

FIRST DIVISION

[G.R. No. 141122, April 22, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO CALAGO, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the judgment^[1] of the Regional Trial Court of Barili, Cebu, Branch 60, finding the appellant, ROGELIO CALAGO, guilty of murder in Criminal Case No. CEB-BRL-214. The appellant was sentenced to suffer *reclusion perpetua* and ordered to pay the heirs of the victim, Arnulfo Lonzaga, the sum of P50,000.00 as civil indemnity.

The records show that an Information dated January 29, 1997, the appellant was accused of stabbing Arnulfo Lonzaga to death with the use of a sharp bladed weapon (*plamingko*), hitting the latter "at the lower portion of his left chest, right chest wall and left thigh." The crime was allegedly committed with treachery and evident premeditation.^[2]

The appellant was arraigned on May 13, 1998. With the assistance of counsel, he pled "not guilty."^[3]

The prosecution presented three (3) witnesses: (1) Dr. Octavio Ortiz, Municipal Health Officer of Dumanjug, Cebu; (2) Sotero Tewan; and (3) Pedro Durango.

The prosecution evidence show that on December 20, 1997, at about 3:30 a.m., **Sotero Tewan** was awakened by a commotion coming from the road, about thirty (30) to thirty-five (35) arm's length from his house in Lamak, Dumanjug, Cebu. He checked out the source of the commotion. From a distance of about five (5) arm's length, he saw the appellant, Rogelio Calago, and the victim, Arnulfo Lonzaga. The appellant was holding a knife, locally known as *plamingko*, while the victim was crying for help. The appellant then stabbed the victim who slumped on the ground. Thereafter, the appellant fled. Tewan rushed to the victim and asked him if he recognized the person who stabbed him to be sure if the victim could identify his assailant. The victim named the appellant.^[4] Tewan recognized the appellant and the victim as the crime scene was well-lighted by the new moon. He also personally knew them for a long time as they were residents of adjacent *barangays*. Appellant is even his *kumpadre*.

Pedro Durango, a neighbor of Sotero Tewan and a brother-in-law of the appellant, also heard the victim's cry for help. When he repaired to the crime scene, Tewan was already with the wounded victim, lying on the ground. He overheard Tewan inquire from the victim who stabbed him. The victim replied that it was the appellant. By then, some of their neighbors had gathered at the crime scene. To

make the identification clearer, Durango also asked the victim who stabbed him. Again, the victim pointed to the appellant. The victim expired five (5) minutes later.
[5]

The victim was autopsied on December 20, 1997 by Dr. Octavio Ortiz, Municipal Health Officer of Dumanjug, Cebu. He sustained three (3) stab wounds. Stab wound no. 1 was located at the lower portion of the left chest wall, wound no. 2 was at the right chest wall and wound no. 3 was at the posterior lobe mid-portion of the left thigh. Stab wound nos. 1 and 2 were fatal because they hit the vital organs of the body, namely, the heart and the upper lobe of lungs. All three (3) wounds caused massive loss of blood that resulted in the death of the victim.
[6]

For its part, the defense presented the following witnesses: (1) Bernardita Alvios; (2) Bonifacio Durango Calago; and (3) the appellant, Rogelio Calago.

The appellant denied that he killed the victim. He claimed that he was in his house on the material date and time due to stomach ache. According to him, he had a stomach ache since December 19, 1997. It lingered until the dawn of December 20, 1997. At about 7:00 a.m., that same day, a younger sister of his wife informed them that he was a suspect in the killing of Arnulfo Lonzaga. His story was corroborated by Bernardita Alvios and Bonifacia Calago.

Bernardita Alvios was a neighbor of the Calagos for eight (8) years. At 5:00 p.m. on December 19, 1997, she claimed that she went to the appellant's house to ask for radish (*kalamungay*). At that time, the appellant was suffering from a stomach ache and his wife, Bonifacia, was attending to his needs. Alvios left as soon as she got the radish from the couple. She admitted that it was the first and the only time she went to the Calagos in the eight (8) years that they had been neighbors.

Bonifacia Calago confirmed that the appellant was in their house in the early dawn of December 20, 1997. Allegedly, he suffered from stomach ache starting December 19, 1997. Due to his illness, she hardly slept in the evening of said date to attend to him. However, she admitted that she fell asleep, albeit very lightly, between 3:00 a.m. up to 4:00 a.m. of December 20, 1997. She woke up at 4:00 a.m. when the rooster crowed. At 9:00 a.m., her sister arrived in their house and reported to them that the appellant was a suspect in the killing of Arnulfo Lonzaga. She cried upon hearing the report. The policemen came to their house and arrested him.

The trial court found the prosecution's version to be more credible and convicted the appellant of murder. Hence, the appeal.

The appellant contends that:

"I.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ROGELIO CALAGO GUILTY OF THE CRIME OF MURDER DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE PRESENCE OF THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

We find the appellant guilty of homicide, not murder, for the killing of the victim, Arnulfo Lonzaga.

Eyewitness Sotero Tewan testified as follows:^[7]

"FISCAL NAZARENO:

Q: Now on December 20, 1997, at 3:30 o'clock dawn, can you tell us where were you?

(WITNESS):

A: I was at the house.

Q: What happened while you were at the house at that time?

A: I heard a commotion.

Q: What did you do when you heard a commotion?

A: I went downstairs of my house.

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Q: You said that you went downstairs and went nearer to the place where you heard the commotion to verify. What was the result of that verification?

A: **I saw Rogelio Calago and Arnulfo Lonzaga.**

Q: What were the two (2), Rogelio Calago and Arnulfo Lonzaga doing at that time?

A: Arnulfo Lonzaga was crying for help.

Q: ...Why was he crying for help?...

A: **I saw that Rogelio Calago was holding a knife on the right hand and he stabbed it toward Arnulfo Lonzaga.**

Q: How far were you when you saw the incident?

A: **About five (5) arms length.**

Q: How far were you from your house when you saw Rogelio Calago stabbed (*sic*) Arnulfo Lonzaga?

A: About thirty (30) arms length more or less.

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Q: **Was Arnulfo Lonzaga hit by the stab?**

A: **Yes.**

Q: **Where was Arnulfo Lonzaga hit?**

A: **At the chest.**

Q: What happened to Arnulfo Lonzaga after being hit by the stab of Rogelio Calago?

A: He fell to the ground.

Q: You said that you went nearer to Arnulfo Lonzaga, what did you do when you were near to (*sic*) him?

A: We then help(ed) him?

Q: Who were with you at that time?

A: I was with Pedro Durango."

On cross-examination, he further declared as follows:^[8]

"ATTY. DONDOYANO:

Q: You are telling this Honorable Court that you were awakened by the noise or arguments between Arnulfo Lonzaga and Rogelio Calago?

A: Yes.

Q: Now, is it true that it was very dark during that time?

A: **It was well-lighted because it was a new moon at that time.**

Q: Do you know that if you are caught telling a lie because you testified under oath, you will be imprisoned with a charge of perjury?

A: Yes, I know that.

Q: **Are you sure that at 3:30 o'clock dawn of December 20, 1997, there was still a moon lighting at that time?**

A: **Yes.**

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Q: You said when you woke up at 3:30 o'clock you heard a

commotion. Is that right?

A: Yes.

Q: And when you were downstairs you heard somebody crying for help? Is that right?

A: Yes.

Q: Who was that person crying for help?

A: Arnulfo Lonzaga.

Q: How did Arnulfo Lonzaga express his cry for help?

A: He said he was stabbed by Rogelio Calago.

COURT:

Q: What is the exact word of Arnulfo Lonzaga?

A: **He said: 'please help me because I was stabbed by Rogelio Calago.'**

Q: Do you mean to say that you did not actually see Rogelio Calago stabbing Arnulfo Lonzaga because at that time you were still five arms length away?

A: **I saw the actual stabbing because when I was there in the house I heard a commotion and when I went downstairs to verify I heard Arnulfo Lonzaga crying for help because he was stabbed by Rogelio Calago.**

Q: And because of that commotion you presumed that it was Rogelio Calago who stabbed Arnulfo Lonzaga.

A: Because Arnulfo Lonzaga told us that he was stabbed by Rogelio Calago.

Q: You said that when you heard Arnulfo Lonzaga crying for help because he was stabbed, it must be that the stabbing was already committed at that time?

A: Yes that is true.

Q: And because the crime was already through, it was already committed and you saw Rogelio Calago holding a knife, therefore, you presumed that Rogelio Calago is the one who stabbed Arnulfo Lonzaga?

A: Yes. Rogelio Calago was holding a knife when I arrived at the scene of the incident.

Q: And because you saw Rogelio Calago holding a knife you presumed(d) that Rogelio Calago was the one who stabbed Arnulfo Lonzaga? Nobody told you?

A: Arnulfo Lonzaga told us that he was stabbed by Rogelio