

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CIPRIANO DIGAMON, DEFENDANT-APPELLANT.***G.R. No. L-29117. November 25, 1969*

Ponente: REYES, J.B.L., J.

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Appeal originally taken to the Court of Appeals from a judgment of the Court of First Instance of Misamis Occidental, in its Criminal Case No. 07202 (Hon. Mariano A. Zosa, presiding), convicting the accused-appellant, Cipriano Digamon, for murder and imposing a penalty of reclusion temporal. The Court of Appeals certified the case to this Supreme Court as one wherein the impossible penalty is reclusion perpetua, beyond its appellate jurisdiction.

The accused-appellant, Cipriano Digamon, pleaded not guilty to an information for murder "with the qualifying circumstance of treachery and the generic aggravating circumstance of evident premeditation," by stabbing with a bolo "one Pedrito Jumawid suddenly and treacherously and without any warning, inflicting on the latter a stab wound on the left iliac crest with fracture of the iliac bone and another stab wound on the left forearm, the first injury directly and necessarily causing the death of the said Pedrito Jumawid" (Information, Court of Appeals' rollo, page 2).

After entering his plea, however, counsel for the accused manifested the willingness of the accused to plead guilty to the lesser offense of homicide, but the prosecution rejected the offer (T. s. n., Jamorol, pages 1-2), whereupon the trial proceeded for the reception of the evidence.

It is admitted that the accused-appellant stabbed Pedrito Jumawid with a "flaminco" (a bolo) in a place outside but near the gate of the dance hall in the barrio market premises of Talairon, Oroquieta, Misamis Occidental, while a dance and canvass for a muse were being held in the evening of 15 December 1962 and where many people had gathered. The only difference between the theories of the prosecution and that of the defense is that according to the former, the accused, out of resentment for Pedrito Jumawid's refusal to accept accused's offer of a drink of tuba, or native wine, upon seeing Pedrito Jumawid watching the dance, suddenly stabbed him, causing his death two days later; but according to the defense, the accused intended to stab one Teodoro Loga in retaliation for an icepick stab inflicted by the latter upon the accused but the stab intended for Loga accidentally landed on Pedrito Jumawid because the latter suddenly interposed himself between the contenders.

Two eye-witnesses for the prosecution described the incident:

Alberto Zamora, a policeman, testified that he attended the dance and canvassing and he was about two (2) meters behind Pedrito Jumawid; the accused approached Jumawid and, without prior conversation, stabbed him on the left side of his body; the victim reeled or careened, and witness Zamora placed him aboard a pedicab and sent him to the hospital (T. s. n., Jamorol, pages 4-8).

Marianito Taan testified that he was also about two (2) meters behind Jumawid, who was witnessing the

canvassing, when Cipriano Digamon arrived, rushed at Jumawid, and stabbed him; Jumawid shouted for help, but, because of fear, witness Taan went away (T. s. n., Napigkit, pages 7-10).

Pedrito Jumawid was examined at the hospital and he was found to have sustained:

"1. stab wound, one (1) inch wide, three (3) inches deep at the level of the left iliac crest, directed downward with linear fracture of the iliac bone;

"2. stab wound, left forearm anterior, with avulsion of the skin." (Exhibit "C")

Sergeant of Police Santiago Abelo, upon hearing about the incident, went to the hospital at past eleven o'clock that evening of 15 December 1962; he saw Jumawid hovering between life and death, trembling as he answered the sergeant's interrogations. Abelo set down in writing his questions and the answers given by Jumawid in an ante-mortem statement that Jumawid later thumbmarked (Exhibit "B"). In said statement, Jumawid identified his assailant as the accused Cipriano Digamon but averred that he had no misunderstanding with him ("Q. Why were you wounded? A. We have no difference").

The victim died in the hospital on 17 December, 1962 (T. s. n., Napigkit, page 25).

The ante-mortem statement admitting the absence of any misunderstanding between the accused and the victim does not eliminate resentment as motive of the accused in killing Jumawid, for the latter's statement evidently refers to a cause immediately preceding the aggression. On this point the Court of Appeals has observed:

"As to the prosecution's evidence to establish motive which consists in the testimony of the sister of the deceased to the effect that on a certain occasion, the accused promised to kill the deceased for refusing to drink tuba offered by the accused, we find the same insufficient motive to kill the deceased. This, however, does not improve the stand of the accused, considering that proof of motive is not essential when the accused is positively identified as the person who committed the crime (People v. Raquel, No. L-17401, Nov. 28, 1964). Indeed, the appellant admits having inflicted the wound that caused the death of the deceased." (CA Resol., 8 April 1968)

We agree to the preceding observations, except to note that in many cases the motive for taking human life appears insufficient to the normal mind (V. Tram, "Why do Men kill." in Wigmore, Science of Judicial Proof, page 184).

The fatal stabbing of Pedrito Jumawid by the accused being admitted by the latter, the burden lay on this appellant to satisfactorily establish that the manslaughter was purely accidental in the course of a fight with Teodoro Loga; but his testimony in this respect is contradicted by several of his own witnesses, apart from the apparent implausibility of Jumawid interposing himself between two armed contestants, Teodoro Loga with an ice pick and appellant Digamon with the small bolo locally-designated as a "flamenco" or "plaminco." It would have been readily apparent to Jumawid that by placing himself between the combatants would inevitably expose him to fatal injury, and elementary prudence would deter him from such interposition.

Reinforcing this consideration are the testimonies of defense witnesses Teodoro Loga and Anacleto Cagamcam. Loga testified that on the evening in question he was able to evade a stab by Digamon, and ran away after doing so; but he roundly denied having seen the deceased (T. s. n., Napigkit, page 37). This is hardly credible if the latter had placed himself between Loga and the appellant. Defense witness Anacleto Cagamcam, in turn, asserted in court that it was 30 minutes after Loga was stabbed by Digamon that the witness heard a shout for help from Jumawid (T. s. n., Napigkit, page 46), thus indicating that the appellant's fight with Loga preceded by an appreciable interval the fatal assault on Jumawid. Thus, his own witnesses wrecked appellant's story. Hence, we are forced to reject the theory of accidental stabbing.

To reinforce appellant's version, defense witness Lanipa, a policeman, declared that he went to the hospital after hearing about the incident for the purpose of taking an ante-mortem statement of the victim but Sergeant Abelo had gotten ahead of him and, therefore, did not, take one anymore, but that, nevertheless, the deceased had told him (witness Lanipa) that the stabbing was accidental. On cross-examination, this witness was evasive in answering the question whether he told Sergeant Abelo aluit the deceased had told the witness in the hospital but finally admitted that he did not inform Sergeant Abelo of it nor had he read the ante-mortem statement taken by Sergeant Abeio (1 . n. n., Napigkit, pages 77-79). The suppression of this vital fact from his superior renders Lanipa's testimony highly suspect.

Rodrigo, the vice-barrio lieutenant at the time of the incident, testified that he did not see the actual stabbing; he claims, however, that after the stabbing appellant Digamon delivered the fatal bolo to him, saying that he had accidentally stabbed Jumawid. This witness was evasive, however, when asked if he had informed the authorities about what Digamon had told him, and finally admitted that he did not (T. s. n., Napigkit, pages 83-85). Anyway, what Digamon told witness Rodrigo is hearsay and of no probative value.

The evidence therefore establishes the commission of the crime of murder, qualified by treachery, which is shown by the suddenness of the attack upon the victim who did not expect it, as he was watching the canvassing for a muse (U.S. vs. Castellon, 12 Phil. 160; People vs. Macarinfas, 40 Phil. 1; People vs. Vacal, et al., L-20913, 27 February 1969, 27 SCRA 24). But, with the Court of Appeals, this Court finds no evidence of evident premeditation.

The accused should be credited with the mitigating circumstance of voluntary surrender, for the positive testimony of prosecution witness, Alberto Zamora, is that immediately after the stabbing accused-appellant Digamon went to the police station to surrender (I.s.n., Jamorol, page 9).

As the commission of the crime was attended by no aggravating circumstance but with one (1) mitigating circumstance, that of voluntary surrender, the minimum penalty for the felony must be imposed, i.e., reclusion temporal in its maximum period. This penalty, being less than life imprisonment, entitles the appellant to the benefits of the Indeterminate Sentence Law (People vs. Yturriaga, 86 Phil. 534, and other cases cited in Aquino, The Revised Penal Code, Vol. 1, pages 655-656).

The trial court found the accused-appellant guilty of murder, qualified by treachery, with the aggravating circumstance of premeditation, and imposed the penalty of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months imprisonment. As already noted, the finding of an aggravating circumstance is error, and even if such finding were correct, the penalty imposed would be erroneous. For, assuming the existence of an aggravating circumstance, then the proper penalty would be death, as the maximum penalty for murder. What the trial court imposed is the minimum period of reclusion temporal, when the minimum penalty for murder is reclusion temporal in its maximum degree (Article 248, Revised Penal Code). Obviously, one error was made on top of another.

Compensatory damages for the death of the victim were awarded by the trial court in the amount of P6,000.00. Under the prevailing jurisprudence, this amount should be P12,000.00 (People vs. Pantoja, 25 SCRA 468, and cases collated in the annotation to People vs. Mabaga, 28 SCRA 788).

FOR THE FOREGOING REASONS, the appealed judgment is hereby modified: (1) by sentencing the appellant, Cipriano Digamo, to an indeterminate penalty ranging from twelve (12) years and one (1) day to eighteen (18) years of reclusion temporal; and (2) by ordering said appellant to pay the heirs of Pedrito Jumawid the sum of P12,000.00 as compensatory damages. Costs against appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando and Teehankee, JJ., concur.
Barredo, J., did not take part.

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