

SECOND DIVISION

[G.R. No. 140731, November 21, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PABLITO ILO Y ACAYEN @ "HAGAWAK", ACCUSED-APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of Branch 63 of the Regional Trial Court of Camarines Sur, finding appellant Pablito Ilo guilty of Murder for the death of his live-in partner, Virginia Oliva, sentencing him to suffer the penalty of *reclusion perpetua* and condemning him to pay her heirs in the amount of P50,000.00 and the costs.

On November 28, 1997, an Information charging appellant with Murder was filed with the trial court. The accusatory portion of said Information reads as follows:

"That on or about the 23rd day of July, 1997, in Barangay Old Caaluan, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and use of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, strike with a big stone, box, kick, one Virginia Oliva, his common-law partner, hitting the latter on the head and on the different parts of her body, which caused her instantaneous death, to her heirs' damage and prejudice in such amount as shall be proven in court.

ACTS CONTRARY TO LAW."^[2]

Upon arraignment on January 13, 1998, appellant, assisted by his counsel *de officio*, pleaded not guilty.

At the trial, the prosecution presented three witnesses, namely: Dr. Ursolino M. Primavera, Jr., Amadeo Bocaya and SPO1 Teresito Porteza, the investigating and arresting officer.

Amadeo declared that on July 23, 1997, at about 10:00 p.m., he and appellant had a drinking spree in the latter's house.^[3] Moments later, appellant and his live-in partner Virginia had a heated argument. Appellant kicked her several times.^[4] Amadeo tried to pacify appellant but to no avail. Appellant rushed to the kitchen, got hold of an old frying pan and struck Virginia with it. She fell on the floor. Amadeo tried to placate his friend but was rebuffed anew. Appellant got hold of a stone used as tripod^[5] in cooking and smashed Virginia's head with it. Amadeo rushed to her aid and wiped off the blood oozing from her head. Amadeo wanted to seek police assistance but was afraid to venture into the neighborhood late at night. He and appellant continued their drinking spree until 4:00 a.m. when Amadeo left and went home.

Amadeo also testified that on two occasions during the trial, appellant asked him not to testify for the prosecution lest Amadeo land in jail for perjury but Amadeo opted to testify. When asked by the public prosecutor to point to Virginia's assailant, Amadeo pointed to the appellant.

Dr. Ursolino M. Primavera, Jr., the second witness for the prosecution, declared *inter alia* that at about 2:00 p.m. on July 24, 1997, appellant brought the hapless body of Virginia to the Tinambac Medicare Community Hospital. By then, she was already dead. Her whole face was contused and swollen. Dr. Primavera performed an autopsy on Virginia's cadaver and prepared a Necropsy Report,^[6] the pertinent portion of which states:

"POST MORTEM FINDINGS:

Skull fracture (sic), closed with muscular contusion (sic), parietal area (R)

Skull fracture (sic) closed forehead (L) with muscular contusion (sic)

Muscular contusion (sic), lacerated wounds 2 cm parietal area (L)

Muscular contusion (sic), whole face

Bluish (sic) discoloration of orbital area bilateral

Lacerated wound eyebrow 1.5 cm (R)

Lacerated wound 2 cm (R) eye

Cause of Death: Cardio-Respiratory Arrest

Hemorrhage – cerebral"

Dr. Primavera opined that the fractures on Virginia's forehead and parietal areas were caused by a solid object.

SPO1 Teresito Porteza of the Tinambac Police Station declared that he conducted an investigation of the death of Virginia during which Amadeo identified appellant as her assailant. Appellant was arrested and jailed. The policeman later proceeded to the house of appellant and conducted an ocular inspection thereof. The place was topsy-turvy. The policemen noticed a broken frying pan and a stone inside the house. Porteza then entered in the police blotter^[7] his investigation report on the incident.

Appellant testified in his behalf. He denied having killed the victim. He further declared that at about 10:00 p.m. on July 23, 1997, he arrived home after a day's work of fishing. He averred that he caught Amadeo on top of Virginia, while both were completely naked. Appellant was flabbergasted. He was about to hit Amadeo with a bolo but the latter dashed out of the window and fled into the darkness of the night. Amadeo, however, returned and picked-up four stones the size of a fist and hurled the same through the window of the house of appellant. One of the stones hit Virginia. Appellant instinctively covered his two young sleeping children with his body to protect them. Appellant dressed up Virginia with a pair of panties and a shirt and brought her to the Medicare Community Center. He insisted that Virginia died because Amadeo hit her with a stone.

On September 28, 1999, the trial court rendered a decision finding the appellant guilty of Murder, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, accused Pablito Ilo y Acayen alias "Hagawak" is hereby found guilty of the offense of Murder. He is ordered to suffer the penalty of Reclusion Perpetua and to pay the heirs of Virginia Ilo y Oliva the amount of ₱50,000.00 for her death, and to pay the costs.

SO ORDERED."^[8]

The trial court gave credence and full probative weight to the collective testimonies of the witnesses of the prosecution in tandem with the physical violence and declared that the killing by appellant of the victim was qualified by treachery. The court, likewise, disallowed abuse of superior strength as a separate modifying circumstance since the same was necessarily included in treachery.

On appeal to the Court, appellant assigned in his brief a solitary error of the court *a quo*; thus:

"THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF THE VICTIM NOTWITHSTANDING THE ABSENCE OF COMPETENT AND SUFFICIENT EVIDENCE TO SUPPORT THE SAME."^[9]

Appellant argues that the injuries inflicted by him on the victim were spur-of-the-moment reflexes during a passionate lovers' quarrel, spawned by jealousy. He avers that the prosecution failed to prove that the killing of Virginia by the appellant was the product of a preconceived plan; a deliberate act to do away with her, what with the presence of Amadeo. He further contends that his actuations were triggered by the provocation emanating from

the victim herself. Hence, appellant contends that he is guilty only of homicide and not of murder. On the other hand, the trial court declared that based on the evidence on record, appellant used means and methods in assaulting Virginia to insure her death without any risk to himself arising from the defense which she might make. Virginia was so emaciated and less than five feet tall; she was at the mercy of appellant. The trial court concluded that treachery qualified the killing and, hence, appellant is guilty of murder.

We do not agree with the trial court.

Treachery is not presumed.^[10] The circumstances surrounding the murder must be proved as indubitably as the crime itself.^[11] The rationale of the principle was explained by the Court in People vs. Angel Rios,^[12] thus:

"It is an ancient but revered doctrine that qualifying and aggravating circumstance before being taken into consideration for the purpose of increasing the degree of the penalty to be imposed must be proved with equal certainty and clearness as that which establishes the commission of the act charged as a criminal offense. It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying and aggravating circumstance alleged to have been present and to have