

SECOND DIVISION

[G.R. No. 105582, July 19, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO CARDEL Y DIZON, AND ARNOLD CALUMPANG Y
VALERIO, ACCUSED-APPELLANTS.**

D E C I S I O N

DE LEON, JR., J.:

Before Us on appeal is the Decision^[1] of the Regional Trial Court of Valenzuela, Metro Manila, Branch 172 in Criminal Case No. 457-V-91, convicting herein appellants, Rolando Cardel y Dizon and Arnold Calumpang y Valerio, of the crime of murder.

On August 12, 1991 at around 8:00 o'clock in the evening, Noel Rioflorido, Jr. was stabbed to death in Bagong Nayon, Valenzuela, Metro Manila. Noel was on his way home to Paso de Blas, Valenzuela, Metro Manila after having visited his friends in Bagong Nayon when the incident happened. Upon investigation of the case by the police, two (2) eyewitnesses pinpointed Rolando Cardel and Arnold Calumpang, as responsible for the death of the victim.

On August 14, 1991, the appellants, Rolando Cardel and Arnold Calumpang, were charged in court with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, in an information that reads:

That on or about the 12th day of August, 1991 in the Municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a bladed weapon one Noel Rioflorido, Jr. y Garalza, thereby inflicting upon the latter serious physical injuries which caused the death of the said victim.

Contrary to law.

Upon being arraigned on August 28, 1991, both appellants, assisted by counsel, separately pleaded "Not guilty" to the information. Thereafter, trial on the merits ensued.

The evidence of the prosecution shows that on August 12, 1991 Willy Conde and Elmer Olesco were in front of the Aling Digna's Store in Bagong Nayon, Valenzuela, Metro Manila. Conde was buying some cigarettes while Olesco was sitting, drinking coke. At around 8:00 o'clock in the evening, Conde and Olesco noticed Noel Rioflorido, Jr. together with Rolando Cardel and Arnold Calumpang, who came close

to two (2) arms length in front of Aling Digna's Store. Calumpang punched Rioflorido, Jr. on the right side of the face before he hurriedly left. Cardel held Rioflorido, Jr. in the nape and stabbed him at the back, on the left side of his body, before he, too, fled from the crime scene leaving Rioflorido, Jr. sprawling on the ground. Thereafter, Conde, Olesco and a certain Arnel carried Rioflorido, Jr. to a passenger jeep and brought him to the Jose Reyes Memorial Hospital in Sta. Cruz, Manila where he died.^[2]

Fe G. Rioflorido identified the body of the victim at the morgue as that of her son, Noel Rioflorido, Jr.^[3] She also signed the form for the request for examination of the dead body dated August 13, 1991.^[4]

Dr. Maximo Reyes, M.D., medico-legal officer of the National Bureau of Investigation (NBI) conducted the post mortem examination on the body of Noel Rioflorido, Jr. on August 13, 1991.^[5] His findings showed that the victim suffered two (2) stab wounds which were both caused by a three-sided weapon (tres cantos). Wound No. 1 measures 2.0 x 1.5 x 1.8 centimeters with an approximate depth of 11.0 centimeters. It was located on the left intrascapular area, just below the chest. It was directed slightly upward entering the posterior chest wall, severing the lower part of the upper lobe, left lung, and posterior aspect of the left ventricle of the heart. Wound No. 2 which involved the skin and soft tissues measures 2.0 x 1.8 x 2.0 centimeters. It was located over the right deltoid area. Wound No. 1, according to Dr. Reyes, was the fatal wound.^[6]

Meanwhile, after learning that he was being implicated in the said stabbing incident in Bagong Nayon, Bagbaguin, Valenzuela on August 12, 1991, Rolando Cardel surrendered to the Paso de Blas Police Station in Valenzuela, Metro Manila on the same day. He was turned over to Patrolman Arnold Alabastro of the investigation section of the Valenzuela police for proper investigation.^[7]

Subsequent investigation which was conducted by Patrolman Alabastro reveals that the victim Noel Rioflorido, Jr. was apprehended by Rolando Cardel and other concerned citizens in Bagong Nayon, Valenzuela, Metro Manila on August 12, 1991 at around 7:30 o'clock in the evening on the ground that he was a suspect in the robbery hold-up of a certain Arnold Calumpang. A commotion subsequently ensued in front of Aling Digna's Store in Bagong Nayon when Rioflorido, Jr. resisted arrest and attempted to escape. A certain Ronaldo Alborque admitted having punched Rioflorido, Jr. in the process. On the other hand, Rolando Cardel lost his temper so he held Rioflorido, Jr. in the nape, and stabbed him.^[8]

At the scene of the crime, a wristwatch and a necklace were recovered and the same were later identified by Arnold Calumpang as among the personal belongings that were forcibly taken from him earlier by Rioflorido, Jr. and two (2) other persons. Patrolman Alabastro also recovered the improvised three-sided knife that was allegedly used in stabbing Rioflorido, Jr. in the house of Rolando Cardel. Said knife and the maong pair of pants and t-shirt of Cardel, together with a sando belonging to Ronaldo Alborque, which were all smeared with red substance, were forwarded by Patrolman Alabastro to the NBI in Manila for laboratory examination.

^[9]

The defense denied any liability of the appellants for the charge of murder in the information. Rolando Cardel, a construction worker, testified that he was in the hospital from 6:00 to 7:00 o'clock in the evening of August 12, 1991. His neighbor, a certain Anita Antipolo, had earlier requested for his assistance in bringing her sick child to the hospital for treatment. On his way home at around 7:30 o'clock in the evening, his attention was incidentally drawn to a group of people carrying a wounded person to be brought to the hospital. He was informed that the person, whose name he later learned as Noel Rioflorido, Jr., was stabbed after having been caught for snatching. Among the group of people, a certain Elmer handed to Cardel a wristwatch with an instruction to return the same to the nephew of a certain Cadiz in Bagong Nayon. Being a member^[10] of the bantay bayan in Bagong Nayon, Valenzuela, Metro Manila, Cardel proceeded to the house of Cadiz. Cardel learned from Arnold Calumpang, whom he met for the first time in the house of Cadiz, that the wristwatch was among the personal belongings that were forcibly taken from him.^[11]

Arnold Calumpang allegedly informed Rolando Cardel that three (3) persons blocked his path. One of them punched Calumpang before they divested him of his necklace, wristwatch and wallet containing P1,000.00 pesos. Cardel stated that the description of one of the three (3) persons which was provided him by Calumpang fitted that of Noel Rioflorido, Jr., who appeared thin and short. On the same evening, Rolando and other members of the bantay bayan in Bagong Nayon were investigated by Patrolman Arnold Alabastro of the Valenzuela police. They informed Patrolman Alabastro that none of them witnessed the stabbing incident.^[12]

Patrolman Alabastro requested Rolando Cardel to assist him locate the whereabouts of Arnold Calumpang so that the latter could give a statement to the police. It was Cardel who accompanied Arnold Calumpang to the police headquarters upon the request of his aunt. Upon arrival at the police headquarters in Valenzuela, Metro Manila, Cardel and Calumpang were pinpointed by alleged witnesses to the stabbing incident as responsible for the death of Noel Rioflorido, Jr..^[13]

Rolando Cardel vehemently denied before the police any participation in the killing of Noel Rioflorido, Jr. claiming that the incident on August 12, 1991 was already finished when he returned to Bagong Nayon from the hospital at 7:30 o'clock in the evening. He also claimed that the two (2) prosecution witnesses, Willy Conde and Elmer Olesco, and the victim, Noel Rioflorido, Jr., were members of the AKHRO fraternity; and that the brother of prosecution witness Willy Conde, a certain Danilo Conde, who is also a member of the AKHRO fraternity, was apprehended previously by Rolando for allegedly snatching a shoulder bag.^[14] In addition, Rolando repudiated authorship of the statement marked as Exhibit "D" of the prosecution. He claimed that the said Exhibit "D" of the prosecution was prepared by a bantay bayan member and that he signed without reading it beforehand.

For his defense, Arnold Calumpang testified that he is a native of Dumaguete City and had been staying in Muñoz, Quezon City for only more than two (2) months when the stabbing incident happened. Calumpang recalled that on August 12, 1991 he decided to visit his aunt in Bagong Nayon, Valenzuela, Metro Manila. After alighting from the jeep at around 6:00 o'clock in the evening, his path was blocked by three (3) unidentified persons. They held him and simultaneously took his necklace, wristwatch and wallet. Calumpang scampered toward the house of his

aunt for fear of his life after one (1) of the persons pulled out a fan knife.^[15]

Upon reaching the house, Arnold immediately informed his aunt that he was held up along the way by three (3) persons and took some of his personal belongings. His aunt went outside and returned at around 7:30 o'clock in the evening together with an alleged member of the bantay bayan who was introduced to him as Rolando Cardel. Cardel informed him that a policeman was waiting outside to take Calumpang's statement involving the stabbing incident. Upon arrival at the police headquarters in Valenzuela, certain alleged witnesses to the stabbing incident pointed to him and Rolando Cardel as responsible for the death of Noel Rioflorido, Jr.. Specifically, he was allegedly seen by the witnesses punched Rioflorido, Jr..^[16]

Calumpang denied the accusation against him for the reason that according to him, he did not go out of the house of his aunt from the time he arrived therein until 7:30 o'clock in the evening when the police and Rolando Cardel arrived to fetch him.^[17]

After analyzing the evidence, the trial court found, as follows:

It is clear from the evidence presented that before the stabbing incident, subject of this case, the accused Arnold Calumpang was divested of his wristwatch and necklace by holduppers when he was on his way home. As the holduppers ran away with his belongings, he shouted for help. The accused Rolando Cardel who testified that he is a bantay bayan exhibiting his I.D. as such, and while drinking with friends, heard the shouts of Arnold, responded by chasing the holduppers and was able to collar one of them, the victim of this murder case Noel Rioflorido, (Jr.). With a certain Ronaldo Alborque, Rolando Cardel was able to drag the victim to Bagong Nayon, place of the stabbing incident where the victim was stabbed by Rolando Cardel after having been collared by Ronaldo Alborque and boxed by Arnold Calumpang. So this is a case of a mob action and revenge against a snatcher who was caught while running with the loot.

x

x

x

From the foregoing, both accused took the law into their own hands by practically executing Noel Rioflorido, (Jr.), alleged snatcher of accused Arnold's wristwatch and necklace, by grabbing him, boxing him, and stabbing him in conspiracy with each other.

x

x

x

When both accused held the victim Noel Rioflorido, (Jr.) and the latter was stabbed, superior strength was taken advantage of by both accused, and treachery was used because the said victim had no chance to defend himself.^[18]

The dispositive portion of the decision of the trial court reads:

WHEREFORE, in view of the foregoing, the Court finds both accused

guilty of murder beyond reasonable doubt acting in conspiracy with each other, and hereby sentences them to suffer the penalty of reclusion perpetua, to indemnify the heirs of Noel Rioflorido, (Jr.) y Garalza in the sum of P50,000.00 and to pay the costs of the suit.

SO ORDERED.^[19]

In their appeal,^[20] the appellants raise the following assignments of error:

I

THE TRIAL COURT ERRED IN CONVICTING BOTH ACCUSED FOR MURDER AND NOT FOR HOMICIDE ONLY CONSIDERING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY AND/OR USE OF SUPERIOR STRENGTH WAS NOT DULY PROVED.

II

THE TRIAL COURT ERRED IN ALSO CONVICTING ARNOLD CALUMPANG FOR MURDER CONSIDERING THAT CONSPIRACY WAS NOT DULY ESTABLISHED.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ROLANDO CARDEL OR IN THE ASSUMPTION THAT HE IS GUILTY, IN NOT APPRECIATING IN HIS FAVOR THE PRIVELEGE MITITGATING CIRCUMSTANCE UNDER ARTICLE 69 OF THE REVISED PENAL CODE AND THE ORDINARY MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND LACK OF INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED.

IV

THE TRIAL COURT ERRED IN NOT APPLYING THE PROVISIONS OF THE INDETERMINATE SENTENCE LAW TO LOWER THE IMPOSABLE PENALTY.

Appellant Rolando Cardel claimed that the stabbing incident was already finished when he arrived in Bagong Nayon, Valenzuela, Metro Manila from the hospital at 7:30 o'clock in the evening on August 12, 1991. Appellant Arnold Calumpang also claimed that he was inside the house of his aunt in Bagong Nayon, after he was robbed of his personal belongings by three (3) persons at around 6:30 o'clock in the evening, and remained therein until 7:30 o'clock in the evening. In effect, the appellants seek refuge under the defense of alibi to escape responsibility for the killing of Noel Rioflorido, Jr..

It must be emphasized that aside from being inherently weak, the defense of alibi cannot prevail over the positive identification of the appellants by the prosecution witnesses.^[21] Prosecution witness Willy Conde was buying some cigarettes at Aling Digna's Store in Bagong Nayon, Valenzuela, Metro Manila when Noel Rioflorido, Jr. was stabbed in front of the store just about two (2) arms length away. Prosecution witness Elmer Olesco was sitting in front of the said store, drinking coke, when the