. Dodong proceeded to Misamis Oriental and then to Marawi City to evade arrest only to be apprehended later by NBI agents.^[11]

Melvin Garcia, 24, had been working at the poultry farm for about two months when Atty. Sarmenta was killed. On the evening of August 21, 1996, Melvin was outside the poultry house feeding the dogs when he heard a shot rang from his employer's house. When he went inside, he saw Rogelio holding two guns, a caliber .38 and caliber .22 rifle. Rogelio immediately pointed the guns at Melvin and Dodong, telling them, "Don't run [or] I will kill you." Rogelio told him that he shot Atty. Sarmenta. Rogelio instructed him to drag the body into the bedroom, after which he and Dodong were ordered to get inside the car. Inside the car, Rogelio asked Dodong whether "his place was near or far." Rogelio said they should all go to his place. Dodong agreed.

Melvin denied that he ever talked about killing Atty. Sarmenta. He said that the latter was a kind employer. He was not aware of any problems between Dodong and Atty. Sarmenta prior to the incident. Neither did he harbor any grudge against the latter. He claimed that he did not report Rogelio's participation in the killing because he was afraid of him.^[12]

On July 23, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding the accused Roberto Cabillan alias "Dodong" and Melvin M. Garcia alias "Rommel Garcia" alias "Robin Garcia" alias "Junior" guilty beyond reasonable doubt of the crime of Murder, punishable under [Art] 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the Court hereby sentences them to suffer the penalty of DEATH.

Further, the accused are further ordered to pay indemnity to the heirs of the deceased offended party in the sum of P50,000.00 as moral damages; P40,000, representing burial and actual expenses; and P1,000,000.00 as exemplary damages.