

## THIRD DIVISION

[ G.R. No. 109617, August 11, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE SION @ "JUNIOR," JOHNNY JUGUILON, EDONG SION, FELIX SION @ "ELLET," AND FEDERICO DISU @ "MIGUEL," ACCUSED. FELIPE SION @ "JUNIOR" AND FEDERICO DISU @ "MIGUEL," ACCUSED-APPELLANTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

In its decision<sup>[1]</sup> in Criminal Case No. D-10796 dated 20 January 1993, but promulgated on 8 February 1993, Branch 44 (Dagupan City) of the Regional Trial Court of the First Judicial Region decreed as follows:

WHEREFORE, the Court finds accused Felipe Sion alias "Junior" and Federico Disu alias Miguel Disu guilty beyond reasonable doubt as principals of the crime of Murder pursuant to Article 248 of the Revised Penal Code, and in view of the attendance of the aggravating circumstance of cruelty which is not offset by any mitigating circumstance, the two accused are hereby sentenced to suffer the penalty of Reclusion Perpetua, and to indemnify jointly the heirs of the victim the sum of P50,000.00 and to pay the costs of the proceedings.

Accused Felipe Sion alias "Junior" and Federico Disu alias Miguel Disu are ordered to pay jointly the heirs of the victim the sum of P11,910.00 as actual damages.

SO ORDERED.

Felipe Sion alias "Junior," whose full name is Felipe Rodriguez Sion, Jr.<sup>[2]</sup> (hereafter appellant Sion), and Federico Disu alias "Miguel" (hereafter appellant Disu), seasonably appealed therefrom to this Court<sup>[3]</sup> in view of the penalty imposed.<sup>[4]</sup>

The case against appellants commenced with the filing of a criminal complaint for Murder<sup>[5]</sup> on 19 November 1991 in Criminal Case No. 2141 (SF-91) before the Fourth Municipal Circuit Trial Court of San Fabian-San Jacinto in the Province of Pangasinan. Charged with appellants therein were Johnny Juguilon, Edong Sion, Felix Sion alias "Ellet," and "four (4) other John Does." After appropriate preliminary examination, Judge Sergio Garcia of said court issued a warrant for the arrest of the accused. No bail was fixed for their temporary liberty.<sup>[6]</sup> However, the warrant was served only on appellant Disu, while the rest then remained at large. Upon appellant Disu's motion for bail, to which Asst. Provincial Prosecutor Restituto Dumlao, Jr., recommended that bail be fixed at P40,000.00 for said accused only, the court fixed said accused's bail at such amount; and upon filing and approval of the bail bond,

appellant Disu was ordered released.<sup>[7]</sup> Subsequently, one Atty. Fernando Cabrera filed, for the rest of the accused, a motion to reduce the bail from P40,000.00 to P20,000.00.<sup>[8]</sup> As Provincial Prosecutor Dumlao agreed to a reduction of P10,000.00, the court granted the motion and fixed bail at P30,000.00. None of them, however, filed a bail bond.

For failure of the accused to submit the required counter-affidavits, the Municipal Circuit Trial Court, finding probable cause against all the accused for the crime of murder on the basis of the evidence for the prosecution, ordered the transmittal of the record of the case, including the bail bond of accused Federico Disu, to the Office of the Provincial Prosecutor of Pangasinan for appropriate action.<sup>[9]</sup>

On 21 January 1992, an Information<sup>[10]</sup> was filed with the Regional Trial Court (RTC), First Judicial Region, in Dagupan City, Pangasinan, against appellants Sion and Disu and Johnny Juguilon, Edong Sion, Felix Sion alias "Ellet," and four (4) unidentified persons (designated as John, Peter, Richard and Paul Doe), accusing them of the crime of murder committed as follows:

That on or about October 16, 1991 in the evening at Brgy. Bindow, municipality of San Fabian, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with stones and a bladed weapon conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation did, then and there wilfully, unlawfully and feloniously hurl with stones, attack and stab Fernando Abaoag inflicting upon him the following injuries:

- stab wound 1½ inches in width, 9 inches in depth between 10-11 ICS, mid axillary area slanting upwards hitting the left lobe of the lung
- stab wound right lateral side of the neck 1½ , inch in depth
- stab wound 1½ inches in width, 1½ in depth mid scapular area, left
- contusion superimposed abrasion left eyebrow

which caused his instant death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code.

The information was docketed as Criminal Case No. D-10796 and assigned to Branch 44 thereof.

On 2 June 1992, accused Sion was arrested.<sup>[11]</sup> Then on 10 June 1992, the RTC annulled and voided the bail earlier granted to appellant Disu by MCTC Judge Sergio Garcia for lack of proper hearing, denied the motion for bail filed by appellant Sion and ordered their detention in jail.<sup>[12]</sup>

Since only appellants Sion and Disu were arrested, the case proceeded against them only. Upon arraignment, both pleaded not guilty to the charge and waived pre-trial.<sup>[13]</sup>

The prosecution's witnesses were: Cesar and Felicitas Abaoag, the brother and the wife of the victim, respectively; Dr. Leopoldo Manalo, San Fabian Municipal Health Officer; Rosendo Imuslan, barangay captain of Barangay Bindow; and SPO1 Ricardo Abrio. On the other hand, the defense presented as its witnesses appellant Disu; appellant Sion; Corazon Sion, wife of appellant Sion; and Dr. Leopoldo Manalo.

The evidence for the prosecution as established by the testimonies of its witnesses is partly summarized by the Office of the Solicitor General in the Brief for the Appellee, as follows:

On or about 7:00 o'clock in the evening of October 16, 1991, Cesar Abaoag was at the barangay road in front of his house situated in Bindow, San Fabian, Pangasinan. He was with his elder brother Carlos Abaoag and Ricardo Manuel (p.6, TSN, August 20, 1992) when all of a sudden, Ronnie Manuel arrived coming from the west complaining that he was being chased by Felipe Sion and Johnny Juguilon (p.7, TSN, id.). On that same occasion, Fernando Abaoag also arrived at the scene. He said to Ronnie, "why Ronnie, you are making trouble again." The latter answered, "I am not making trouble uncle because while I was inside the house of Eling Alcantara, Felipe Sion and Johnny Juguilon were trying to stab me. (p.8, TSN, id.). Seconds later, Felipe Sion and Johnny Juguilon appeared and started throwing stones. Fernando Abaoag told them to stop throwing stones but before they desisted and left, one of them uttered "even you Andong, you are interfering, you will also have your day, vulva of your mother, you Abaoag[s]" (pp. 9-10, id.) Apparently, the utterance was directed against Fernando Abaoag whose nickname is Andong.

Subsequently thereafter, at about 9:00 o'clock on that same evening, Cesar Abaoag while inside his house lying down on his bed heard the sound of stone throwing at the nearby house of his brother Fernando. He went out to see who were throwing stones (p.14, TSN, id.). When already near the house of Lolly Galdones, Cesar Abaoag saw his brother Fernando already outside his house. He also saw Johnny Juguilon, one of the members of the group of stone throwers, hurl a big stone against Fernando. Upon being hit on the left eyebrow, Fernando turned his back towards Felix Sion, Edong Sion and Miguel Disu who were also throwing stones towards his direction. On the other hand, appellant Felipe Sion, who was near the victim, with a very sharp double bladed dagger, stabbed Fernando, first on the left side just below the armpit, then on the left waistline and finally on the right side of the neck below the jaw (pp. 18-19, TSN, id.).

Cesar tried to extend help to his brother but Miguel Disu hurled a stone on him which landed on his right side below the armpit. When he heard Felipe Sion shouting to his companions saying, "we will also kill Cesar," Cesar desisted in helping his brother (pp. 22-23, TSN, id.). Instead, he ran to his brother's house and informed Felicitas, the wife, about the helpless condition of Fernando (pp. 22-23, TSN, id.) Upon being informed, Felicitas, accompanied by Carlos Abaoag, went to the place of the incident. The assailants were no longer there. She only saw her

husband lying prostate on the ground very weak in the state of dying. When she inquired what happened, Fernando answered "naalaak" which in English means "I was hit" (pp. 4-5, TSN, July 27, 1992). Fernando told his wife that his assailants were Felipe Sion, Miguel Disu, Edong Sion, Johnny Juguilon and Felix Sion (p.6, TSN, id.)

The victim was rushed to St. Blaise Hospital in San Fabian but he was pronounced dead on arrival (pp. 24-25, TSN, August 20, 1992).

Dr. Leopoldo Manalo, a Municipal Health Officer of San Fabian, Pangasinan conducted post mortem examination (Exh. A) on the body of the victim. The result of his findings showed that Fernando Abaoag sustained the following injuries, to wit:

- "1) stab wound 1½ inches in width, 9 inches in depth between 10-11, ICS, mid axillary area slanting upwards hitting the left lobe of the lung
- 2) stab wound right lateral side of the neck 1½ inches in width, 1½- inch in depth
- 3) stab wound 1½ inches in width, 1½ in depth mid scapular area, left
- 4) contusion superimposed abrasion left eyebrow."<sup>[14]</sup>

Dr. Manalo further testified that the stab wounds were caused by a sharp-pointed instrument, possibly a dagger, with the first wound hitting the lower lobe of the left lung causing severe bleeding and its eventual collapse. He determined the cause of death to be hemorrhagic shock secondary to multiple stab wounds.<sup>[15]</sup>

Barangay Captain Imuslan testified that he and Kagawad Fernando Gatchalian, on the night of the incident, found a small bolo and a bloodied double-bladed weapon (dagger) near the scene of the crime.<sup>[16]</sup> Cesar Abaoag recognized this weapon as the one used by appellant Sion in stabbing the victim.<sup>[17]</sup> On her part, Felicitas Abaoag declared that she spent more than P11,000.00 for the wake and burial of her husband whose death saddened her, she being left alone to take care of their children.<sup>[18]</sup>

In his defense, appellant Sion, brother and cousin of accused Edong<sup>[19]</sup> Sion and Felix Sion alias "Ellet," respectively, admitted that on the night in question, he participated in a stone-throwing incident and "free-for-all rumble" between his group (the Sions and Johnny Juguilon) on one hand, and the Abaoags and Manuels, on the other. However, he professed his innocence, claiming that it was his brother Edong Sion and Johnny Juguilon who stabbed the victim.<sup>[20]</sup> His version of the incident was summarized by the trial court, thus:

On October 16, 1991 at about 7:00 p.m., he, together with Johnny Juguilon went to the house of Eling Alcantara as he wanted to talk with his son, his friend. Ronnie Manuel was already there when they arrived. While at the place, Johnny Juguilon and Ronnie Manuel came out and

started fighting with each other. Ronnie Manuel ran and proceeded to the place of his cousin. He was pacifying Johnny Juguilon and Ronnie Manuel but Johnny Juguilon threw stones at Ronnie Manuel. At this point, Fernando Abaoag intervened in the quarrel saying, "vulva of your mother Johnny, you are too much, you will also have your day." Johnny Juguilon answered "vulva of your mother Andoy, do not interfere because you are not our enemy." After the verbal exchange, he took Johnny Juguilon to their (Sion's) house....At about 9:00 p.m., that same evening, they stoned their house, its sides and the stairs. He and Idong and Johnny Juguilon looked for Cesar Abaoag, Ronnie Manuel, Ricky Manuel, Andong Abaoag and two (2) other companions. They were at the place of Marta Soriano. After that, they still threw stones towards them. There was a free for all rumble between Ronnie Manuel, Ricky Manuel, the Abaoags and Idong Sion, Johnny Juguilon, Ellet Sion and himself, in front of the house of Loly Galdones. He denied the testimony of Cesar Abaoag that he stabbed Fernando Abaoag three times and before he was stabbed Johnny Juguilon stoned him (Fernando Abaoag). It was Idong Sion and Johnny Juguilon who stabbed Fernando Abaoag. After Fernando Abaoag was stabbed, they ran away. His group also ran away. He went home and rushed towards Johnny Juguilon because he was stabbed. He brought Juguilon to the St. Blaise Clinic and Hospital. He did not report the incident to Barangay Captain Rosendo Imuslan. On October 17, 1:00 p.m., he presented himself to Kagawad Lagman who brought him to the Police Station. ...<sup>[21]</sup>

In his defense, appellant Disu offered denial and alibi. He declared that he had no participation in the killing of Fernando Abaoag, and during the whole night of 16 October 1991, while the quarrel, stoning and stabbing incidents in question were taking place, he was resting and sleeping in the house of his employer, Felicidad Gatchalian, after driving the latter's jeepney the entire day. However, before proceeding home from work that afternoon, he went to the store of Oping Juguilon to buy cigarettes and dropped by the house of appellant Sion where he stayed for about five minutes. He only learned about the killing the following morning when he was told that he was one of the suspects. He was arrested about a month after the incident.<sup>[22]</sup>

On rebuttal, Cesar Abaoag refuted the testimony of appellant Sion. Cesar asserted that neither his brothers, the Manuels nor himself threw stones at Sion's house; there was no free-for-all fight between the Sions and the Abaoags; Johnny Juguilon and Edong Sion merely threw stones at, but did not stab Fernando Abaoag; and it was only appellant Sion who stabbed Fernando Abaoag.<sup>[23]</sup>

After the conclusion trial, the court granted appellants' motion to file a memorandum within fifteen days. Despite the extension given, appellants' counsel did not file the memorandum. Thus, in its order of 11 December 1992, the trial court declared the case submitted for decision.<sup>[24]</sup>

On 8 February 1993, the trial court promulgated its decision,<sup>[25]</sup> the dispositive portion quoted in the introductory paragraph of this ponencia.