

SECOND DIVISION

[G.R. No. 102078, May 15, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO FELICIANO Y AGUSTIN, JOHN DOE AND PETER DOE
ACCUSED. ROLANDO FELICIANO Y AGUSTIN, ACCUSED-
APPELLANT.**

DECISION

ROMERO, J.:

Rolando Feliciano alias "Ato" appeals from a decision of the Regional Trial Court, Branch 104 of Quezon City finding him guilty beyond reasonable doubt of the crime of Robbery with Homicide.^[1]

On May 30, 1988, Rolando Feliciano, his brother Rogelio Feliciano and John Doe, were at the house of 68-year old Rosario Fariñas at 99 K-6 Street, Quezon City. They claimed to be waiting for Ben Junio, Rosario Fariñas' son-in-law.^[2] Along with Rosario Fariñas, a thirteen-year old helper, Nelia Basilio, was also around. When Rosario's brother, Marciano Fariñas, arrived at about ten thirty in the morning, the three men were already inside the house.

In keeping with Filipino custom, the three guests were invited to lunch even if Ben Junio had not yet arrived. Upon entering the dining room, Rolando Feliciano immediately poked a knife at Rosario Fariñas. Rogelio Feliciano, alias "Kiting" pointed a gun at Marciano Fariñas and the third man pointed a knife at Nelia Basilio. Without warning or provocation, Rolando Feliciano stabbed Rosario Fariñas three times in the chest. The first wound was fatal as it punctured the heart. Marciano Fariñas was brought to the second floor to get money for the robbers. All told, P1000.00 and \$200.00 were taken from Marciano. The young helper was also forced to divulge that there was money in Rosario's room on the ground floor. After ransacking the room, the men found and carried away an undetermined amount of U.S. dollars. Upon returning to the ground floor, Marciano Fariñas was asked to give more money. When he declined to give any, Rolando Feliciano, upon Rogelio Feliciano's instructions, stabbed Marciano Fariñas several times.

This last victim screamed for help, causing the robbers to panic and hurriedly scamper away after firing at Marciano. The latter did not get shot and survived after undergoing hospital treatment for twenty-three days.

The findings of Dr. Alberto M. Reyes, medico legal officer of the NBI, established that Rosario Fariñas died of severe hemorrhage secondary to stab wounds in the chest.

^[3]

On December 5, 1990, a team of policemen from Cardona, Rizal, led by Pfc. Crispin Gondra, arrested Rolando Feliciano after wounding him in his attempt to escape.

Rogelio Feliciano and John Doe eluded arrest and have not been apprehended.

Rolando Feliciano was charged with the crime of Robbery with Homicide in an information which reads:

"That on or about the 30th day of May, 1988, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain and by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously rob ROSARIO FARIÑAS Y TOLENTINO and MARCIANO T. FARIÑAS in the following manner to wit: on the date and place aforementioned, accused pursuant to their conspiracy, armed with knives and guns, robbed ROSARIO FARIÑAS Y TOLENTINO and MARCIANO T. FARIÑAS at their residence located at No. 99 K-6th, Kamias, this City, and divested them of the ff.:

1. MARCIANO T. FARIÑAS - P1,000.00 and \$200.00 US Dollar
2. ROSARIO FARIÑAS Y TOLENTINO - Undetermined amount of U.S. Dollars

and that on the occasion of the said Robbery, said accused with intent to kill and without any justifiable cause did then and there, wilfully, unlawfully and feloniously, stabbed (stab) them on the different parts of their bodies, thereby inflicting upon ROSARIO FARIÑAS Y TOLENTINO serious and mortal wounds which was (were) the direct and immediate cause of her untimely death and physical injuries to said MARCIANO T. FARIÑAS which have required him medical attendance and/or incapacitated him from performing his customary labor for a period of more than nine (9) days but less than thirty (30) days, to the damage and prejudice of the heirs of said ROSARIO FARIÑAS Y TOLENTINO and to said MARCIANO FARIÑAS in such amount as may be awarded to them under the provisions of the New Civil Code of the Philippines.

CONTRARY TO LAW." (Corrections in parenthesis supplied)

After arraignment, trial ensued. Prosecution evidence was mainly based on the eyewitness accounts of Nelia Basilio and Marciano Fariñas. The defense proffered alibi, with the accused-appellant Rolando Feliciano, his wife and a neighbor testifying. The trial court convicted Rolando Feliciano of Robbery with Homicide on September 5, 1991 in a decision with the following dispositive portion:

"WHEREFORE, finding the accused ROLANDO FELICIANO Y AGUSTIN guilty beyond reasonable doubt of the crime of Robbery with Homicide, as penalized under Art. 294, Revised Penal Code, he is hereby sentenced to DEATH, but because of the constitutional mandate prohibiting the imposition of death penalty, he is hereby ordered to suffer the penalty of RECLUSION PERPETUA only, plus all the accessory penalties provided by law; to pay the heirs of the deceased Rosario Fariñas the sum of

P50,000.00, and to pay also Marciano T. Fariñas P1,000.00 and \$200.00 US dollars, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."

In this appeal, accused-appellant Rolando Feliciano contends that the trial court failed to prove his guilt and participation in the crime charged. He is not the third unidentified robber as stated by Nelia Basilio whose testimony is perjured and who never mentioned Rolando Feliciano in the first affidavit she gave before the police. Accused-appellant likewise faults the trial court for not giving credence to his defense of alibi.

According to appellant, Nelia Basilio's failure to identify him in her first affidavit, given on the evening of May 30, 1988,^[4] is fatal to the case and disproves Rolando Feliciano's culpability. More particularly, the name of appellant Rolando Feliciano is not mentioned in this affidavit, which reads in part:

"06. T - Kilala mo ba kung sino ang pumatay sa amo mo?
S - Yung isa po si ROGELIO FELICIANO na kilala ko po sa pangalang KITENG at yung isa na si ROGEL ang pangalan yung isang lalaki ay hindi ko alam ang pangalan ngunit alam at tanda ko lahat ang mukha nila."

While it is true that appellant's name does not appear in this first affidavit, which was taken a few hours after the crime, still, his responsibility for the crime cannot be doubted. On December 9, 1990, witness Nelia Basilio executed another affidavit before Pfc. Reynaldo Medina, Jr. at the Rizal Medical Center in Pasig, Metro Manila. In this second statement, she categorically identified Rolando Feliciano, then lying on Bed No. 26 of the hospital's surgical ward, as the person who stabbed Rosario Fariñas on May 30, 1988.^[5] More significantly, appellant's guilt is certain in view of the following testimony:

"DIRECT EXAMINATION OF NELIA BASILIO

Q What did you do after cooking lunch?

A I called them, sir.

Q You used the word "them" "sila" to whom are you referring?

A Rolando Feliciano and Rogelio Feliciano, sir, and others whom I do not know and I cannot identify:

x x x

x x x

x x x

Q And did these three persons acceded (sic) to your invitation to join you for lunch?

A No, they entered the dining room and immediately poked (sic) at us, sir.

Q You mentioned, you stated that the moment or as soon as these three persons entered the dining room they

immediately poked (sic) at you and your lolo and lola, who in particular of the three persons poked (sic) at you?

A The one whom I cannot identify.

Q What did he used (sic) in poking at you?

A A gun, sir.

Q How about your lola Rosario Fariñas you said that another person, one of the three poked something to (sic) her, could you identify the person who poked something at her?

A Rolando Feliciano, sir.

Q If you will see Rolando Feliciano again, would you be able to identify him?

A Yes, sir.

Q Will you please stand up and look around and point to us Rolando Feliciano if he is inside the court room?

A Yes, sir, (witness goes down the witness stand and point to a person who when asked gave his name as Rolando Feliciano).^[6]

x x x

x x x

x x x

Q You mentioned that as soon as the accused and these two other companions who are at large Rolando poked a knife to your lola by the name of Rosario Fariñas y Tolentino, what happened next after the accused poked a knife to (sic) her?

A He stabbed her, sir.

Q How many times did accused Rolando Feliciano stabbed (sic) your lola Rosario?

A Three (3) times, sir."^[7]

On cross-examination, Nelia Basilio testified:

"ATTY.CEREZO:

Q And in fact, you know the person of Rolando Feliciano because he was your barrio mate at Bayambang, Pangasinan?

A Yes, sir.

COURT:

This accused present, Rolando Feliciano, is your barrio mate?

WITNESS:

Yes, your honor."^[8]