

EN BANC

[G.R. No. 135521, April 11, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO M. JUDAVAR, DEFENDANT-APPELLANT.**

DECISION

PUNO, J.:

This case is on automatic review of the decision dated August 21, 1998 of the Regional Trial Court, Branch 34, Iriga City in Criminal Case No. IR-3802 which sentenced accused-appellant Francisco M. Judavar to death for the crime of murder.

In an Information dated May 31, 1995, accused-appellant was charged with murder for the death of Arnel Dato committed as follows:

“That on or about the 15th day of February 1995 at about 2:30 in the morning in Caranday, Baao, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to kill, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Arnel C. Dato from behind, while the latter was standing and witnessing the dance being held at the Caranday Public Market, thereby inflicting upon the said victim mortal wounds, which directly caused his death, to the latter’s damage and prejudice in such amount as may be proven in court.

All acts contrary to law.”^[1]

Accused-appellant was arraigned and pleaded not guilty to the charge. At the trial, the prosecution presented six (6) witnesses, namely: (1) Dr. Ruperto Alfelor, (2) Roberto Robosa, (3) Nardito Dato, (4) Margie Malazarte, (5) Francisco Cabalquinto, and (6) Nonito Dato. Their testimonies established the following facts: In the evening of February 14, 1995, a public dance in celebration of Valentine’s Day was sponsored by the Senior Citizens of Caranday and held at the market site of Carandang, Baao, Camarines Sur. Sweethearts Arnel Dato and Margie Malazarte attended the dance and enjoyed the evening together. At about 2:00 in the early morning of February 15, Margie momentarily left Arnel. As he waited for his sweetheart, Arnel stood on one side of the hall and watched the people dancing on the floor. Accused-appellant appeared and approached Arnel from behind. Suddenly, accused-appellant swung his right hand and, with a ten-inch knife, stabbed Arnel, hitting his right chest. Arnel fell to the ground bleeding. Margie Malazarte ran to him, crying and shouting out accused-appellant’s name as the attacker of her beloved. Appellant fled clutching the knife in his hand. People scampered in different directions. Francisco Cabalquinto, a barangay tanod, saw the stabbing and ran toward the victim. As he approached Arnel, Francisco was stabbed

in the back twice by Brigido Bustarda, a friend of accused-appellant. Francisco was about to be stabbed again by Brigido and a certain Nicolas Saniei when Nardito Dato, the chief barangay tanod, who was dancing with his wife when he saw the stabbing, sprayed tear gas on the assailants. Nardito Dato then chased accused-appellant but was unable to catch him. He later reported the incident to the police.
[2]

Margie Malazarte and Arnel's relatives brought Arnel to the hospital but he was declared dead. Dr. Ruperto Alfelor, Municipal Health Officer of Baao found:

"ABDOMEN

1. Stabbed [*sic*] wound at the right hypochondrium 2 cm away from the right lateral plane of epigastrium.

Cause of Death: HEMORRHAGIC SHOCK secondary to stabbed [*sic*] wound."
[3]

It was alleged that the killing of Arnel Dato was motivated by jealousy. Two years earlier, in 1993, the victim and accused-appellant were rivals for the love of Margie, their high school classmate. Margie accepted Arnel because he was kind and thoughtful, very much unlike appellant who was easy-go-lucky and "cruel."
[4] This incurred appellant's ire. On September 24, 1994, the sweethearts attended a novena at the barangay chapel in del Pilar, Baao when appellant appeared and punched Arnel. Margie pulled her boyfriend away and tried to pacify appellant. Fuming mad, appellant warned Arnel that if he would not part from Margie, he would kill him.
[5] The following month, on October 12, 1994, at the barangay fiesta, Margie and Arnel went to a dance and saw appellant at the entrance of the dance hall. Appellant approached Arnel and, suddenly, appellant punched and tried to stab his rival. Margie screamed at appellant, telling him not to hurt her beloved. Appellant fled.
[6] Finally, four months later, on that fateful Valentine ball, appellant killed Arnel.

The victim's body was brought down from the mountains of Caranday and his wake was held for fifteen days in his uncle's house in San Vicente in the same municipality. The deceased's father, Nonito, spent P70,000.00 for the wake and funeral of his son.
[7] His son's death was a big loss to the family. The deceased, who was eighteen years of age, was very kind and of great help to his father in their farm. He wanted to finish his studies and was a high school graduating student at the time of his demise.
[8]

As a result of the victim's death, the Chief of Police of Baao charged accused-appellant with the crime of murder. On March 10, 1995, a warrant for appellant's arrest was issued by the Judge of the Municipal Trial Court of Baao, Carmarines Sur.
[9] No bail was recommended. The warrant of arrest, however, could not be served since appellant could not be located in the municipality. There was information that he was in Taguig, Metro Manila. On March 13, 1996, two sets of alias warrants of arrest were issued—one for Taguig, Metro Manila and the other for Camarines Sur.
[10] On August 9, 1997, accused-appellant was arrested in Iriga City, Camarines Sur.

For his defense, accused-appellant presented two (2) witnesses: Juansus Botor and

himself. According to appellant, in the evening of February 14, 1995, he, Juansus Botor and three of his friends were at the dance hall in Caranday. At 2:00 in the morning of the following day, they noticed a commotion. Sensing some trouble, appellant and his friends decided to leave the hall at once. As they were leaving, Juansus Botor saw a man clutching an icepick. The man swung his right hand and, with the icepick, stabbed the person in front of him. Juansus did not recognize the man because he, appellant and their friends left hurriedly. It was only later that they learned that the victim was Arnel Dato. Accused-appellant denied having courted Margie Malazarte but admitted they were high school classmates. He claims he had no personal grudge against Margie and the Dato family.

In a decision dated August 21, 1998, the trial court found accused-appellant guilty as charged. The court sentenced appellant to death and pay the victim's heirs civil indemnity of P50,000.00, moral damages of P20,000.00 and actual damages of P60,358.30 and the costs, viz:

"WHEREFORE, in view of the foregoing considerations, this court finds the accused FRANCISCO JUDAVAR, GUILTY beyond reasonable doubt of the crime of Murder, and hereby sentences him to suffer the maximum penalty of DEATH. He is likewise directed to indemnify the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) for the victim's death, Twenty Thousand Pesos (P20,000.00) as moral damages, Sixty Thousand Three Hundred Fifty Eight Pesos 30/100 (P60,358.30) as actual damages, and to pay the costs of the suit. Let the record of this case be forwarded to the Supreme Court for automatic review."^[11]

On December 2, 1998, appellant filed before this court a motion for new trial.^[12] The Solicitor General filed his Comment^[13] to which appellant replied.^[14]

In a Resolution dated July 6, 1999, we denied the motion for new trial for lack of merit.^[15]

In this appeal, accused-appellant assigns the following errors:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER AND IMPOSING THE PENALTY OF DEATH.

II. THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF ARNEL DATO WAS ATTENDED WITH TREACHERY AND EVIDENT PREMEDITATION.

III. THE TRIAL COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY THE HEIRS OF THE DECEASED P50,000.00 AS INDEMNITY, P20,000.00 AS MORAL DAMAGES, P60,358.30 AS ACTUAL DAMAGES AND THE COST OF THIS SUIT."^[16]

Accused-appellant claims that the killing of Arnel Dato was not murder but death in a tumultuous affray. He alleges that before the victim's death, several people were creating trouble at the dance hall and, in the course of the commotion, the victim was stabbed to death by an unidentified person.

Reviewing the evidence, the killing of Arnel Dato was not made in the course of a tumultuous affray. Three witnesses, namely, Roberto Robosa, Nardito Dato and Francisco Cabalquinto testified that they saw accused-appellant approach Arnel Dato from behind and, with his right hand, swing a ten-inch knife into Arnel, hitting the latter's right chest. When this occurred, Roberto Robosa was five meters away from the victim;^[17] Nardito Dato was ten meters away^[18] while Francisco Cabalquinto was more than a meter from Arnel.^[19] The dance hall was lit by fluorescent lamps and the area where appellant stood was lit by light from the electric post.^[20] The three witnesses directly saw and positively identified accused-appellant as the victim's assailant. Their testimonies are credible, candid, straightforward and free from any material or significant inconsistency. The fact that Nardito Dato and Francisco Cabalquinto were uncles of the deceased^[21] does not *ipso facto* render their testimonies biased.^[22] There is no evidence of ill-motive on their part to testify falsely against appellant.^[23] Moreover, their testimonies are corroborated by Roberto Robosa who is not a relative of the victim.

The evidence is clear that the victim's death was not caused in the heat of a tumultuous and rambunctious melee. It was the stabbing that caused the commotion.^[24] When Arnel fell to the ground, people scampered in different directions. The situation grew worse when Francisco Cabalquinto was also stabbed.^[25] The commotion subsided only after the chief barangay tanod, Nardito Dato, and his men were able to pacify the crowd.

Dr. Ruperto Alfelor, the municipal health officer who conducted the post-mortem examination on the victim's body, testified that the direction of the stab wound was upward, from the lower ribs towards the liver.^[26] He theorized that if the victim was struck from behind, the wound was most probably caused by a right-handed person.^[27] Appellant takes issue that he is left-handed and claims that it was impossible for him to have stabbed the victim because the fatal blow could have only been delivered by a right-handed person. At a demonstration before the trial court, appellant, with his left hand, caught a ball pen thrown at him and, with the same hand, wrote his name three times on a sheet of paper.^[28] Appellant claims he was able to establish his left-handedness and it became the duty of the prosecution to rebut this presumption. Since the prosecution failed to do so, the presumption stands.^[29]

The fact that appellant is left-handed does not rule out the possibility that he is also right-handed. If indeed he is left-handed, he should have presented proof that he could not perform manual work with his right hand or that he has lost the use of his right hand. It is common knowledge that some people are ambidextrous, meaning, that they are capable of using both hands with equal ease.^[30] Margie Malazarte knew appellant as a right-handed person.^[31] And even assuming that appellant had suddenly lost the use of his right hand after the stabbing, he was directly and positively seen to have struck the victim with a knife, hitting him on the right chest, thereby causing his death. Regardless of whether appellant is left-handed or right-handed, what is important is that he was positively identified as the victim's assailant by no less than three credible witnesses.

Appellant's flight after the stabbing incident and his unexplained absence from