

EN BANC

[G.R. No. 137050, July 11, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GEORGE CORTES Y ORTEGA, ACCUSED-APPELLANT.**

D E C I S I O N

PARDO, J.:

The case is before the Court on automatic review of the decision^[1] of the Regional Trial Court, Surigao del Sur, Branch 29, Bislig, finding accused George Cortes y Ortega guilty beyond reasonable doubt of murder and sentencing him to the supreme penalty of death.

On August 12, 1998, provincial prosecutor Alfredo J. Pondoc of Surigao del Sur filed with the Regional Trial Court, Surigao del Sur, Branch 29, Bislig, an Information for murder against accused George Cortes y Ortega, which reads as follows:

"That on or about 11:00 o'clock in the evening, more or less, of June 24, 1998, at P. Lindo Street, Saint Paul District, Nangagoy, Bislig, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation, armed with a knife and with intent to kill did then and there willfully, unlawfully and feloniously attacked, assault and stabbed one Edlyn S. Gamboa, a 16 year old girl, thereby inflicting the latter multiple stab wounds on her body which caused her instantaneous death as certified by the doctor, to the damage and prejudice of the victim's heirs.

Contrary to law: In violation of Article 248 of the Revised Penal Code."^[2]

On June 24, 1998, at about eleven o'clock in the evening, Junilla Macaldo was sitting on a bench outside her house located at P. Lindo St., Saint Paul District, Mangagoy, Bislig, Surigao del Sur. While thus seated, Edlyn Gamboa came to her asking for the whereabouts of Yen-yen Ibuña. Junilla noticed that Edlyn was followed by accused George Cortes. Junilla then instructed Edlyn to go upstairs of the house. When Edlyn complied, accused followed her and successively stabbed her several times. Junilla tried to help Edlyn, but accused overpowered her. In a moment, Edlyn was able to run away despite being wounded; however, she collapsed five (5) meters away from where she was stabbed. Junilla shouted for help. At this juncture, accused scampered away. Edlyn was able to stand up but again collapsed after walking about five (5) steps. She was brought to the Babano Medical Clinic, where she expired.

Accused admitted that he stabbed Edlyn. He mistook Edlyn for her male companion against whom he had an altercation earlier. He committed the mistake because at the time of the incident, accused was very drunk and the place was very dark. He only learned that he had stabbed the wrong person the following morning through

the radio vigilantes program.

On August 28, 1998 the trial court arraigned the accused.^[3] He entered a plea of guilty.^[4] In virtue of his plea of guilty, the trial court proceeded to satisfy itself of the voluntariness of the plea by propounding questions to the accused to find out if he understood his plea and the legal consequence thereof. Accused, assisted by counsel, reiterated his plea of guilty and the extra judicial confession he executed before the police.

Nonetheless, the prosecution proceeded to present evidence to prove the presence of aggravating circumstances. The accused on the other hand presented evidence proving the mitigating circumstances that attended the commission of the crime.

The prosecution alleged that the aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, disrespect to sex, and intoxication were present in the commission of the crime. The accused, on the other hand, raised the attendance of the mitigating circumstances of voluntary surrender, plea of guilty, mistaken identity and the alternative mitigating circumstance of intoxication.

On September 2, 1998, the trial court after considering the aggravating and mitigating circumstances attendant found the existence of the aggravating circumstances and appreciated only the mitigating circumstance of plea of guilty that was offset by one of the aggravating circumstances. The trial court then proceeded to rule on the appropriate penalty to be imposed on the accused. The trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by the Republic Act 7659, otherwise known as the Death Penalty Law and is hereby sentenced to suffer the penalty of Death, to indemnify the family of the victim in the amount of P60,000.00, and to pay damages in the amount of P200,000.00 and cost ."^[5]

Hence, this review.^[6]

Accused raises the following errors imputed to the trial court:

1. In finding that the aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, sex and intoxication attended the commission of the crime charged; and
2. In imposing the death penalty upon accused instead of *reclusion perpetua*.

According to the accused, the prosecution failed to prove the aggravating circumstances of evident premeditation and other circumstances attending the commission of the crime.

We agree with the accused that the prosecution did not prove the aggravating circumstance of evident premeditation. "The prosecution failed to establish the