

## SECOND DIVISION

[ G.R. No. 127095, June 22, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LITO LAGARTEJA AND ROBERTO LAGARTEJA, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**MELO, J.:**

The brothers Lito Lagarteja and Roberto Lagarteja were separately charged with Murder, and two counts each of Frustrated Murder, under four Informations, reading as follows:

Criminal Case No. 88-61750

That on or about the 13th day of March, 1988, in the City of Manila, Philippines, the said accused conspiring and confederating with one other whose true name, identity and whereabouts are still unknown and helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one Generoso Tipora Y Romero by then and there stabbing him on the chest with a fanknife, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death thereafter.

Contrary to law.

Criminal Case No. 88-63473

That on or about March 13, 1988, in the city of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of FERDINAND CARCELLAR Y VILLAR by then and there stabbing him at the armpit and left arm with a fan knife, thereby inflicting upon him stab wounds which were necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of cause independent of the will of the herein accused, that is, by the timely and able medical assistance rendered to said FERDINAND CARCELLAR Y VILLA which prevented his death.

Contrary to law.

Criminal Case No. 88-63474

That on or about March 13, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of ROBERTO EMNAS Y TUMAWAG by then and there stabbing him on the chest with a fan knife, thereby inflicting mortal, thus performing all the acts of execution which would have produced the crime of murder, as a consequence, but nevertheless did not produce it by reasons of cause independent of the will of the herein accused, that is, by the timely and able medical assistance rendered to said ROBERTO EMNAS Y TUMAWAG which prevented his death.

Contrary to law.

Criminal Case No. 8863954

That on or about March 13, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating with Lito Lagarteja y Cabutin who was already charged for the same offense in the Regional Trial Court of Manila and docketed as Crim. Case No. 88-61750 and helping one another, did then and there, wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation attack, assault and use personal violence upon one Generoso Tipora y Romero by then and there stabbing him on the chest with a fanknife, thereby inflicting upon the latter mortal wound which was the direct and immdiate cause of his death thereafter.

Contrary to law.

(pp. 116-118, Rollo)

On motion, the four cases were consolidated, and pleas of not guilty having been entered, a joint trial on the merits ensued, following which, a judgment of conviction was rendered, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, Lito Lagarteja, in Criminal Case No. 88-61750, and Roberto Lagarteja, in Criminal Case No. 88-639954, GUILTY of the crime of Murder, and hereby sentences them to suffer an imprisonment of from TEN (10) YEARS and ONE (1) DAY of Prision Mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of Reclusion Temporal, as maximum, and to indemnify the heirs of Generoso Tipora in the sum of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

Likewise the Court finds both accused, Lito Lagarteja and Roberto Lagarteja, in Criminal Cases Nos. 88-73473 and 88-63474, GUILTY of two (2) counts of Frustrated Murder, and hereby sentences them to suffer an imprisonment of EIGHT (8) YEARS and ONE (1) DAY to TEN (10) YEARS for each count, and to indemnify the victims, Roberto Imnas and Ferdinand Carcillar, the amount of Thirty Thousand (P30,000.00) Pesos each, without subsidiary imprisonment in case of insolvency.

With Costs

SO ORDERED.

(pp. 16-17, Rollo)

The prosecution's version of the episode is based on the testimony of its witnesses, namely, Elisa Jumatiao, Emily Tipora, Ferdinand Carcellar, Roberto Imnas, Dr. Prospero Cabaluna, Dr. Cesar Paloma, Pfc. Benjamin Nuguid, and Patrolman Manuel Lao. The Office of the Solicitor General summarized the events as follows:

Around 6:45 p.m. on March 13, 1988, Elisa Jumatyao was along Quezon St., Tondo Manila buying food from Aling Nene's Store when she spotted appellants Lito Lagarteja and Roberto Lagarteja, each holding a fan knife, approaching (TSN, November 10, 1988, pp. 4-5). Suddenly, she saw Lito Lagarteja stab Ferdinand Carcellar who was standing by the door of the store of Roberto Emnas, about five (5) meters from her (TSN, January 19, 1988, pp. 3-4, TSN, April 7, 1989, p. 6). Roberto Lagarteja waited nearby as a back-up.

Then, appellants walked towards a group consisting of Generoso Tipora, Gregorio Tipora and a certain Manny, who were conversing, after which Lito Lagarteja stabbed Generoso Tipora, hitting the latter on the chest at a spot near the heart. Roberto Lagarteja again acted as a back-up (TSN, November 10, 1990, pp. 7-8). Whereupon, appellants proceeded to Magsaysay Street, which runs parallel to Quezon Street. Along the way, they encountered Roberto Emnas who was stabbed by Lito Lagarteja on the chest (TSN, August 11, 1989, p. 7). As Roberto Emnas ran away calling for help, he encountered Pat. Manuel Lao. Roberto Emnas pointed at both appellants who were running away. Pat. Lao gave chase and shot and hit him. (TSN, October 20, 1989, pp. 7-10).

Generoso Tipora and Roberto Emnas were taken to the Mary Johnston Hospital (TSN, January 19, 1989, p. 11) while Ferdinand Carcellar and Lito Lagarteja were taken to the Tondo General Hospital (TSN, November 10, 1990, p. 9, November 10, 1990, pp. 6-7). Generoso Tipora died upon arrival at the Mary Johnston Hospital (Exhibit "B"). Pat. Manuel Lao suffered a stab wound on his left arm but was not hospitalized (TSN, October 20, 1989, p. 7)

(pp. 79-81, Rollo)

Dr. Prospero A. Cabanayan of the National Bureau of Investigation, Medico Legal Division issued the following Postmortem Report on Generoso Tipora:

Pallor, lips and nailbeds

Stab wound, chest, left side, anterior aspect, level of 2nd intercostal space, 8.0 cm., from anterior median line, oriented upward and laterally, fusiform, 1.7 cm. long edges, clean cut, upper extremities, sharp, lower extremity contused lateral border, levelled directed backward, downward and medially, penetrating thoracic cavity, left, grazing lung, upper lobe, anterior surface to middle mediastinum, perforating pericardium, heart, left ventricular wall, interventricular, septum, with an appropriate depth of 12.0 cm.

Hemopiracardium, approximately 320 c.c.  
Hemothorax, left, approximately 1,600 c.c.  
Brain and other visceral organs, pale  
Stomach, full of undigested rice and other food particles.

Cause of death – Hemorrhage, severe, secondary to stab wound.

(pp. 120-121, Rollo)

Dr. Cesar J. Paloma examined and attended to the wounds of victims Ferdinand Carcillar and Roberto Imnas.

The version of the events presented by the accused, on the other hand, is to the effect that at about 5 o'clock on the afternoon of March 13, 1988, Roberto, a pedicab driver, happened to pass by the house of Roberto Imnas and saw Ferdinand Carcillar talking to his gangmates, at which time, he did not notice any unusual incident. Later, at around 6:45 o'clock that evening, unknown to Roberto, his brother Lito, motivated by revenge, stabbed Ferdinand Carcillar while the latter was at the door of the house of Imnas, because Carcillar had earlier created trouble at the dancing hall while high on drugs. Afterwards, Lito went home and talked with his gangmates in front of their house located at 90-A Quezon Street, Bo. Magsaysay, Tondo, Manila. At the time of the stabbing of Carcillar, Roberto was not with his brother, Lito Lagarteja (p. 36 Rollo).

In the meantime, Roberto Lagarteja was on his way home on his pedicab and upon arriving at Quezon Street, he noted people scampering in all directions shouting that somebody had been stabbed. Pat. Manuel Lao, passing by the front of the house of Roberto Imnas, was informed that it was Lito who stabbed Carcillar, so Pat. Lao proceeded to the house, he was asked to surrender by the policeman. When there was no response, Pat. Lao started firing the house. Upon seeing Lito outside their house, Roberto called to his brother to go inside, but Lito did not take heed. Instead, Lito stabbed Pat. Lao, hitting him on the arm, for fear that Pat. Lao would hit his brother Roberto (pp. 36-37, *Ibid.*)

Both Roberto and Lito confided that they had no quarrel with Generoso Tipora, or with Roberto Imnas, and prosecution witness Elisa Jumatiao (p. 37, *Ibid.*)

Moreover, Lito claimed that he could not have stabbed Roberto Imnas from behind, because Imnas is much taller and bigger than him. Likewise, defense witness Leonila Tepace asserted that Generoso Tipora was stabbed by Lito's companion in the course of the commotion and that Roberto was not there at all (p. 37, *Ibid.*)

The trial court's judgement of conviction is based on the testimony of prosecution witnesses who were given complete credence. Prosecution witness Elisa Jumatiao's identification of the two brothers in the killing of Generoso Tipora and in the stabbing of Roberto Imnas and Ferdinand Carcillar was found by the trial court to be more credible because this witness was not shown to have any improper motive for testifying against accused-appellants (p. 14, *Ibid.*).

Victims Ferdinand Carcillar and Roberto Imnas corroborated each other's testimony when they both pinpointed accused-appellant Lito Lagarteja as the perpetrator of the crime (p.15, *Ibid.*)

During the trial, although no evidence was adduced directly showing Roberto as having actively participated in the fatal stabbing of Generoso Tipora and the