

FIRST DIVISION

[G.R. No. 128887, January 20, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO AQUINO Y PUMAWAN @ "EDDIE AQUINO," ACCUSED-
APPELLANT.**

D E C I S I O N

DAVIDE JR., C.J.:

Accused-appellant Edgardo Aquino y Pumawan (hereafter EDGARDO) prays for the reversal of his conviction for murder decreed by the Regional Trial Court, Branch 75, Olongapo City, in its decision^[1] of 30 January 1997 in Criminal Case No.56-96.

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the Appellee's Brief; thus:

On January 19, 1996, Roselyn Lampera, daughter of Valerio and Esmeralda Lampera was in their house, together with her mother, younger brother Daniel and younger sister (tsn, July 31, 1996, p. 3). Their house is like a small cubicle without any partitions, elevated from the ground by about 2 1/2 feet (Ibid., pp. 3-4).

In the morning of that fateful day, Roselyn's mother, Esmeralda, was in their house taking care of Roselyn's younger sister who was sick at the time (Ibid., p. 3). Her younger brother, on the other hand, was playing on the ground near their house (Ibid., p. 4). Appellant Edgardo Aquino (who was their neighbor) arrived, looking for their father. Both Roselyn and her mother informed Edgardo that Valerio, Roselyn's father, was in Olongapo (Ibid., p. 5).

Unsatisfied with their answer, Edgardo (who was near the door at the time) peeped in their house and when he did not see Valerio, pulled out his knife. Initially, he tried to stab Roselyn's younger brother. When Roselyn and her mother saw this, they rushed towards the younger boy in an attempt to protect him (Ibid.). When Edgardo saw their reaction, Edgardo stepped inside their house, eager to vent his ire on Roselyn, intending to stab her. Roselyn's mother pulled her aside, shouting. Edgardo went for her mother who tried valiantly to evade his thrust as she was then carrying Roselyn's sick younger sister. Roselyn saw Edgardo repeatedly stab her mother in the latter's stomach and chest areas.... Out of fear, Roselyn managed to destroy their nipa wall and jumped out of their house. Despite her shouts for help, no help came (Ibid., pp. 6-7).

At about the same time also, Benjamin Costimiano, a *purok* leader, was in his house when he heard some kind of shouting or commotion. Being a

purok leader, he went to the place of incident and saw the victim (tsn, August 15, 1996, p. 15). He heard the people there say that the culprit was Edgardo Aquino (Ibid.). He went after Edgardo and was able to catch up with him in the house of one Francisco Franco. Benjamin asked Edgardo (who was still armed with a knife at that time) to put down the knife and the latter gave him the knife (Ibid., pp. 16-17). Benjamin described the knife used as a double-bladed one, and when it was handed to him, the handle still had some blood on it (Ibid., p. 19).

Dr[.]. Nancy Valdez, Medico-legal Officer III of the San Marcelino District Hospital, testified that she was the one who conducted the autopsy on the cadaver of the victim. She noted four (4) stab wounds at the xiphoid processes/chest area, two (2) of which were fatal as they penetrated the thoracic cavity, causing lacerations on the anterior portion of the superior lobe of the left lung (tsn, August 29, 1996, pp. 8-10).

Valerio Lampera, Esmeralda's husband, declared that the untimely death of Esmeralda caused him pain and compelled the family to incur expenses in the amount of ₱2,500.^[2] Daniel Isaac, Esmeralda's 8-year-old son, was likewise psychologically and emotionally affected by the unexpected demise of his mother.^[3] He cried on the witness stand when asked of the whereabouts of his mother.

EDGARDO had another story to tell. According to him, Esmeralda's husband was his business partner in the sale of fish. In the evening of 19 January 1996, he went to the house of the Lamperas to get his capital for the business. He saw Roselyn standing by the stairs of the house and asked her about the whereabouts of her father Valerio. When she informed him that Valerio was not there, he left for the store of Francisco Franco. On his way to the store, he heard shouts coming from the Lampera's house, which he mistook to be just another ordinary fight. He proceeded to Franco's store. Then Benjamin Costimiano, a *purok* leader, arrived at the store, carrying with him a knife which, according to him, was recovered from inside Esmeralda's house. Benjamin invited EDGARDO to go with him to the Police Department of Subic, Zambales. Upon arrival thereat Costimiano ordered the detention of EDGARDO allegedly because the latter was a suspect in the killing of Esmeralda. EDGARDO was detained for two months but was not investigated by the police. He could not remember having been brought to the office of the Provincial Prosecutor and having given a statement thereat. He insisted that he did not kill Esmeralda and that the knife presented by the prosecution was not taken from him. Besides, he had no reason to kill the wife of his business partner.^[4]

The trial court gave credence to the version of the prosecution. It thus found EDGARDO guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No.7659. It held that the killing was attended by the qualifying circumstance of treachery, since the deceased was carrying a sick child when suddenly attacked. It appreciated in his favor the mitigating circumstance of intoxication based on the testimony of EDGARDO that he drank liquor on that fateful day while fishing at sea, which was corroborated by Roselyn's testimony that EDGARDO had *red* eyes. This circumstance was, however, offset by the aggravating circumstance of dwelling. Since there was no other modifying circumstance established, the trial court sentenced EDGARDO to suffer the penalty of *reclusion perpetua* and to pay the heirs of the deceased the amounts

of ₱50,000 as indemnity; ₱50,000 as moral damages; ₱30,000 as exemplary damages; and ₱2,500 as actual damages.

EDGARDO seasonably appealed to us. In his Appellant's Brief, he contends that the trial court erred in (a) considering treachery when the same was inexistent and (b) convicting him of murder qualified by treachery; and that it also overlooked material facts of substance which if considered would be sufficient to acquit him of the crime charged.

EDGARDO argues that no treachery was proved. First, the victim was already forewarned of the danger that would befall her, since EDGARDO initially pointed a knife at her young son, then tried to stab her daughter but missed. Besides, the attack was frontal and expected. Treachery did not automatically attach just because the victim was a woman and was holding a child. Second, one of the requisites of treachery, namely that "the means of execution was deliberately and consciously adopted," was absent because the stabbing spree was made at the spur of the moment when EDGARDO was enraged with passion and obfuscation or was under the influence of a sudden attack of "temporary insanity." Third, to appreciate treachery, the accused must be shown to have made some preparations to kill the victim. EDGARDO was in the victim's house with a legitimate purpose, *i.e.*, to collect his share of the proceeds of the sale of the night's catch of fish in the amount of ₱640; there was no murder in his heart at the precise moment.

Further, EDGARDO claims that from his warrantless arrest to the custodial interrogation, he was denied his constitutional rights to remain silent and to have an effective counsel.

In the Appellee's Brief, the OSG recommends that the judgment appealed from be affirmed *in toto*. It agrees with the trial court that there was treachery in view of the sudden and unexpected attack upon the unarmed victim, who had not committed the slightest provocation and who was totally unaware of EDGARDO's murderous designs. Neither the victim nor her children anticipated the attack. EDGARDO did not give any warning that he was about to start a stabbing spree. The victim, then carrying a sick child, never had the chance to defend herself or to retaliate. All that she managed to do was to try to evade EDGARDO's knife blows.

Anent the third assigned error, the OSG argues that "temporary insanity" is not recognized in this jurisdiction and that mere abnormality of the mental faculties will not exclude imputability.^[5] In any case, EDGARDO had the burden of proving his alleged "temporary insanity," as it is a basic principle in our rules on evidence that he who alleges a fact must prove the truth thereof. However, he did not raise this argument below, and it is only now that he belatedly raises it.

In light of the positive identification by a credible eyewitness of EDGARDO as the perpetrator of the crime, his self-serving denial is worthless. There is no shred of doubt as to his culpability for the death of Esmeralda.

We do not, however, agree with the trial court that treachery attended the commission of the crime. For treachery to qualify the killing to murder, the following requisites must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the