

FIRST DIVISION

[G.R. No. 103968, July 11, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIMSON M. GARDE, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

The appellant, Dimson M. Garde, sentenced to *reclusion perpetua* by the court *a quo*, at first withdrew his appeal in his motion of 10 March 1995, which the Court resolved to grant (upon the receipt of an endorsement from the Director of the Bureau of Corrections to the effect that appellant, despite having been advised of the consequences of the withdrawal of his appeal, confirmed nevertheless his desire to give up the appeal). The Public Attorney's Office, which was also required to react on appellant's motion later timely manifested, however, that appellant had changed his mind and that he would prefer to have his appeal pursued. On 05 July 1995, the Court reinstated the appeal.

Appellant was charged, along with the one Edeme C. Tayapad,^[1] with murder in an information that read:

"The undersigned Asst. City Fiscal accuses DIMSON M. GARDE and EDEME C. TAYAPAD @ 'PARIS' of the crime of MURDER, committed as follows:

"That on or about the 14th day of May 1987, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, Dimson Garde and Edeme Tayapad alias 'Paris', being them armed and provided with bladed weapons, conspiring, confederating, and acting in concert, with intent to kill and by means of treachery and with evident premeditation, taking advantage of superior strength, did, then and there willfully, unlawfully and feloniously assault, attack, strike and stab with said weapons one Noli Diaz, thereby causing upon the person of the latter the following wounds, to wit:

"1. Wound 2.0 cm. in length, neck, supero-anterior aspect, left, medial extremity, contused and lateral extremity sharp, perforating trachea thereat.

"2. Wound stabbed, 0.5 cm. in length, chest, anterior, level of the 3rd, inter-costal space, 4.5 cm. from right.

"3. Wound, stabbed, 2.5 cm. in length, chest, anterior, level of the 3rd inter costal space, 8.5 cm. from sternal line, superior extremity contused and medially, to enter theracic cavity, grazing superior lobe of left lung,

then perforating ventricle of the heart.

"4. Wound, stabbed, 2.5 cm in length, chest anterior, level of the 7th inter costal space, 3.0 cm. from right mid sternal line, lateral extremity, contused and medially extremity sharp, directed backward, downward and laterally, to enter thoracic cavity, but non-penetrating.

"5. Wound, stabbed, 1.5 cm. in length, hypochondriac region, 8.0 cm. from right mid sternal line, both extremities sharp, directed backward, upward and medially to enter abdominal cavity perforating right lobe of the liver.

"6. Wound, stabbed, 1.5 cm. in length, chest, anterior, level of the 4th inter costal space, along left mid axillary line, both extremities sharp, involving only skin and muscles.

"7. Wound, stabbed, 2.0 cm. in length, hypochondriac region, level of the wound no. 50, 10.5 cm. from left mid-sternal line, medial extremity contused and lateral extremity contused, involving only skin and muscle.

"8. Wound, incised, 3.0 cm. in length, hypothenar aspect, hand, left.

"9. Wound incised, 4.0 cm. in length, scapular region, along right posterior axillary line.

"10. Wound, stabbed, 2.0 cm. in length, scapular region, along right para sternal line, both extremities sharp, non-penetrating.

"11. Wound incised, 6.0 cm. in length, arm, left, middle third, posterior medial aspect.

which directly caused the death of the said Noli Diaz to the damage and prejudice of the heirs of the said victim in the amount as follows, to wit:

P 30,000.00 -as indemnity for the death of the victim;

P 10,000.00 -as moral damages for mental anguish or such amount to be fixed by the court;

P 129,000.00 -as indemnity for loss of earning capacity, or such amount to be fixed by the court;"^[2]

When arraigned, the two accused entered a plea of "not guilty;" whereupon, trial ensued.

The Solicitor General summed up the evidence for the prosecution; viz.:

"At about 4:15 o'clock in the afternoon of May 14, 1987, Noli Diaz was standing at the sidewalk of Gonzaga Street in Bacolod City talking with three friends, Arnold, Tony and Pidoy.

"Edeme Tayapad, also known as 'Paris,' approached Noli Diaz from behind, tapped him on the shoulder and said, 'Kumusta' (p. 5, tsn, June

13, 1988). As Noli Diaz turned his head to see who was greeting him Tayapad stabbed Diaz on the back with a 10-inch knife. Appellant then emerged and also stabbed with double-bladed 7-inch knife (pp. 9-10, *ibid.*). Appellant and Tayapad continued to stab Noli Diaz even after he had fallen to the ground. Noli Diaz sustained eleven (11) wounds which caused his death (pp. 6-15, *tsn*, Oct. 17, 1988). Both assailants then ran away.

"The police apprehended both Tayapad and appellant in the early morning of May 15, 1987. They recovered the weapons used. At the police station, appellant executed an extrajudicial confession admitting commission of the crime, in the presence of witnesses and his counsel, Atty, Mariano Natuel (pp. 4-22, *tsn*, Feb. 22, 1989)."^[3]

The Public Attorney's Office counsel for accused-appellant, presented its own version of the incident; thus:

"At past three (3) o'clock in the afternoon of May 14, 1987, accused-appellant Dimson Garde had just finished playing mahjong with Edeme Tayapad and two friends near the squatters' area. They saw Noli Diaz carrying a fighting cock. Tayapad asked Diaz if he was going to sell the cock. Diaz answered in the negative as he had just recovered his cock which had been missing. Thereafter, Diaz went home. Accused-appellant also proceeded home to eat lunch. Later, Tayapad fetched appellant to accompany the former in going to Diaz' house as he just might decide to sell the fighting cock. Appellant went with Tayapad but he just stayed at the corner of Gonzaga street. Tayapad talked with Noli Diaz in the presence of Arnold, Pidoy and Tony. Appellant saw Tayapad held Diaz' hand and proceeded to stab the latter. Diaz ran away but fell. Tayapad stabbed him again. Shocked and frightened, appellant ran away as he might be implicated in the crime. He proceeded towards the downtown area. A barangay tanod and some security guards apprehended the accused-appellant and they frisked him. They were unable to recover anything from the accused-appellant. He was brought to BAC-UI at the public plaza where relatives of the victim manhandled him. A policeman brought appellant inside a room, hit him on the chest and forced him to admit he killed Noli Diaz. Thereafter, appellant was taken to a certain Erning who was typing sworn statements. When his sworn statement was taken, appellant was not assisted by counsel. He does not know Atty. Natuel. He does not know how to read as he attended school only up to Grade III. He was forced to sign a document in the presence of many policemen as he was afraid they will manhandle him. Appellant denied stabbing Noli Diaz. He did not carry any weapon on that fateful afternoon of May 14, 1987. Barangay tanod Samson did not recover any weapon from him and the alleged knife. (Exh. 'A') was already at the BAC-UI when they reached said place. Accused-appellant know prosecution witness Jonathan Balabag, Fidela Diaz, the victim's mother, is Balabag's employer."^[4]

Giving credence to the evidence offered by the prosecution, the trial court held both accused to have committed, in conspiracy with each other, the crime with which they were charged. In rejecting the advocacy of the defense, it said:

"A careful examination of the testimony of the said accused shows that he disclaimed having stabbed the deceased together with his co-accused but could not explain the fact why the deceased suffered eleven (11) stabbed wounds when according to him his co-accused Tayapad stabbed the deceased only three (3) times. The said accused Garde, likewise, claimed that his confession was obtained thru force by the officers but he did not complain to the authorities about this matter despite the lapse of two (2) years. A careful examination of his confession (Exh. 'F') shows that the contents practically jibed with his testimony in Court. The facts practically corroborated the testimony of Jonathan Balabag, one of the witnesses for the prosecution."^[5]

The trial court concluded:

"WHEREFORE, the court finds both accused Dimson Garde and Edeme Tayapad guilty beyond reasonable doubt of the crime of murder for the killing of Noli Diaz and hereby sentences them to suffer the penalty of reclusion perpetua and to indemnify the surviving spouse of the deceased the sum of P30,000.00 as indemnity for his death and P10,000.00 as moral damages suffered by the surviving spouse, without subsidiary imprisonment in case of insolvency, but with the accessory penalties provided for by law."^[6]

The instant appeal is interposed by accused Dimson M. Garde. Edeme C. Tayapad appears to be "at large."^[7]

Appellant Garde asserts that the trial court has erred (a) in finding him guilty beyond reasonable doubt of the crime of murder, and (b) in admitting his extra-judicial confession.

The Court has closely scrutinized the records, and it is convinced that the trial court did not misjudge the case. The Court is particularly impressed by the testimony of prosecution witness Jonathan Balabag whose eyewitness account of the incident not only appears to be clear and credible but likewise substantially coincides with the physical evidence and the medical findings^[8] on the case. Balabag testified:

"Q Now, when you said Paris tapped the shoulder of the deceased Noli Diaz, where was Paris situated when he tapped the shoulder of Noli Diaz?

"A Paris was at the back of Noli and he tapped the shoulder on Noli and then stabbed him.

"Q So, you want to convey to his Honorable Court that when Paris tapped the shoulder of Noli Diaz, Noli Diaz has to turn around and then he was stabbed by Paris?

"ATTY. LABIS:

Objection, your honor. Leading.

"COURT: