

EN BANC

[G.R. No. 133993, October 13, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO GABALLO, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, Acting C.J.:

Before us on automatic review is the decision of the Regional Trial Court of the Seventh Judicial Region stationed in Dumaguete City (Branch 34) in its Criminal Case No. 13341 finding accused-appellant guilty of murder and sentencing him to suffer the supreme penalty of death. Disposed thus the trial court:

WHEREFORE, accused ANTONIO GABALLO is hereby found guilty beyond reasonable doubt of the crime of MURDER, attended by the qualifying aggravating circumstances of treachery and abuse of superior strength, though the latter is absorbed by treachery pursuant to existing jurisprudence, and the presence of a generic aggravating circumstance which is his being "high" on drugs when he mercilessly and brutally stabbed to death the defenseless 14-year old unarmed female victim. The court finds no mitigating circumstances which may be appreciated in favor of the accused. Considering the senseless brutal killing of victim Amelita Cueco, taking into account the actuation of the accused during the incident and his demeanor during the trial where he seemed to be unrepentant and instead appeared to enjoy and relish the thought of having killed his hapless victim, the court is constrained to impose upon him the capital punishment of DEATH as provided for under the amendatory provisions of Section 6 of Republic Act No. 7659.

Accused Antonio Gaballo is likewise hereby ordered to indemnify the family of the victim the sum of FIFTY THOUSAND PESOS (P50,000.00).

The City Warden of the Dumaguete City Jail is hereby directed to immediately transmit the living body of accused Antonio Gaballo to the National Penitentiary in Muntinlupa, Metro Manila, where he will remain detained in its maximum security cell until the execution of the final judgment of the court.

SO ORDERED.

Promulgated this 30th day of April 1998 at Dumaguete City, Philippines.

(Sgd.) ROSENDO B. BANDAL, JR.

Judge

(p. 45, *Rollo*)

A concise and accurate narration of the undisputed facts are summarized in the appellee's brief as follows:

The students of Dumaguete Science High School usually pass an uninhabited shortcut road in going to said school. The shortcut is a pathway formed by the continuous passage of students and where thick shrubs of talahib and ipil trees were abundant on both sides of the road (TSN, Feb. 17, 1998, pp. 4-5).

At around 6:30 a.m. of January 20, 1998, two construction workers, Matias Cañete, Jr. and Jimmy Ganaganag, heard a girl scream from a distance. Cañete then saw a girl being hugged and pulled by a man towards the ipil trees (TSN, Feb. 19, 1998, pp. 5-6).

The two workers immediately ran towards the place where they heard the girl's scream. When they reached the place, Cañete stopped to observe the surrounding as there was silence. Ganaganag proceeded inside the bushes where he saw a girl in school uniform lying face down. Ganaganag also saw a man sitting down beside the girl. At that time, he was about three (3) armslength from the man (*Ibid.*, pp. 14-16).

The man immediately ran away and while Ganaganag was running after him, he again saw the man's face as the latter looked back. Unfortunately, Ganaganag was not able to apprehend the then unidentified man (*Ibid.*, p. 17).

Vice-Governor George P. Arnaiz, who resided near the Dumaguete Science High School, was summoned by his driver who reported the tragic incident to him. Arnaiz brought the young girl to the hospital where she was pronounced dead twenty minutes later. It was only in the hospital where Arnaiz learned that the young girl's name was Amelita Cueco (TSN, Feb. 17, 1998, pp. 7-8; 12).

Captain Petronillo Baldebrin directed PO2 Nathaniel Rubia to conduct a follow-up investigation into the killing of Amelita Cueco. During said investigation, Jose Percival Millan, a teacher at the Dumaguete Science High School, led the police investigator to the place where he had found the murder weapon—a Rambo-type knife, and a multi-colored bag with several items inside, which knife and bag he had earlier given to the police (TSN, Feb. 11, 1998, pp. 36, 52-55).

On the same day of January 20, 1998, a policeman brought Magdaleno Hinautan, appellant's barriomate who stayed with appellant at the Palace of Justice construction bunkhouse from November 25, 1997 to January 19, 1998, to the police station. At the station, Hinautan readily identified the bag and the knife as belonging to appellant (TSN, Feb. 10, 1998, pp. 54-66).

At around 10:00 p.m. of January 20, 1998, PO2 Rubia, accompanied by Magdaleno Hinautan, was able to trace appellant aboard the vessel GOERICH bound for Cebu City. PO2 Rubia invited appellant to the police station for further investigation. At the station, some of Rubia's police companions invited witnesses who were able to identify appellant as the one who killed Amelita Cueco (TSN, Feb. 11, 1998, pp. 56; 59-60).

Appellant assails his conviction and seeks reversal, arguing that he was not positively identified by prosecution's witnesses as the assailant, and that his guilt has not been shown beyond reasonable doubt.

From the records of the proceedings before the trial court, it appears that although accused-appellant pleaded not guilty to the crime as charged in the Information, he nevertheless admitted having stabbed and killed the victim in this case, to wit:

Clerk of Court: (Calling the case) Appearances?

PROSECUTOR DAVID B. MOLINA: The same appearance for the public prosecution, Your Honor.

ATTY. SALETO J. ERAMES: The same appearance for the private prosecution, Your Honor.

ATTY. CARLITO H. VAILOCES: Public Attorney's Office, Your Honor, for the defense.

COURT: Are you ready for arraignment?

ATTY. VAILOCES: We are ready for arraignment, Your Honor.

COURT INTERPRETER: (Translating the Information into the Cebuano dialect.)

ATTY. VAILOCES: Your Honor please, we pray that the designation of the offense as Murder be translated only to that of "*pagpatay sa lipot*".

COURT:

Q. — Did you understand the Information filed against you?

ACCUSED:

A. — I understand, Your Honor.

Q. — Did you commit the crime filed against you?

A. — I did not commit the crime of murder with treachery.

ATTY. VAILOCES: Your Honor please, the accused understood the crime of murder as "*pagpatay sa lipot*", Your Honor, so he is in no position to understand the other qualifying circumstances, Your Honor, because earlier we made a manifestation that the designation of the offense as murder be translated only to that of "*pagpatay sa lipot*". So, that's the way he understood the designation of the offense, Your Honor.

COURT: The information does not only mention the qualifying aggravating circumstance of treachery. Embodied in the Information is also the allegation of abuse of superior strength as well as cruelty, and evident premeditation, on top of the allegation of treachery. So you have not apprised him about the other aggravating circumstances.

ATTY. VAILOCES: Your Honor, please, normally Your Honor, the crime of murder is always translated as "*pagpatay sa lipot*" , your Honor, normally. So, generally speaking, the crime of murder is translated as "*pagpatay sa*

lipot". That already embraces all the qualifying circumstances, Your Honor, because abuse of superior strength is still "*lipot*", taking advantage, Your Honor. That's how the accused understood it, Your Honor, because that is the way it was explained to him, that all the qualifying circumstances constitute "*pagpatay sa lipot*".

COURT: You explain to him carefully because what is alleged in the Information is not only treachery. There are also allegations in the Information wherein the killing was attended by the qualifying aggravating circumstances of evident premeditation and cruelty, aside from treachery. If that is the case, we will have a short recess again so that you can confer with your client.

(tsn, Feb. 3, 1998, pp. 2-4)

Upon resumption of the arraignment proceedings, the following transpired:

THE COURT RESUMES SESSION:

COURT: Are you ready for the arraignment?

ATTY. CARLITO VAILOCES: Yes, Your Honor.

COURT INTERPRETER: (Translating the Information again into the Cebuano dialect.)

COURT:

Q. — Did you understand the Information filed against you?

ACCUSED:

A. — Yes, Your Honor.

Q. — Did you commit the crime filed against you?

A. — I am not guilty, Your Honor. I did not commit the crime with treachery, abuse of superior strength and cruelty, Your Honor.

Q. — Are you responsible for the death of victim Amelita Cueco?

A. — **Yes, Your Honor.**

Q. — Are you the one who inflicted the mortal wounds on Amelita Cueco in the morning of January 20, 1998 in the City of Dumaguete?

A. — Based on my knowledge, Your Honor, **I was able to stab once.** I threw the knife for the second time, and it hit her body. Then I ran away.

ATTY. VAILOCES: Your Honor please, the accused already pleaded not guilty against the charge, Your Honor. We beg the indulgence of the Honorable Court, Your Honor, that it is enough that he has been confronted or he has been informed of the nature of the accusation against him. So we wish, Your Honor please, that whatever the prosecution has to prove his guilt, it must be proven during the trial, Your Honor.