

SECOND DIVISION

[G.R. No. 132168, October 10, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSELITO LOPEZ Y FRANCISCO, ACCUSED-APPELLANT.**

DECISION

BELLOSILLO, J.:

The specter of landlessness on one hand and the uneasy partnership between the landed and the landless on the other have often haunted our country's restive socio-economic past. Now more pronounced than ever is this affliction with the mushrooming of squatter colonies in the urban centers and of landless tenant-farmers in the rural areas. This case is a miniature representation of this continuing societal malady that breeds discord and lawlessness.

The spouses Placido and Feliza Lopez, together with their daughter Emily, nephew Bongbong, and son Joselito with wife Sharon, lived in a shanty on a patch of land owned by one Perla Castro in Tamaw-an, Pinsao Proper, Baguio City.

Perla Castro had been seeking the ouster of the Lopezes from her land since 1993. In fact, on 18 May 1993 the Lopez spouses signed an *Acknowledgment Receipt* that "they received the amount of five thousand pesos (P5,000.00) as an assistance from Perla Castro to transfer voluntarily x x x our shanty which we have constructed elegally (sic) on the portion of their land owned by Mr. Eduardo Castro."^[1] This dispute over the land caused a rift between Perla and the Lopezes. The antagonism existed such that almost every time Felisa Lopez also known as *Luding* and Perla Castro would meet an acrimonious exchange would invariably take place, like "cats and dogs," as one witness would put it.^[2]

Quite apparently, the Lopezes reneged on their promise since from the time the *Acknowledgment Receipt* was executed in 1993 up to the time of Perla's violent death in 1996 the Lopez spouses were still occupying the subject property. In the meantime, Perla sold the land to one Liwayway Maramat who managed to secure an order for the demolition of the shanty of the Lopezes, although it was yet to be implemented as of September 1996.

According to Liwayway Maramat, on 16 September 1996, at around 10:30 in the morning, she accompanied Perla Castro to Pinsao Proper to check on the reported excavations being done by the Lopezes on portions of her land. When they arrived there, Perla immediately confronted *Luding* and Joselito about their digging and told them to stop. She told them to dig instead on the fifty-square meter lot supposedly waived in their favor by a certain Josie Ramos.

Liwayway recounted that Perla asked her to see for herself the new lot where the Lopezes were to transfer. As an afterthought, Perla called on Joselito to show him

the new site. While the three (3) were talking, Joselito suddenly grabbed the hair of Perla at the back and started hacking her with a bolo. Terrified, Liwayway ran to a nearby house some ten (10) meters away and locked herself in. She was frantic. As the murder frenzy continued, she heard Perla desperately calling for help but all she (Liwayway) could say was, "I cannot help you because I'm afraid." The relatives of the accused could only "shout and shout." They were hysterical. Liwayway then heard Emily, sister of the accused, saying, "*Gunguman nga baket ta swapang ka ti daga.*" (That's what you get old woman because you are greedy for land).^[3]

While seeking refuge in the house, Liwayway would peep outside once in a while and saw Joselito enter his house and later walking out to the highway. He was holding something wrapped in a light green cloth which she surmised was a bolo. On the other hand, Perla was lying prostrate on the ground, face down, with both arms stretched sidewise, although it was not clear on which side. She waited for four (4) jeepneys to pass before going out to the street to make sure that the accused was no longer within the vicinity. Then she proceeded immediately to the residence of the barangay captain to report the incident. An hour later, she learned that the wounded Perla Castro was already dead.

At around 2:30 in the afternoon, Dr. Vladimir Villacorta Villaseñor autopsied the body of the victim. He explained that hacked wound No. 1 found in the sketch marked Exh. "H" was the wound inflicted on the left side of the head and the other hacking wounds were inflicted while the victim had her back towards the assailant or probably while prostrate on the ground. He further stated that the victim sustained eighteen (18) wounds, seven (7) of them hacking wounds, in various parts of her body.^[4]

Testifying for the defense, *Luding* Lopez narrated that on 16 September 1996, at around 10:00 o'clock in the morning, while she and the rest of her family were cleaning the place where they were moving to within the same vicinity, Perla and Liwayway arrived. They told the Lopezes to stop digging because the land also belonged to Perla and that their house would be demolished the following day. *Luding* then hurriedly went inside their house to retrieve a document regarding the "50 sq. m. land that we are going to transfer (to?) and about the P5,000.00 that we will use in the buying of nails."^[5] This document was supposed to contain the agreement between Perla and the Lopezes that the latter would vacate the subject land upon the grant of a fifty-square meter lot where they could construct a new house. When *Luding* came out, she gave the document to Liwayway who turned it over to Perla. But, instead of reading it, Perla unceremoniously tore it to pieces and insolently quipped, "You are illiterate, you do not know how to read." Feeling slighted, *Luding* cried and ran to the barangay captain's residence some 300 meters away; unfortunately, he was not around so she returned home.

Meanwhile, according to *Luding*, Perla and Liwayway decided to leave but came back moments later only to invite her to join them and see for herself the new site. Accused Joselito volunteered to go. But four (4) to five (5) meters away, she saw her son hacking Perla. She then ran and embraced Joselito to restrain him. Other relatives soon followed. When Joselito came to his senses, he asked her for some money as he would surrender to the authorities.^[6]

The testimony of accused Joselito corroborated that of *Luding*. He recounted that

when Perla pointed to him their new place, his mother who was following them protested that the lot belonged to a certain Apostol and if they transferred there he would just the same demolish their house. So her mother reiterated her plea for Perla and Liwayway to grant them the fifty-square meter lot Perla promised them. To show his support for his mother, he asked Perla why she sold the subject land, and the latter simply replied, "You have no business with that because you do not know anything about that."^[7] At this point, according to Joselito, his mind went blank. When he regained his composure, he heard his wife and baby crying. He also noticed the bloodied victim in front of him. His mother and his wife told him to escape but he refused, and instead asked money from his mother for fare because he was going to surrender to the authorities. Then he wrapped his bolo with a handkerchief and in the company of his wife left for the police station.

On 20 September 1996 an Information for Homicide was filed against accused Joselito Lopez for the killing of Perla Castro. On 9 December 1996 the Information was amended to Murder upon a finding by the investigating prosecutor that the crime was qualified by treachery and taking advantage of superior strength.^[8]

After trial the court *a quo* convicted Joselito Lopez of murder and sentenced him to *reclusion perpetua*. He was also ordered to pay the heirs of Perla Castro P50,000.00 as civil indemnity, P28,500.00 as actual damages, P300,000.00 as moral damages, P100,000.00 as exemplary damages and P50,000.00 as attorney's fees, without subsidiary imprisonment in case of insolvency.^[9]

In finding the accused guilty of murder, the trial court made the following conclusions:^[10] that the accused admitted the killing of the victim by hacking her repeatedly with a bolo, which fact was corroborated by Liwayway Maramat; that the qualifying circumstances of treachery and abuse of superior strength alleged in the Information were present in the killing of the victim; that treachery was present was borne by the fact that at the time of the assault the victim was in no position to defend herself. The attack was sudden, unexpected and without warning. As noted by the lower court, the killing took place when the victim was pointing to the place where the family could transfer their shanty and so had no inkling of the attack nor expected it; that abuse of superior strength was also present as shown by the disparity in the sex, age and conditions of the victim and the accused - the victim was a frail woman of fifty-eight (58) years, barely five (5) feet tall, with poor eyesight and unarmed, while the accused was twenty-two (22) years old, five (5) feet seven (7) inches in height, robust, healthy, in the prime of his youth, and armed with a twenty-two (22)-inch bolo;^[11] that the generic aggravating circumstance of cruelty or scoffing at the corpse also attended the killing because unnecessary hacking wounds were viciously inflicted while the victim was still alive or, if she was already dead when inflicted, then the killing was attended by the aggravating circumstance of outraging or scoffing at the corpse; and that the mitigating circumstance of voluntary surrender was appreciated in favor of the accused, as it was not disputed that he surrendered with his weapon to the police immediately after the killing.

Accused-appellant Joselito Lopez now assails the Decision of the court *a quo*:

First, that the trial court erred in appreciating the qualifying circumstances of treachery, abuse of superior strength and the generic aggravating circumstances of