

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEODORICO EMPEÑO, AURELIO EMPEÑO, CECILIA ARCHETA,
JESUFIN OR PEPING VERDADERO AND APOLONIO EMPEÑO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-27610. May 28, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal, taken by defendants Aurelio, Teodorico and Apolonio, all surnamed Empeño, and Cecilia Archeta and Jesufin Verdadero, alias Peping, from a decision of the Court of First Instance of Cagayan, the dispositive part of which reads as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds all the accused guilty beyond reasonable doubt of the crime of one murder defined and penalized under Art. 248, of the Revised Penal Code, with respect to the killing of Jaime Amilagan and another murder, under the same article of the same Code, with respect to Ernesto Amilagan, and hereby sentences:

"(a) Aurelio Empeño to reclusion perpetua each in the two murders;

"(b) Teodorico Empeño to reclusion perpetua each in the two murders;

"(c) Cecilia Archeta to reclusion perpetua each in the two murders;

"(d) Jesufin or Peping Verdadero to reclusion perpetua each in the two murders; and

"(e) As to Apolonio Empeño, being a minor, the Court hereby commits this accused to a Correctional Institution, until he shall come of age, when, if the said institution should find him to have conducted himself very well as a good and law-abiding citizen, he may be released if so recommended accordingly. This boy should not spend the rest of his life confined behind bars for having only followed his parents whom he owes love and loyalty; this should attenuate or mitigate the gravity of his act.

"All accused are to pay jointly and severally the heirs of the deceased Jaime and Ernesto Amilagan, in the amount of P6,000.00 in each case, without subsidiary imprisonment in case of insolvency. All the accused are entitled to one-half of their preventive imprisonment, being detained prisoners.

"All to pay corresponding proportionate costs of these proceedings."

The victims in this case, Jaime Amilagan and his brother Ernesto Amilagan, had filed the application for pasture-lease agreement No. 22449, covering a public land of about 200 hectares, in the Sitio of Daga, Municipality of Coner, Province of Apayao, which Rogelio T. Cardenas, the Acting Officer-in-Charge of the Bureau of Lands, had recommended for approval. Defendants Teodorico Empeño and his wife Cecilia Archeta, as well as their sons Aurelio and Apolonio Empeño and their son-in-law Jesufin (Peping) Verdadero, in turn, held a small parcel of land which the Amilagans claim to be within the area covered by their aforementioned

application. It appears that sometime before December 6, 1961, Teodorico Empeño had made a "kaingin" in said parcel of land, in view of which, he was, on December 6, 1961, accused of illegal "kaingin", upon the recommendation of the aforementioned Rogelio T. Cardenas. The Empeños, in turn, filed a complaint against the Amilagans for the destruction of the corn of the former by the cows of the latter. Apparently, these incidents had induced the Empeños to enclose the area held by them with a barbed wire fence, which was broken, however, by the Amilagan brothers, on June 11 or 12, 1965, in order that their cows could pass through and go to the place where they were scheduled to be branded, on June 13, 1965.

On June 12, 1965, at 3 p.m., as Jaime and Ernesto Amilagan, together with Pascual Contreras, Aurelio Balunsat, Deogracias de Leon, Federico Amilagan and Juanito Catnae were walking single-file along a trail passing through a hilly place, covered thickly by tall grass, coming from the corral of said brothers, defendant Cecilia Archeta stopped them and asked Ernesto Amilagan why he had destroyed said fence. Ernesto answered that he had done so to let his cows pass, in going to the branding place the next day. Cecilia then remarked, in a loud voice, "you are very tough," whereupon Aurelio Empeño emerged from the west side of the trail and forth-with gave Jaime Amilagan a bolo slash on the left side of the head. Almost at the same time, Teodorico Empeño came out of the tall grasses and immediately swung his bolo at Ernesto Amilagan, who, in his attempt to evade the blow, tripped over a muddy hole and fell down on his face. Thereupon, Aurelio hacked him on the right side of the head. Similarly, Teodorico swung his bolo at Ernesto, whereas Cecilia clubbed him on the back, and, with a bolo slash, wounded two (2) of his fingers. At this juncture, Jesufin Verdadero and Apolonio Empeño appeared from different directions and swung their respective bolos at Ernesto, whom Jesufin wounded on the upper part of the breast, near the thorax, and Apolonio on the left leg. Moreover, Teodorico gave Ernesto another bolo slash on the left forearm. The Amilagan brothers died on the spot, due to hemorrhage.

The defense maintains that the injuries sustained by both had been inflicted by Aurelio Empeño single-handedly and acting in self-defense. It tried to prove that, as Aurelio was fetching one of his carabaos, which was tied to a tree, in the afternoon of the occurrence, Jaime Amilagan came and, immediately, wounded him with a bolo slash, in his left forearm; that, thereupon, he (Aurelio) drew out his own bolo and swung it at Jaime's head; that Ernesto Amilagan then approached and attacked him with his (Ernesto's) bolo; that he (Aurelio) evaded the bolo slashes given by Ernesto and reciprocated the same with his (Aurelio's) own bolo, thereby inflicting several wounds upon Ernesto; and that Teodorico Empeño, his wife Cecilia and their son-in-law, Jesufin Verdadero, were then working on the concession of one Pacis, who was Jesufin's landlord, about two (2) hours' walk from the scene of the occurrence.

Furthermore, Apolonio Empeño - then below sixteen (16) years of age - testified that, after taking his meal, on June 12, 1965, he went in search of one of his carabaos, which he was unable to locate, because, at about 3 p.m., Sgt. Taliping came and invited him to go back to his house; that, on the way thereto, they met Aurelio Empeño, who was wounded and drenched in blood, and explained that he had been wounded by Jaime Amilagan; and that, thereupon, Taliping brought him and Aurelio to their hut, near which they found the dead bodies of two (2) persons.

In this connection, it should be noted that the theory of the defense is based mainly upon the testimony of the defendants, whereas the version of the prosecution is supported by the testimony of Pascual Contreras and Deogracias de Leon, who were with the Amilagan brothers at the time of the occurrence and were corroborated by Sgt. Taliping. After analyzing the evidence, His Honor, the Trial Judge, in a carefully written decision, accepted the version of the prosecution and found that of the defense unworthy of credence. Indeed, the defense maintains that the occurrence was triggered by Jaime Amilagan, who had allegedly attacked Aurelio Empeño and wounded him, on the left arm, with a bolo. Sgt. Taliping positively testified, however, that, when he met Aurelio

Empeño, that afternoon, immediately after the occurrence, he did not have any injury in the body. Then, also, Sgt. Taliping testified that, upon being informed by Aurelio Balunsat that there had been some killings in the ranch of the Amilagans, he (Taliping) proceeded thereto immediately; that, on the way, he met Apolonio Empeño, whose clothes were stained with blood; that Apolonio was, moreover, carrying a blood stained bolo; that, upon being asked to explain his condition, Apolonio replied that he, his father Teodorico, his mother Cecilia, his brother Aurelio, and his brother-in-law Jesufin Verdadero, had killed Jaime Amilagan and Ernesto Amilagan. Besides, Aurelio admitted that the Amilagans had no possible reason to try to kill him.

On the other hand, there is ample evidence to the effect that the defendants harbored ill-feelings towards the Amilagan brothers, not only because the latter had succeeded in securing a favorable indorsement of their application for a pasture-lease agreement covering an extensive area, which included the land held and cultivated by the Empeños, but, also, because the Amilagans had thrown down their (Empeños) fence, apart from seeking their prosecution for illegal "kaingin".

The theory of the defense is further weakened by the circumstance that the testimony of the defendants is inherently incredible, for Apolonio Empeño would have us believe that he did not even know the names of the two (2) dead persons he found at the scene of the occurrence and that he had never seen them before, although they were, in fact, neighbors.

Upon the evidence on record, We are fully satisfied that, enraged at the destruction of their fence by the Amilagans, the defendants herein, armed with bolos, waited for them, taking cover behind clumps of tall grass surrounding the trail leading to the hut of the Amilagans, and that, as the latter passed by that trail, in the afternoon of the occurrence, the Empeños, acting in concert with each other, attacked and killed the Amilagan brothers in the manner testified to by the witnesses for the prosecution. Having thereby acted with treachery, the crime perpetrated by the defendants is that of double murder, committed by a band and with abuse of superior strength, which are, however, offset by the mitigating circumstance of passion and obfuscation, justifying the imposition of the penalty prescribed for said offenses in its medium period, or life imprisonment, which is the penalty meted out in the decision appealed from. The same should, however, be modified insofar as the indemnity is concerned, which should be increased to P12,000.00 for each of the offenses aforementioned.[1]

With this modification, the decision appealed from should be, as it is hereby affirmed, therefore, in all other respects, with costs against the appellants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and Villamor, JJ., concur.

Barredo, J., took no part.

Castro, J., on official leave.

[1] People v. Pantoja, G.R. No. L-18793, Oct. 11, 1968; People v. Sangaran, G.R. No. L-21757, Nov. 26, 1968; People v. Gutierrez, G.R. No. L-25372, Nov. 29, 1968; People v. Buenbrazo, G.R. No. L-27852, Nov. 29, 1968; People v. Bakang, G.R. No. L-20908, Jan. 31, 1969; People v. Labutin, G.R. No. L-23513, Jan. 31, 1969; People v. Acabado, G.R. No. L-26104, Jan. 31, 1969; People v. Vacal, G.R. No. L-20913, Feb. 27, 1969; People v. Gonzales, G.R. No. L-23303-04, May 20, 1969; People v. Tapac, G.R. No. L-26491, May 20, 1969.

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