

THIRD DIVISION

[G.R. No. 139179, April 03, 2002]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILFREDO
TOLENTINO Y ESPERAT AND JONATHAN FABROS Y CASTRO,
ACCUSED. JONATHAN FABROS Y CASTRO, APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

An appeal in a criminal case opens the entire records to review. The appellate court may pass upon every circumstance favorable to the accused. In the present case, the prosecution failed to prove the existence of conspiracy beyond reasonable doubt. Neither was it able to show that appellant was an accomplice or accessory. Hence, he must be acquitted on reasonable ground.

The Case

Jonathan Fabros y Castro appeals the May 27, 1999 Decision^[1] of the Regional Trial Court (RTC) of Zamboanga City (Branch 17) in Criminal Case No. 13698, finding him guilty of murder and sentencing him to *reclusion perpetua*. The dispositive portion of the Decision reads as follows:

"WHEREFORE, finding the accused Wilfredo Tolentino and Jonathan Fabros guilty beyond reasonable doubt of the crime of murder, and taking into consideration the aggravating circumstance of dwelling (*morada*) without any mitigating circumstance to offset the same, the Court hereby sentences the above-named accused separately to suffer the penalty of [r]eclusion [p]erpetua, to pay separately the heirs of the victim the sum of P50,000.00 as moral damages, the sum of P50,000.00 as exemplary damages, and to indemnify the said heirs [in] the sum of P15,000.00 as actual damages, and to pay the costs."^[2]

The Information, dated March 2, 1996, charged appellant as follows:

"That on or about February 28, 1996, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a piece of wood and knife, conspiring and confederating together, mutually aiding and assisting with one another, by means of treachery and evident premeditation and with intent to kill, did then and there without any warning, assault, attack and stab with the use of said weapons that they were armed with, at the person of HERNAN SAGARIO y CUESTA, thereby inflicting mortal wounds on the different parts of the latter's body which directly caused his death, to the damage and prejudice of the heirs of said victim.

"That the commission of the above-stated offense has been attended by

the following aggravating circumstances, to wit:

1. Abuse of superior strength; and
2. Dwelling.”^[3]

With the assistance of counsel,^[4] appellant pleaded not guilty when arraigned on June 7, 1996.^[5] After due trial, the RTC rendered the assailed Decision.

The Facts

Version of the Prosecution

The prosecution’s version of the facts is summarized by the Office of the Solicitor General as follows:^[6]

“On February 28, 1996 around 7:30 in the evening, appellant and his cousins, Sheila Guilayan and Merwin Ledesma, were at their house in Luyahan, Pasonanca, Zamboanga City when their neighbor Wilfredo Tolentino called them. When asked what was it all about, Wilfredo simply motioned to them to come to his house located just across the road. Once they were inside the house, Wilfredo immediately revealed his plan to kill Hernan Sagario, Sheila’s stepfather. Wilfredo explained that it was the only way to free Sheila’s mother - appellant’s aunt - of the sufferings being caused by Hernan. Wilfredo then instructed Merwin to go back to the house and get the bolo of Hernan. Merwin obliged, got the bolo, and gave it to Wilfredo. Thereafter, they were told by Wilfredo to go home and wait for Hernan.

“Around 8:30 in the evening, Hernan arrived. He went directly to the kitchen and fixed the bag of rice he was carrying. Meanwhile, appellant, together with Sheila and Merwin, just stayed quiet in the living room. Moments later, Wilfredo with a 2”x2” piece of wood in his hand entered the house. He then followed Hernan towards the kitchen. When about an armslength away from Hernan, Wilfredo, without saying a word, immediately walloped Hernan on the right side of the neck sending the latter unconscious and falling face down to the ground. Wilfredo immediately instructed appellant and Merwin to help him bring Hernan out of the house. Lifting Hernan out of the house, Wilfredo held him by the neck while both appellant and Merwin grasped his feet. They then carried Hernan towards the creek about seven meters away from the house.

“Upon reaching the creekside, the three stopped and moved closer to the water. At this juncture, Wilfredo successively stabbed Hernan on different parts of the body causing the latter’s instant death. After throwing the victim’s lifeless body in the creek, the three immediately left.

“The post-mortem examination on the victim’s cadaver disclosed that the cause of his death was cardio-respiratory arrest due to shock and hemorrhage secondary to [a] stab wound penetrating the chest.” (Citations omitted)

Version of the Defense

Appellant, on the other hand, presented the following version of the facts:^[7]

"Accused Jonathan Fabros and Wilfredo Tolentino both denied killing the victim. Instead, they pointed to each other as the one who killed Hernan Sagario. Fabros pointed to Tolentino as the assailant and the latter also fingered the former as the killer of Sagario.

"Relying on his lone testimony and corroborating the testimony of prosecution witness Sheila Guilayan, accused Fabros narrated that he is a resident of Luyuhan, Pasonanca, particularly in the house of his auntie Amparo Guilayan (the common-law wife of Hernan Sagario), together with his cousins Merwin Ledesma and Sheila Guilayan.

"On 28 February 1996, at around 7:00 p.m., he returned home to Luyahan after his work at Astoria Hotel as a waiter. Sheila was at home when he arrived. Shortly thereafter, their neighbor, accused Tolentino, came over and called for Sheila. Sh[ei]la stood up and went to the house of Tolentino, leaving behind Fabros and Merwin Ledesma. After a while, he and Ledesma heard Sheila crying and the two went to the house of Tolentino. At the house of Tolentino, Fabros and Ledesma asked Sheila why she cried. [She] disclosed Tolentino's plan to kill her stepfather Hernan Sagario. When asked for his motive to kill Hernan Sagario, Tolentino merely reasoned that he just wanted to help their auntie Amparo get rid of her problems. When they expressed apprehension [about] being implicated and tried to prevent Tolentino from pursuing his plan, the latter told them not to worry; for he will take care.

"When Tolentino saw their uncle Hernan coming towards the house, he ordered them to go home and they obeyed. As he arrived, Hernan ordered Fabros to boil water. Afterwards, Hernan went out of the house to buy Ovaltine. When Hernan returned, Tolentino approached him and they talked for about two minutes. Afterwards, Tolentino went to his house while their uncle Hernan told him (Fabros) to check if the water was already boiling. Jonathan went to the kitchen while their uncle placed the rice he brought in a container. At that instance, Jonathan heard the sound 'pok', and saw Tolentino holding a piece of wood (2" x 2"). Then, he saw his uncle f[a]ll down slowly, his chest hitting the corner edge of a table. Tolentino approached his uncle and kicked him. Then he ordered Fabros to come near him and carry Hernan by his feet. Afraid that Tolentino will hit him with the piece of wood, Fabros held his uncle by the feet while Tolentino pulled Hernan by the shirt and he just followed Tolentino. Tolentino brought Hernan near the river. When Jonathan noticed that his uncle regained consciousness, he ran away towards a banana plantation and from there he saw Tolentino [stab] Sagario on the chest. After stabbing the victim, Tolentino pushed and waded him into the water. Scared, Jonathan ran home. About twenty minutes later, Tolentino arrived and with thumbs up sign, he said, 'Okey na!'. Jonathan also observed that there was blood on the shoulder of Tolentino. The latter then called the three (3) and warned them that if they will tell other people, he will kill them. Out of fear, they just

followed whatever Tolentino told them.

"By reason of fear of Tolentino's threat, Jonathan told the police that he did not know what happened. On 01 March 1996, however, he was arrested for the death of Hernan Sagario on account of an information received by the police identifying him as the assailant. He was brought to the Sta. Maria Police Station and thereat he was told by the police that if he will not admit, they will show him the witness, which the police later did by showing to him his co-accused Tolentino. On seeing Tolentino, he declared that he (Tolentino) was the one who killed the victim.

"However, on 14 July 2000, long after the trial court's decision had become final and executory on his part, Wilfredo Tolentino, apparently conscience-stricken, executed an affidavit admitting sole responsibility for the death of Hernan Sagario and retracted his testimony implicating accused-appellant Jonathan Fabros. His affidavit is herein reproduced as follows:

'I, WILFREDO TOLENTINO y ESPERAT, 65 years old, widower, Filipino, a convicted prisoner with the San Ramon Prison and Penal Farm in Zamboanga City, after having been duly sworn to in accordance with law hereby depose and state:

'That I was convicted for the crime of Murder in Criminal Case No. 13698 entitled 'The People of the Philippines, Plaintiff, versus, Wilfredo Tolentino y Esperat and Jonathan Fabros y Castro, accused,' which Decision was promulgated on May 30, 1999 and ha[s] become final;

'That of the four years I have been in prison, I have contemplated on the consequences of my acts and have been conscience stricken causing me sleepless nights and deep pity [for] my co-accused Jonathan Fabros whom I have wrongfully imputed to be the killer of the victim Hernan Sagario y Cuesta. As he appealed the Decision, [maybe] I still have the chance to rectify the wrong I have done to him and tell the Honorable Court what actually happened [o]n the night of February 28, 1996, as hereunder narrated;

'That I had known Hernan Sagario earlier in 1994 when he was still a security guard and he attempted to shoot me with his service firearm and although we had amicably settled the matter between us, when he came to be my neighbor, I would remember that incident and my old grudge against him would be rekindled;

'That earlier that night of February 28, 1996, I came home quite drunk [after] my drinking spree with my relatives across the river and one of the topics we discussed was about the incident when Hernan Sagario attempted to shoot me. As I recalled that incident, my old grudge against him resurfaced and I resolved right then and there to take my revenge on

Hernan. So when he came home and he was in the kitchen, I took hold of a piece of wood and hit him with it and when he fell down unconscious, I dragged his body outside of the house, ordering Jonathan Fabros who was then in the kitchen to help me carry the body of Hernan outside or else he would also become my victim. Jonathan unwillingly assisted me carry the body of Hernan outside and upon my direction, we dragged the body of Hernan towards the river where to finish him off, I stabbed [him] in the chest and pushed him down into the water to hide his body. For his part, Jonathan left me when the body reached the river;

'That after [the] killing, I threatened Jonathan Fabros, Neneng (the daughter of Hernan's live-in-partner) and Weng-weng, a cousin of Neneng and Jonathan[,] never to report the incident to any one or else they could become my next victim;

'That during the investigation of the killing, I pointed to Jonathan as the killer of Hernan, thinking that I would not be implicated. Even when I was also charged for the killing, I was confident that I would be acquitted if I would point to Jonathan as the killer. During the trial of the case, I bribed Jonathan and even gave P20,000.00 to a middle man to effect the pay off but Jonathan returned the money to me saying he could not admit what he did not commit;

'That my conscience ha[d] been greatly troubled by denying Jonathan his future by [my] own evil acts and by this affidavit hopes to correct the wrongs I had done to Jonathan Fabros;

'That I am executing this affidavit [to] attest to the truth of the foregoing narration of facts and to appeal to the Court authorities to rectify the wrongs I had done to Jonathan Fabros and I am willing to testify in court o[n] these statements narrated.'"

Ruling of the Trial Court

The trial court held that the prosecution's evidence positively identified Wilfredo Tolentino as the person who had hit the victim with a piece of wood and later stabbed him with a bolo. It also ruled that the killing was qualified by treachery and attended by the aggravating circumstance of dwelling.

The court *a quo* observed that overt and positive acts of appellant manifested his approval of the killing and the concurrence of his acts with those of the other accused.^[8] Thus, the RTC concluded that Fabros was a co-conspirator and should be held equally responsible for the murder.

Hence, this appeal.^[9]

The Issue