

FIRST DIVISION

[G.R. Nos. 95891-92, February 28, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSMUNDO FUERTES @ "DODO"; AGUSTIN LUYONG @ "JACK" AND "JACKIE PANGALAN" (AT LARGE); EDGAR GIBONE; FRANCISCO SALVA @ "BOCHOY"; AND ROLANDO TANO @ "BOY NEGRO" AND "BRANDO", ACCUSED, OSMUNDO FUERTES, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

For gathering firewood and quenching their thirst with coconuts gathered from a tree inside a *hacienda* managed by Osmundo Fuertes, Napoleon Aldeguer, aged 14, and Mateo Aldeguer, aged 16, were bound, gagged, brutally hacked to death and thrown at the bottom of a dried creek.

Indicted for the dastardly deeds were Osmundo Fuertes @ "Dodo", Agustin Luyong @ "Jack" and "Jackie Pangalan", Edgar Gibone, Francisco Salva @ *Buchoy*, and Rolando Tano @ "Boy Negro" and "Brando" in two (2) Informations for Murder docketed as Criminal Case Nos. 1582 and 1583.

Criminal Case No. 1582 charges –

"That on or about November 1, 1986, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with sharp bladed/pointed instruments (bolos) and with intent to kill, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, hack and/or stab with said weapons one NAPOLEON ALDEGUER, thereby inflicting upon him mortal wounds which caused his death, and not contented with that, sliced the left leg of the lifeless body of said Napoleon Aldeguer.

That the commission of the crime was attended by the aggravating circumstances of (1) abuse of superior strength; (2) adding ignominy to the natural effects of the crime; and (3) that the crime was committed in consideration of a reward or promise.

CONTRARY TO LAW."

Criminal Case No. 1583 alleges –

"That on or about November 1, 1986, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable

Court, the above-named accused, armed with sharp bladed/pointed instruments (bolos) and with intent to kill, with treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, hack and/or stab with said weapons one MATEO ALDEGUER, thereby inflicting upon the latter mortal wounds which caused his death, and not contented with that, stabbed the abdomen of the lifeless body of said Mateo Aldeguer.

That the commission of the crime was attended by the aggravating circumstances of (1) abuse of superior strength; (2) adding ignominy to the natural effects of the crime; and (3) that the crime was committed in consideration of a reward or promise.

CONTRARY TO LAW."

Accused Osmundo Fuertes @ "Dodo", Edgar Gibone, Francisco Salva @ "Butchoy" and Rolando Tano @ *Boy Negro*, upon arraignment, entered pleas of "not guilty" to both charges.^[1] Trial thereafter proceeded against the four (4) accused because accused Agustin Luyong @ "Jack", and "Jackie Pangalan" was still at large.

Accused Francisco Salva was, upon motion of the prosecution,^[2] discharged by the trial court in order to be utilized as a state witness. Joint trial of the two cases, upon motion of the prosecution without any objection from the defense,^[3] thereafter ensued.

Subsequently, accused Agustin Luyong @ "Jack" was apprehended and committed to the Provincial Jail. On September 1, 1987, said accused assisted by counsel, entered a plea of "guilty" upon arraignment^[4] in both cases.

On the basis, among others, of his extra-judicial confession,^[5] executed in the presence of his defense counsel, narrating the incident and his participation therein as well as the post-mortem examination reports^[6] made by Dr. Gil G. Mantilla, Assistant Provincial Health Officer, judgment^[7] was thereafter rendered against accused Agustin Luyong @ "Jack", in a Decision dated September 14, 1987, the dispositive portion of which reads as follows:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, in Crim. Case No. 1582, the Court finds the accused Agustin Luyong *alias* "Jack" guilty beyond reasonable doubt as principal of the crime of Murder for the killing of Napoleon Aldeguer, Jr., and hereby sentences him to suffer the penalty of *reclusion perpetua* (life imprisonment), with the accessory penalties provided for by law, to indemnify the legal heirs of the deceased Napoleon Aldeguer, Jr. in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, and Crim. Case No. 1583, the Court likewise finds the accused Agustin Luyong *alias* "Jack" guilty beyond reasonable doubt as principal of the crime of Murder for the killing of Mateo Aldeguer, and hereby sentences him to suffer the penalty of *reclusion perpetua* (life imprisonment), with the accessory penalties provided for by law, to indemnify the legal heirs of the victim, Mateo Aldeguer, in the sum of P30,000.00, without subsidiary imprisonment in

case of insolvency; and to pay proportionate costs of these proceedings.

In the service of the above penalties, the rules provided in Art. 70 of the Revised Penal Code shall apply.

SO ORDERED."

After a joint trial, accused Rolando Tano, Edgar Gibone and appellant Osmundo Fuertes, were found guilty beyond reasonable doubt of the offenses charged in a judgment dated December 4, 1989,^[8] the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations:

(a) in Criminal Case No. 1582, the Court finds the accused Osmundo Fuertes *alias* "Dodo", Edgar Gibone and Rolando Tano *alias* "Boy Negro" GUILTY beyond reasonable doubt as principals of the crime of MURDER for the killing of Napoleon Aldeguer, and hereby sentences each of them to suffer the penalty of *RECLUSION PERPETUA*, with the accessory penalties provided for by law, to indemnify, jointly and severally, the heirs of the victim Napoleon Aldeguer, the sum of THIRTY THOUSAND PESOS (P30,000.00);

(b) in Criminal Case No. 1583, the Court finds the accused Osmundo Fuertes *alias* "Dodo", Edgar Gibone and Rolando Tano *alias* "Boy Negro" GUILTY as principals of the crime of MURDER for the killing of Mateo Aldeguer, and hereby sentences each of them to suffer the penalty of *RECLUSION PERPETUA*, with the accessory penalties provided for by law, to indemnify, jointly and severally, the heirs of the victim Mateo Aldeguer the sum of THIRTY THOUSAND PESOS (P30,000.00), plus the costs of the proceedings.

The rules provided in Article 70 of the Revised Penal Code shall be observed in the service of the above sentences.

SO ORDERED."

Dissatisfied, accused Osmundo Fuertes @ *Dodo* interposed this appeal alleging –

I. THAT THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO, AND RELYING HEAVILY ON, THE TESTIMONY OF PROSECUTION WITNESS FRANCISCO SALVA.

II. THAT THE TRIAL COURT GRAVELY ERRED IN FINDING THAT A CONSPIRACY EXISTED AMONG THE ACCUSED.

The prosecution's version of the incident as summed in the People's brief:

In the morning of November 1, 1986, Francsico Salva was riding on a horse and pasturing some cows and carabaos within the premises of Hacienda Ong located in Lumagaob, Barrio Sainz, Mati, Davao Oriental.^[9]

Thereupon, he saw two boys gathering young coconuts.^[10] Salva approached the two boys and asked them why they were gathering young coconuts and the two

boys replied that "they were thirsty".^[11]

Thereafter, Salva reported the matter to appellant (who was overseer of the *Hacienda*) and the latter promptly ordered Salva and some other persons including accused Edgar Gibone to board a jeep which he drove to the place where the two boys were gathering coconuts.^[12] When they arrived at the place, the two boys were already on a hill, prompting appellant and his group to chase them, but they failed to catch them.^[13]

Thereafter, appellant and his companions returned to appellant's house bringing with them two bundles of firewood allegedly gathered and left by the two boys. When they arrived at appellant's house, appellants and his companions "ate" and thereafter appellant sent somebody to fetch accused Rolando Tano and Jack.^[14]

Later in the afternoon, Rolando Tano and Jack arrived at appellant's house. Thereupon, Salva and Edgar Gibone were summoned by appellant and were instructed to go with Rolando Tano and Jack to the place where the two boys were earlier seen gathering coconuts to apprehend them should they return.^[15] Upon arriving at the place, they allegedly hid in the "*Canyan* tree" and after a while the two boys appeared. After a brief chase, they were able to catch the two boys. The two boys were "hand-tied" and brought to the house of Joaquin Reyes.^[16]

Upon reaching the house of Joaquin Reyes, Jack ordered Salva and Gibone to hide.^[17] Thereafter, Jack and Tano asked Felisa Reyes, the wife of Joaquin Reyes, for water to drink and also instructed the latter to fetch appellant at the latter's house.^[18]

Felisa Reyes complied with the request and proceeded to appellant's house and informed the latter that two persons were waiting for him in her house. She described the two persons to appellant who, in turn, told her that said persons were Jack and Boy Negro.^[19]

Thereafter, appellant instructed Felisa Reyes to go home as he and his companions "will just follow".^[20] Felisa Reyes went back home and after a while appellant, together with two other persons arrived. Upon seeing the two boys, appellant allegedly started scolding them and called them thieves.^[21]

After scolding the two boys, appellant and Jack had a conversation during which they allegedly agreed that the two boys be killed.^[22] Thereafter, appellant and his two companions left. Jack then ordered Salva and Gibone to proceed to the "dead creek" which they promptly did.

Later on, Jack, Rolando Tano and the two boys also arrived at the "dead creek" followed by appellant.^[23]

At the "dead creek", Jack removed the shirts of the two boys upon being ordered to do so by appellant.^[24] Jack and Rolando Tano tore the shirts and with the torn shirts covered the mouths of the two boys.^[25] Jack stabbed the smaller of the two boys, who was later identified as Napoleon Aldeguer, with a bolo at the latter's

abdomen.^[26] Upon being stabbed, Napoleon fell to the ground as Jack kept on stabbing him.^[27]

Jack handed the bolo to Rolando Tano and the latter started stabbing the other boy who was later identified as Mateo Aldeguer.^[28]

Rolando Tano handed the bolo to Edgar Gibone who was threatened by Jack that should he not stab Mateo Aldeguer, he will, in turn, be stabbed by Jack. Edgar Gibone complied by stabbing Mateo Aldeguer.^[29]

Edgar Gibone was instructed by Jack to hand the bolo to Salva but the latter refused to accept the bolo prompting Jack to threaten him with death. Salva accepted the bolo and hacked the left thigh of Napoleon Aldeguer as instructed by Jack.^[30]

Jack took the bolo from Salva and hacked the neck of Napoleon Aldeguer.^[31]

After stabbing the Aldeguers, Jack and Rolando Tano left and "followed" the dead creek. Appellant Edgar Gibone and Salva left and proceeded to the house of one Nardo where appellant allegedly warned Gibone and Salva "not to reveal what happened."^[32]

Later in the day, Rolando Tano and Jack allegedly arrived at the house of appellant and were met by the latter in his office where he gave each a small envelope.^[33]

In the afternoon of November 2, 1986, the bodies of Napoleon and Mateo Aldeguer were found in Hacienda Ong.

The Postmortem Examination Reports^[34] Issued By Dr, Gil Mantilla who examined the bodies of the victims contained the following findings:

NAME : MATEO ALDEGUER
SEX : Male
AGE : 16 Years Old
ADDRESS : Mapantad, Mati, Davao Oriental
TIME : 5:45 P.M.
EXAMINED :
PLACE : Padilla Funeral Parlor
EXAMINED : Rizal Extension, Mati,
Davao Oriental

FINDING

1. Hacked Wound, Neck, Right Side, 2 Inches along the level of the Jaw;

2.

Stabbed 1. 2 Inches Anterior Axillary Line below
Wound, The Clavicle.

2. ½ Inch below the Right Nipple, 2 Inches