

## [SYLLABUS]

[ G.R. No. 102062, March 14, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CAMILO FERRER AND ROMEO REYES, ACCUSED-APPELLANTS.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

In resolving this case, this Court finds occasion to differentiate between a state witness and a prosecution witness. It also reiterates some well-settled doctrines in appreciating the generic aggravating circumstances of nocturnity and cruelty.

This is an appeal from the Decision<sup>[1]</sup> dated May 15, 1991 of the Regional Trial Court of Roxas, Isabela, Branch 23, finding appellants Camilo Ferrer and Romeo Reyes guilty beyond reasonable doubt of the crime of murder for the fatal assault upon Florante Agtang and imposing on each of them the penalty of reclusion perpetua and the joint and several payment to the heirs of the victim of the amount of P50,000.00 as civil indemnity, plus costs.

Originally charged in the Information filed before the then Court of First Instance of Isabela on February 18, 1977 were Tomas Agnir or Agner and appellants Ferrer alias Milo and Reyes alias Romy. The Information alleged as follows:

"That on or about the 27th day of April, 1976, in the municipality of Quirino, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with Juan Galasi, who is already dead, and four (4) John Does, whose real identities are still unknown, armed with three (3) firearms, boloes and pointed knives, conspiring and confederating together and all helping one another, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill, suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and stab with sharp-pointed knives one Florante Agtang, inflicting upon the latter multiple stab wounds on the different parts of his body which directly caused him instantaneous death due to acute hemorrhage.

CONTRARY TO LAW."<sup>[2]</sup>

Arraigned on July 22, 1977 in the Ilocano dialect which they speak and understand, the three accused pleaded not guilty to the crime charged.<sup>[3]</sup>

#### **The Facts**

The facts of the case as summarized<sup>[4]</sup> by the trial court are as follows:

"The prosecution presented four (4) witnesses, including one of the accused Tomas Agner who was subsequently discharged as a state witness (p. 160, records).

The defense presented the two accused, Camilo Ferrer and Romeo Reyes, Merlita Cajalne, wife of accused Romeo Reyes, and the parents of Camilo Ferrer, Pedro Ferrer and Quintina Francisco.

From the combined testimonies of the prosecution witnesses, it appears that in the evening of April 27, 1976, Florante Agtang, Apolonio Villanueva and Oscar Viernes, three young men from Dolores, Quirino, Isabela, went together to barangay Vintar of the same municipality and a neighboring barrio, to visit ladies of their court - Florante Agtang to the house of one Ester Galasi and Oscar Viernes to the house of one Leticia Gambalan. Apolonio Villanueva preferred to go with Oscar Viernes and stayed in the house of Leticia after they conducted Agtang to the house of Ester.

At about 10:00 o'clock that same evening, Florante Agtang dropped by the house of Leticia where his companions were and bade the duo for all of them to go home. They all went together homebound when upon reaching the outskirts of barangay Vintar, after they had just passed an Independent Church not far from the house of Leticia, they heard a whistle and two men emerged from nowhere and warned them not to run away. The trio stopped and identified themselves. The two unidentified persons approached and frisked them for hidden weapons with one of the two pointing a long firearm at them. Apolonio and Oscar were found to be carrying knives while Florante was divested of a homemade-gun known as "paltik." Proceeding further as they were ordered to follow, they came upon a place near a cornfield where four (4) more persons emerged, one of whom was identified as the accused Tomas Agner. Apolonio was able to flee as he was frightened by their captors that they would use the knife confiscated from his possession to kill them. Running as fast as he could, he was shot at but they missed him. Infuriated because of Apolonio's escape, they started beating Florante and Oscar before they reached a river bank. They were ferried across the river and upon reaching the Magsaysay-Quirino boundary near the proposed railroad, the two were again ordered to remove their clothes with which they used to tie them. After they were tied a certain Doming hit Florante with a butt of the gun felling him to the ground as a result. Florante lying fallen, Camilo Ferrer and Romeo Reyes took turns in stabbing their hapless victim. They waylaid Florante and the group left him where he was slain, including Oscar Viernes who was released but was forewarned not to reveal what happened to anyone.

The following morning, the incident was reported by Oscar Viernes despite the warning to the barangay captain of Dolores who in turn reported the same to the police authorities of Quirino, Isabela. Acting on said report the police found the dead body at the place pointed to by Oscar where they were maltreated. The body bore multiple stab wounds. Brought to their house the body of Florante was autopsied by Dr. Luis R. Tamayo, Municipal Health Officer of Roxas, isabela. The findings of Dr.

Tamayo confirmed the presence of several stab wounds and the cause of death was attributed to acute hemorrhage resulting from said injuries."

The star witness for the prosecution was Tomas Agnir (or Agner) who, upon motion of the fiscal, was discharged from the Information by the trial court in order that he could be a state witness. He testified thus:

Agner was the brother-in-law of Juan Galasi, the latter's sister being the former's wife. He and Galasi co-owned a boat which Agner himself used in ferrying people across the river.<sup>[5]</sup> In the evening of April 27, 1976, Galasi, Romeo Reyes, Camilo Ferrer and a certain Domingo or Ding went to his house and asked him to take them across the river. They warned him that should he refuse to obey them, they would kill him.<sup>[6]</sup>

Acceding to the group's demand, Agner went westward with them to the river. Along the way, they met Oscar Viernes, Florante Agtang (Agtang or Florendo Agtang<sup>[7]</sup>) and Apolonio Villanueva. Reyes, Domingo and Ferrer searched the bodies of the three. They got two knives from each of Villanueva and Viernes and a paltic firearm from Agtang. Near the banana plants, as all of them had resumed walking to the river, three other persons who were strangers to Agner, joined them. Suddenly, Villanueva ran away. Domingo shot at but missed Villanueva. Consequently; Domingo, Ferrer and Reyes tied Agtang and Viernes with what looked like a plastic rope. All of them went to the river where Agner ferried them across.

They went northward to the proposed railroad. There, Agner was segregated from the group at a distance of around four (4) meters. From that distance, Agner watched as Domingo struck Agtang's mouth with a gun butt, causing him to fall to the ground while Ferrer and Reyes stabbed the victim several times as he lay helpless. All these happened in the presence of Galasi. Domingo then ordered Viernes to go home. Agner himself was told by the three unidentified persons to go home with instructions not to reveal to anyone what had happened otherwise, he too would be killed.

According to Agner, Agtang was assaulted by the group because Galasi, whose daughter was to be married to Agtang, did not want the marriage to take place as he preferred someone from Magsaysay to be his daughter's groom. Domingo was from Aggad, Magsaysay, Isabela.<sup>[8]</sup>

Villanueva, who was 21 years old when the incident happened, corroborated Agner's story. He testified that, at around 7:00 o'clock in the evening of April 27, 1976, he, together with Viernes and Agtang, left their place in Dolores, Quirino, Isabela for Vintar (Bintar), another barrio in Quirino. Negotiating the distance between the two barrios on foot, he and his companions arrived in Vintar at around 9:00 o'clock that night. They proceeded to the Galasi residence where Agtang visited Ester Galasi. Then Villanueva accompanied Viernes while the latter visited Leticia Gambalan. After around two hours, Agtang fetched them and the three of them proceeded home.

Along the way, someone whistled at them. When they came to a halt, two persons approached and told them not to run. The three young men were told to follow them northward. When they reached a banana plantation, the two persons, who turned out to be Reyes and Ferrer, whistled and four other persons came out from hiding.

These four men asked the three young men to follow them to the fields. Of these four men, Villanueva recognized only Agner whom he used to see in Vintar.

When they reached the fields, one of them, whom Villanueva identified later as Ferrer, approached him and asked for his small bolo (imuco), saying that they would use the bolo in killing him. Frightened, Villanueva fled into the tobacco field and hid there the whole night. In the morning, he went home and checked on his companions. He found Viernes but learned that Agtang's dead body had been found on the other side of the Mallig River.<sup>[9]</sup>

Twenty-one-year-old Agtang sustained seven (7) stab wounds on the left chest, right chest, epigastrium and abdomen. These wounds injured the lungs, heart and stomach and produced massive hemorrhage. He had four (4) puncture wounds on the right iliac region and two (2) other stab wounds on the right and left axilla which injured the lungs and also produced extensive hemorrhage.<sup>[10]</sup>

Based on the sworn statements executed by Villanueva and Viernes on May 4, 1976,<sup>[11]</sup> Sgt. Doroteo Villegas filed a complaint for murder against Agner and five (5) John Does before the Municipal Court of Quirino.<sup>[12]</sup> It was from Agner, who executed a sworn statement on June 19, 1976,<sup>[13]</sup> that Sgt. Villegas learned the identities of Reyes and Ferrer.<sup>[14]</sup> Accordingly, Sgt. Villegas filed an amended complaint naming therein as accused, aside from Agner and Galasi, "Romy Reyes, Milo Perel (sic), Doming Doe, John Doe (sic), Peter Doe and Bernard Doe."<sup>[15]</sup> On August 6, 1976, the Municipal Court of Quirino<sup>[16]</sup> ordered the issuance of warrants for the arrest of all the accused but dismissed the case as regards Galasi who had died.<sup>[17]</sup> After due investigation, the aforementioned Information was filed.

### **The Defense: Denial and Alibi**

In their defense, appellants interposed denial and alibi, swearing that they were both at home when the crime was committed. Merlita Cajalne, the wife of Reyes, testified that April 27, 1976 was their wedding anniversary, having been married on April 27, 1971. After taking their supper with their five children at 6:00 o'clock that night, they went to bed. She woke up at 6:00 o'clock the following morning and found her husband still asleep. She was sure that her husband did not leave home during the night because she got up six (6) times that night to answer the call of nature.<sup>[18]</sup>

Appellant Reyes testified that he did not even go out of his home in Aga, Delfin Albano, Isabela that fateful day, much less that evening. He denied having been to Vintar. He was able to go to Quirino only when he was arrested. The police of Quirino took him from the municipal jail of Delfin Albano. They rode a jeep from Delfin Albano up to Santiago from where they walked to Quirino. According to Reyes, Agner implicated him in the murder case because he had not paid Agner for services rendered in planting and harvesting his (Reyes') palay.<sup>[19]</sup>

For his part, appellant Ferrer, who used to farm the land of Antonio Gambalan in Aga, Magsaysay (now Delfin Albano), testified that he could not have gone to Vintar on April 27, 1976 because his sister, Margarita, was lying in state at their home. She had died at dusk of April 26, 1976 after she failed to deliver the child she was

carrying.<sup>[20]</sup>

Pedro Ferrer, appellant's father, testified that he and his son Camilo, had gone to bed at the same time in the evening of "a certain day in April, 1976" when they served coffee to some visitors who attended the wake of his dead daughter, Margarita. On cross-examination, however, Pedro Ferrer declared that on that day, they were celebrating the death anniversary of their grandmother.<sup>[21]</sup>

Appellant Ferrer's 70-year-old mother, Quintina Francisco, could not remember the date of the death of her daughter Margarita. However, she insisted that on April 27, 1976, her son Camilo was in their house. On cross-examination, she declared that her daughter Margarita died in the early evening of April 27, 1976.<sup>[22]</sup>

As stated above, the trial court held appellants guilty beyond reasonable doubt of the crime of murder. It found that of the two qualifying circumstances alleged in the information, namely, evident premeditation and treachery, only the latter was duly proven. Evident premeditation had no factual basis whereas treachery was sufficiently established by the fact that Agtang was struck with the butt of a gun and stabbed repeatedly, that he sustained twelve (12) wounds (should be thirteen [13] wounds) while he was tied and therefore in a defenseless position.

Appellants' notice of appeal was filed by their counsel of record, Atty. Edwin C. Uy.<sup>[23]</sup> On September 2, 1992, the Court required him to show cause why disciplinary action should not be taken against him for his failure to file appellants' brief within the required period of time.<sup>[24]</sup> He did file a four-page brief<sup>[25]</sup> but failed to explain its late filing. Thus, on November 11, 1992, the Court imposed upon Atty. Uy a fine of P500 or a 5-day imprisonment for his failure to explain why he did not file the brief within the prescribed 10-day period. The Court also dismissed him as counsel for the appellants and appointed the Public Attorney's Office of the Department of Justice as counsel de officio.<sup>[26]</sup>

The Solicitor General filed the appellee's brief<sup>[27]</sup> upon receipt of the brief filed by Atty. Uy for the appellants. Since the Public Attorney's Office filed its own appellants' brief on May 6, 1993, the Solicitor General filed a second appellee's brief to traverse the contentions of the appellants.<sup>[28]</sup>

In this appeal, appellants allege through the Public Attorney's Office that the trial court erred in convicting them of the crime charged notwithstanding the prosecution's failure to prove their guilt beyond reasonable doubt. Appellants assert that they should not have been convicted on the testimony of their former co-accused which was not materially corroborated and therefore insufficient, coming as it did from someone who had his own interest to protect.

In so contending, appellants quote<sup>[29]</sup> the portion of Agner's testimony wherein he described the participation of each of the perpetrators of the crime as follows:

- "Q. After you were segregated and brought to a distance of more or less 4 meters what happened, if any?
- A. Camilo Ferrer and Romeo Reyes stabbed Florante Agtang.
- Q. About Din/Doming, did he do any from the person of