

## FIRST DIVISION

[ G.R. No. 104955, August 17, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HECTOR DOMINGO, JOSELITO DOMINGO, JUAN DOMINGO AND  
VICENTE DOMINGO, ACCUSED-APPELLANTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

Jose Teober Ricafort was to be married to Susana Loterte on January 7, 1987. Preparations were already underway but, unfortunately, they were all put to naught by the untimely demise of Jose on December 28, 1986.

These facts stand out in the records:

On December 28, 1986 at around 11:00 o'clock in the morning, Jose and Susana were preparing to take a bath in a nearby well around 100 meters away from the house of the latter at barangay Guiron, Pilar, Sorsogon. Jose went ahead as Susana still had to prepare their things. After a short while, Susana followed. When she was barely 20 meters away from the well, Susana saw Jose being surrounded by accused-appellants Hector, Joselito, Juan and Vicente, all surnamed Domingo. After saying "*Hayop ka, ikaw an nagsaksak san tugang ko!*" (*You are an animal, you were the one who stabbed my brother!*) Hector immediately lunged towards Jose with a fish spear hitting the latter on the chest. With the fish spear embedded in his chest, Jose ran towards Susana but fell to the ground after negotiating 5 meters. The four accused then pounced on him hacking and hitting him on different parts of his body. Susana could not do anything but shout for help. Julian Loterte, upon hearing the cries of Susana, immediately went to the well. When he arrived, the assailants had already scampered away. Julian then saw Jose lying face down on the ground while Susana was holding his severed hand. Julian turned over the body of Jose and saw that the latter had suffered several hack wounds, his hand severed, his neck almost cut off from his body and a fish spear embedded on his chest.

Julian immediately ordered Susana to summon help. The latter first reported the incident to barangay *kagawad* Rosalina Macayan who in turn informed the barangay captain. Susana likewise notified Rogelio Ricafort, the uncle of the victim.

On December 29, 1986 the police authorities arrested Hector in front of the municipal building of Pilar while Juan was apprehended at barangay Sapa of the same municipality. At the time of his arrest, Hector's t-shirt was bloodied and he had a bolo in his possession.

Due to the Christmas holiday, no case could immediately be filed against the four assailants. Consequently, Hector and Juan were both released from custody.

Nonetheless, after the holidays, an information<sup>[1]</sup> was filed against Hector, Juan, Joselito and Vicente, all surnamed Domingo, charging them with murder. Said information charges, thus:

"That on or about the 28th day of December, 1986, at around 11:00 o'clock in the morning, at Barangay Guiron, Municipality of Pilar, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a spear, bolo and a knife, did then and there, willfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, assault, attack, hack and stab one Jose Teober Ricafort in the different parts of his body, inflicting upon the latter the following injuries, to wit:

- Hack wound - across parieto-occipital bones; 8 inches deep, cutting skull bones exposing and cutting brain;
- Hack wound - 6 inches long by 4 inches deep, base, neck, rt.;
- Body and Chest - punctured wound with "spear" still intact 2 inches deep; .5 inch point of entrance; about 5 fingers below nipple, right;
- Hack wound - 6 inches long 1 ½ inches deep, superior border, scapula, right;
- Hack wound - 7 inches by 2 inches, superior border, scapula, left.;
- Hack wound - 5 inches by one inch across lumbar region;
- Upper Extremities - Hand cut off from wrist left;
- Hack wound - cutting almost half of hand from medial aspect wrist up to 3rd tarsal bones right;
- Hack wound - 3.5 inches by 2.5 across mid-arm right;
- Lower extremities - Lacerated wound - 8 inches by 3 inches lateral aspect, thigh, right;
- Lacerated wound - 6 inches by 3 inches medial aspect, thigh, left;
- Lacerated wound - 4 inches by 1 inch above-knee, right;
- Lacerated wound - 5 inches by 3 inches lower leg, cutting off Achilles tendon left.

thereby causing the immediate death of said Jose Teober Ricafort, to the damage and prejudice of his legal heirs."

During arraignment they pleaded "not guilty" to the charge. They all denied participation in the crime and interposed instead the defense of alibi.

For his part, Vicente alleged that he was at Tingco, Inapugan, Pilar from December 26, 1986 up to December 30, 1986 repairing the motorboat of one Wilson Matamorosa. He also alleged that Sapa could be reached from Tingco by sea in one-half hour by motorboat. Matamorosa corroborated the testimony of Vicente.

According to Matamorosa, he engaged the services of Vicente on December 26, 1986. From that day on until December 30, 1986, Vicente had been staying in his house at Tingco, Inapugan, Pilar. On December 29, 1986 he and Vicente went to Donsol to buy wood for the base of his banca. On their way back to Tingco, they were fired at by policemen at sea. When they docked, the police officers held Vicente for questioning while Matamorosa was allowed to go home. He did not inquire from the policemen the reason why Vicente was being held in custody but he knew the latter was suspected of killing somebody. He proceeded to Tingco leaving Vicente in the company of the policemen. Upon reaching Tingco, he watched "*entre cuatro*" which is a kind of gambling at the house of their barangay captain starting at 2:00 o'clock and went home only at around 5:00 o'clock in the afternoon. When he arrived home, he saw Vicente already working on his motorboat.

As regards Juan, he asserted that he was at the pier of Aroroy, Masbate together with his wife Mary Jane on December 28, 1986 at around 11:00 o'clock in the morning. They were waiting for a boat that would take them to Pilar as they would visit his brothers. It normally takes 5 hours by boat to negotiate the distance between Aroroy and Pilar. Juan insisted having gone on a leave of absence for 19 days when he went to Pilar, Sorsogon to visit his family. Juan and his wife allegedly arrived at Pilar, Sorsogon only at 5:00 o'clock in the afternoon of December 28, 1986. Nemia Cardeño, a neighbor, and Jerry Bermejo, machine operator of *M/V Salvacion*, corroborated the testimony of Juan.

Cardeño narrated that she was at the pier of Aroroy, Masbate on December 28, 1986 to send off her cousin. That day, she remembered seeing Juan Domingo and his wife Mary Jane at the pier waiting for *M/V Salvacion* that would take them to Pilar, Sorsogon. Cardeño claimed to have clearly recalled their meeting, however, she could not readily recall the time when she testified before the court. She could not even recall when her best friend, Mary Jane, got married to accused-appellant Juan.

On the other hand, Bermejo testified that he saw Juan and his wife at the pier of Aroroy, Masbate on December 28, 1986. He claimed he always saw Juan everytime the latter travelled from Aroroy to Pilar and vice-versa. Notably, when asked for other instances and dates wherein he likewise supposedly saw Juan, he failed to specify a single one.

For his part, Hector maintained he was at the cockpit of Apad, Pilar, Sorsogon from 7:00 o'clock in the morning up to late in the afternoon of December 28, 1986. He was allegedly selling fish together with his business partner, Mario Lomboy. He claimed to have left the area only when he took his lunch at the house of a certain Mrs. Tagle.

Mario Lomboy, a 59-year-old fisherman, was presented to corroborate his testimony. He testified that he and the accused Hector were partners in buying and selling fish. He narrated that at 7:00 o'clock in the morning of December 28, 1986 up to 12:00 o'clock noon, he and Hector were at the cockpit in Apad, Pilar, Sorsogon selling a

*bañera* of fish. They finished selling at 12:00 noon and ate their lunch at the house of Mrs. Tagle. After lunch, they returned to the cockpit to watch the cockfights.

Joselito *alias Diokno* lived at Naspi, Pilar, Sorsogon. He denied participation in the killing of Jose Ricafort at barangay Guiron, Pilar, Sorsogon on December 28, 1986. On that day and time, he was allegedly in barangay Naspi, Pilar, Sorsogon at the house of his mother. Nobody corroborated his testimony. He denied his name was Joselito and instead claimed being known as Diokno.

On February 9, 1990, the trial court rendered a decision<sup>[2]</sup> finding Hector, Vicente, Juan and Joselito guilty of **homicide** and correspondingly sentenced them to suffer the indeterminate penalty of 12 years and 1 day as minimum to 20 years as maximum of *reclusion temporal*, to pay the heirs of the victim P30,000.00 as death indemnity, P10,000.00 for burial expenses, P20,000.00 as moral damages and to pay the costs of the suit.

The case was elevated to the Court of Appeals on the following assignment of errors:

1. THE COURT ERRED IN CONVICTING THE ACCUSED AND BRUSHING ASIDE THEIR DEFENSE OF ALIBI ALTHOUGH WELL SUPPORTED BY TESTIMONIES OF CREDIBLE WITNESSES; AND
2. THE COURT ERRED IN GIVING FULL CREDIT TO THE ISOLATED AND DOUBTFUL TESTIMONY OF SUSANA LOTERTE PARTICULARLY IN ALLEGEDLY HAVING WITNESSED THE INCIDENT AND RECOGNIZED THE CULPRITS WHO DID NOT LIFT A FINGER TO SILENCE NOR HARM HER.

The defense claims the lower court should not have lent credence to the testimony of prosecution eyewitness, Susana Loterte. It argues that had Susana actually witnessed the killing, then, the assailants would not have hesitated to finish her off. The defense opines that since Susana became hysterical when she witnessed the killing then she is not capable of keen perception of what happened around her. The defense concluded that since Susana's testimony was of doubtful credibility, then the testimony of Rogelio Ricafort was likewise not credible as he only sourced his information from Susana. Likewise, after the suspects were initially apprehended, they were immediately released from custody for lack of positive identification from the prosecution witnesses. In fact, nine days had elapsed before the police officers were able to secure supporting affidavits from witnesses.

The appellate court was unconvinced. It found the protestations of the accused-appellants, particularly on the credibility of prosecution witness Susana to be mere speculations and conjectures. It accorded great weight and respect to the factual findings of the trial court relying particularly on the lone testimony of Susana which served as primary basis for the conviction of the four accused. It found no error on the part of the court *a quo* in its appreciation of all the evidence submitted before it.

Also, the Court of Appeals was satisfied with the explanation given by the prosecution as to why accused-appellants were initially released from detention, and why it took the police officers nine days to secure supporting affidavits. As found by the trial court, the accused-appellants were initially released from detention for