

## FIRST DIVISION

[ G.R. No. 126125, March 09, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARMANDO GAVIOLA, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

Albert Fernandez was the only witness in the killing of his father, Antonio Fernandez. In open court, he positively identified Armando and Eduardo Gaviola as the culprits. Armando denied the accusation but the trial court relied on the testimony of Albert Fernandez. Hence, Armando Gaviola was convicted of murder<sup>[1]</sup> and accordingly sentenced to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of Antonio Fernandez the sum of P50,000.00 as civil indemnity and P18,087.00 as medical and burial expenses, and to pay the costs. Eduardo Gaviola was never arraigned and has remained at large.

Accused-appellant Armando Gaviola now assails the decision<sup>[2]</sup> of the trial court and argues for his acquittal.

The appeal must fail and the conviction of accused-appellant Armando Gaviola for murder stands.

Albert Fernandez testified that on the night of July 29, 1994 at around 11:00 o'clock, he was working inside their house when he heard a noise outside. He went out to investigate, and he saw accused-appellant Armando Gaviola hack his father, Antonio Fernandez, with a bolo hitting him on the right forearm. Antonio fell to the ground, and Eduardo Gaviola stabbed him in the stomach and buttocks.

Accused-appellant then tried to hack Albert but the latter was able to hold his hand and grapple for possession of the bolo. A patrol car arrived, prompting accused-appellant and Eduardo Gaviola to run away. Albert rushed his father to the hospital where he died three (3) days later due to injuries he sustained which developed "severe infection secondary to gangrene in the right forearm"<sup>[3]</sup> brought about by "contamination of the instrument used in the hacking."<sup>[4]</sup>

Accused-appellant, however, narrated a totally different story. He claimed to have acted in self-defense. He averred that on the night of the incident, he heard his fellow "trisikad" driver, Tommy Mihiyo, cry for help. He went to render assistance, and he saw Antonio and Albert Fernandez mauling Mihiyo. He pacified and separated the protagonists. Antonio and Albert Fernandez then left and accused-appellant attempted to bring Mihiyo to the hospital but in no time Antonio and Albert Fernandez were back. This time, Antonio was armed with a scythe while Albert brought with him a metal tube with nail bullets.

Allegedly, the Fernandezes attacked accused-appellant but he was able to evade the blows. He was able to wrest possession of the scythe from Antonio. In their struggle and while acting in self-defense, accused-appellant hit Antonio on different parts of his body which eventually led to his death.

The trial court relied primarily on the testimony of Albert Fernandez which it found to be credible and consistent with the evidence presented. It is well-entrenched in our jurisprudence that findings of facts of trial courts absent any showing of arbitrariness is accorded great weight and respect. This Court finds no reason to depart from this rule and upholds the trial court when it held, thus:

x x x This Court has observed the demeanor of Albert Fernandez during his testimony on the witness stand and he positively identified both Armando Gaviola and Eduardo Gaviola as the persons responsible for the killing of his father, Antonio. He testified in a straightforward manner and his testimony was never discredited by the cross-examination of the defense. The testimony of Albert Fernandez coincides substantially in detail with the affidavit that he executed which is part of the record of the case x x x.

Likewise, the testimony of Albert Fernandez on how the two accused inflicted the injuries on his father Antonio and the resulting wounds suffered by Antonio is consistent with the testimony of Dr. Isabelo Sabanal and the certificate of death marked as Exhibit C. x x x The mere fact that Albert Fernandez is the son of the victim Antonio Fernandez, will not affect the credibility of his testimony.<sup>[5]</sup>

Being the son of the victim, Albert Fernandez had more reason to identify the real culprits. It would be unnatural if he would opt to testify against an innocent person and allow the guilty one to remain free. The relationship of this witness with the victim does not disqualify him from taking the witness stand. Rather, his innate desire to bring to justice those whom he personally knew committed a crime against a close relative makes his identification of the accused all the more credible.

In contrast, the trial court found the testimony of accused-appellant incredible and self-serving. Granting that accused-appellant risked his life and limb for Mihiyo, the least that the latter could have done was to testify on his behalf. Inexplicably, Mihiyo was never placed on the witness stand. Neither was any reason proffered to explain his absence.

The trial court was correct in its assessment that treachery and evident premeditation did not attend the commission of the crime. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>[6]</sup> In this case, the prosecution did not establish how the attack was commenced. When Albert Fernandez went out of their house to investigate, Armando and Eduardo Gaviola were already in the act of attacking Antonio. In *People v. Rodrigo Maldo, et al.*,<sup>[7]</sup> this Court held: