

## THIRD DIVISION

[ G.R. No. 128360, March 02, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR CRISPIN, ACCUSED-APPELLANT.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

Appeal from a decision of the Regional Trial Court of Palawan, Branch 52,<sup>[1]</sup> finding accused-appellant Edgar Crispin guilty of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua* with the accessory penalties provided by law, and ordering him to pay to the heirs of the victim civil indemnity of P50,000.00, actual damages of P80,000.00, and moral damages of P30,000.00.

The Information reads:

The undersigned hereby accuses FELIPE CRISPIN, EDGAR CRISPIN, EDMUND LOSIS, HENRY LOSIS and PAQUITO GOMEZ, of the crime of "MURDER" as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 4th day of May, 1994, at Sitio Little Caramay, Barangay Magara, Municipality of Roxas, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another with evident premeditation and treachery, while armed with bladed weapons and with intent to kill, and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack, assault and stab one MIGUEL BADENAS, hitting him on various vital parts of his body inflicting upon him multiple injuries, to wit:

x x x

which were the direct and immediate cause of the instantaneous death of said Miguel Badenas and thereafter the above-named accused threw the body of said Miguel Badenas into the river.

CONTRARY TO LAW.<sup>[2]</sup>

Of the five accused, only accused-appellant was arrested, arraigned and put to trial.

The evidence for the prosecution discloses that at about 8 o'clock in the evening of May 4, 1994, the five accused converged at the house of one Danilo de Asis in Sitio

Little Caramay, Magara, Roxas, Palawan for a drink. At about 9 o'clock in the evening, Cesar Delima and the victim joined them. Cesar Delima left after an hour, claiming he was sleepy, and the others continued their drinking until midnight, when Danilo de Asis asked them to leave as it was already late in the evening. The group had consumed five bottles of beer.

Honorio Cabailo testified to witnessing the attack on Miguel Badenas. Cabailo stated that at the time in question, he was active in the campaign for the forthcoming barangay elections, and had just left the house of Ramon Balmonte in Sitio Caramay, for Sitio Capalad, also in Barrio Magara, to meet his fellow election campaigners. As he was walking towards Sitio Capalad, and from a distance of about five meters, he recognized Edgar Crispin and his cousin Felipe Crispin as well as the victim, all being his barriomates in Magara, Roxas, Palawan. Cabailo further testified that while herein accused-appellant Edgar Crispin and Felipe Crispin stabbed Badenas, three other men whom he failed to identify blocked the way of the victim to prevent the latter from escaping.<sup>[3]</sup> Overcome with fear for what he saw, Cabailo proceeded to Sitio Capalad and did not learn about the death of Miguel Badenas until three days after, when a relative of Badenas told him that Badenas died of stab wounds.

The body of Miguel Badenas was interred immediately and without post-mortem examination after it was fished out of the river of Little Caramay, as it was already in a state of decomposition. About a month later, upon the request of Police Officer Joseph Carbonel, Chief of Police of Roxas, Palawan, the body was exhumed and examined on May 28, 1994 by Dr. Leo Salvino. The exhumation report<sup>[4]</sup> bore the following findings:

1. Stab wound, 0.5 cm. penetrating the sternal area, entire anterior chest wall hitting the cardiac ventricle through and through;
2. Stab wound, 0.5 cm. penetrating mid-clavicular area;
3. Stab wound, mid-clavicular area;
4. Stab wound, 0.6 cm. penetrating mid-clavicular area;
5. Stab wound, penetrating mid-axillary area, 2.5 cm.;
6. Stab wound, 2.5 cm., penetrating mid-axillary;

Back - stab wound, 2.5 cm., penetrating paravertebral area; and

Abdomen - stab wound, penetrating the entire abdominal cavity, upper quadrant

PROBABLE CAUSE OF DEATH: Cardiac Tamponade, Massive Hemo-pneumothorax

Testifying on the exhumation report, Dr. Salvino declared that he found at least nine stab wounds on the deceased's body, eight of which penetrated the body cavities. Based on the sizes of the wounds, he opined that it is likely that more than one person, using different kinds of sharp bladed instruments, have caused the injuries.

Danilo de Asis, the owner of the house where the five accused and the victim spent the night drinking, testified that the group left his house at about 12 o'clock in the early morning of May 5, 1994. He went to sleep as soon as the group left, and did not learn of the death of Miguel Badenas until four days later, when the body was fished out of the river.<sup>[5]</sup>

For his part, accused-appellant interposed the defenses of denial and alibi. He testified that while he knew his four co-accused, he was not with them on the evening in question since he was at the residence of his brother-in-law, Rogelio Gorada, also in Sitio Little Caramay, Magara, Roxas, Palawan. Accused-appellant stated that he and his friend, Nolito Bacaltos, arrived at Gorada's house at about 7:30 in the evening of May 4, 1994, shortly after which they began drinking beer. At about 8 o'clock in the evening, they finished drinking and ate supper. Then he and Bacaltos spent the night in Gorada's house, and left for their respective homes at around 6:30 the next morning. He claimed no knowledge of what happened to Miguel Badenas on the early morning of May 5, 1994, and came to learn of the latter's death on May 7, 1994 only.<sup>[6]</sup>

Nolito Bacaltos testified in support of accused-appellant's story. Bacaltos's elder sister, Editha, is married to Teodoro Crispin, an elder brother of accused-appellant. He corroborated the testimony of accused-appellant that they were together on the evening of May 4, 1994 at the house of Rogelio Gorada, spent the night there, and went home at about 7 o'clock the following morning.<sup>[7]</sup>

Finally, the defense presented Ramon Balmonte, the owner of the house where Honorio Cabailo was said to have come from on the night that he witnessed the killing. Balmonte, who at the time he testified was a member of the Sangguniang Barangay of Magara,<sup>[8]</sup> said that he could not remember if Cabailo slept at his house sometime on the first week of May 1994, as he was always out of his house.<sup>[9]</sup>

The trial court rejected the denial and alibi of accused-appellant and convicted him of murder. While it held the circumstances of evident premeditation and treachery unsubstantiated by the evidence, it found the killing to be qualified to murder by the attendance of abuse of superior strength. It also ruled out the generic aggravating circumstance of nighttime, there being no evidence to show that the accused purposely sought nighttime to facilitate the commission of the offense.

Thus, the dispositive portion of the questioned Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the co-accused EDGAR CRISPIN guilty beyond reasonable doubt as co-principal of the crime of murder, and there being no modifying circumstances appreciated, and pursuant to Article 248 of the Revised Penal Code, as amended by R.A. 7659, in relation to Article 63(2) of the same Code, and not being entitled to the benefits of the Indeterminate Sentence Law, he is hereby sentenced to reclusion perpetua, with the accessory penalties of civil interdiction for life and of perpetual absolute disqualification; to pay the heirs of Miguel Badenas for the death of the latter,

a. Civil Indemnity	.....	P 50,000.00
b. Funeral Expenses and Wake	.....	20,000.00
c. Lost Income for his Family	.....	60,000.00
d. Moral Damages	.....	30,000.00
TOTAL	.....	P160,000.00

and the costs.

x x x

SO ORDERED.<sup>[10]</sup>

On appeal, accused-appellant raises the following assignments of error:

1. The lower court erred in convicting accused-appellant of murder qualified by abuse of superior strength, when said qualifying circumstance is not alleged in the Information.
2. The lower court erred in convicting accused-appellant despite the absence of proof beyond reasonable doubt.

In support of the first assignment of error, accused-appellant cited the Constitution<sup>[11]</sup> and decided cases<sup>[12]</sup> which held that an aggravating circumstance not alleged in the Information but proven in trial cannot qualify a crime but should only be treated as a generic aggravating circumstance. Hence, assuming the correctness of the finding of abuse of superior strength, accused-appellant should not be convicted of murder, but only homicide.

As regards the second assignment of error, accused-appellant contests the trial court's reliance on the testimony of eyewitness Honorio Cabailo, especially on Cabailo's claim that he recognized accused-appellant on a dark moonless night, by mere starlight. He pointed out that even the trial court acknowledged that it is likely for Cabailo's identification of the perpetrators to have been inaccurate since starlight, by itself, could not have provided him with sufficient illumination.<sup>[13]</sup>

Accused-appellant also assails the trial court's extensive reference to the sworn statement of Cesar Delima, taken by the police of Roxas, Palawan, who also claimed to witness the five accused attack and kill Miguel Badenas.<sup>[14]</sup> While Cesar Delima was named in the Information as one of the principal witnesses, he did not appear when subpoenaed to testify.<sup>[15]</sup> Accused-appellant decries the fact that the trial court gave credence to the allegations of the sworn statement despite the prosecution's failure to present Delima as a witness, thus depriving the accused of his right to cross-examine him. He further contends that the sworn statement could not have been validly considered by the trial court, it not having been formally offered in evidence by the prosecution.