

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN PEÑA, ACCUSED-APPELLANT.

G.R. No. 116022. July 01, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Juan Peña appeals from the decision of 31 May 1993[1] of the Regional Trial Court (RTC) of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-2069, finding him guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, “with all the accessories of the law, and to indemnify the heirs of Isidro Odiada, also known as Proceso Odiada, the sum of P87,000.00 as actual damages, P50,000.00 for the death of the victim” and to pay the costs of the suit.

Accused was charged with Murder in a complaint[2] filed with the Municipal Trial Court of Bula, Camarines Sur. After preliminary examination, said court issued a warrant for the arrest of the accused with no bail recommended.[3] Accused was arrested and thereafter detained at the Bula Police Station.[4]

After appropriate proceedings, the Municipal Trial Court, finding a prima facie case for murder against accused, transmitted the record of the case to the Office of the Provincial Prosecutor of Camarines Sur in Naga City.[5] On 22 July 1991, the Provincial Prosecutor’s Office filed an Information with the Regional Trial Court (RTC), Fifth Judicial Region, in Pili, Camarines Sur, charging Juan Peña with the crime of murder committed as follows:

That on or about the 20th day of June 1991, in Barangay Fabrica, Bula, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with the qualifying aggravating circumstances of treachery and evident premeditation, armed with a double-bladed weapon and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with said instrument one Isidro Odiada, then incumbent Barangay Captain of [the] same locality, thereby inflicting upon the latter, [sic] mortal wound on his body which directly caused his death, to his heir’s damage and prejudice in such amount as may be proven in court.

That the generic aggravating circumstances of dwelling, the crime having been committed within the premises of the victim’s house and disregard of the respect due to him on account of his rank of being a public official, were present in the commission of [the] herein charge.

ACTS CONTRARY TO LAW.[6]

The information was docketed as Criminal Case No. P-2069 and raffled to Branch 32 thereof. Upon arraignment, accused entered a plea of not guilty and waived pre-trial.[7] Trial commenced thereafter.

The evidence for the prosecution, as established by the testimonies of its witnesses, namely: Dr. Rosendo Prades, the Municipal Health Officer of Bula, Camarines Sur; Wilfredo Miday; Aristeo Odiada; Lydia Odiada; Rogelio Balderama; and SPO Claro Ballebar, was summarized by the trial court as follows:

On June 20, 1991 at about 5:00 o’clock in the afternoon, in Fabrica, Bula, Camarines Sur, in the yard of Isidro

Odiada, who is also known as Proceso Odiada, the incumbent barangay captain of said barrio, the accused, a chief of the Barangay Tanod, appointed by Odiada, but on that afternoon, informed of his relief, stabbed Isidro Odiada with a double-bladed knife, Exh. C, hitting Odiada at the right hypochondriac region, hitting the liver, Exh. A; Odiada was brought to the Camarines Sur Regional Hospital at Naga City where he died about an hour after admission; at the time Odiada was stabbed, he was [in] a prone position, having fallen from the chair he sat on when the accused pushed him; as Odiada tried to stand up, with his left hand trying to support his body, the accused held his right arm, raised his arm up and suddenly delivered the stab with a double-bladed knife he drew from his waist, then fled from the scene of the incident; the accused went to the direction of the ferry to the nearby barrio, but on his way, he met witness Balderrama, to whom he announced that Odiada was dead, having stabbed the latter; the accused threw his weapon among the grasses, but Balderrama retrieved it, and on June 22, 1991, produced it, on request, for the Bula Police.

Earlier, or on June 10, 1991, about noon time, accused announced to Aristeo Odiada his intention to kill Isidro Odiada had the latter passed his way, and averred he would not stop until he killed Isidro. Aristeo reported the matter to his uncle, Isidro, who made light of the accused's threat.

As a result of the death of Isidro Odiada, his common-law wife, Lydia Odiada spent P67,000.00 for the burial, pictures, plot and other funeral expenses of Isidro, aside from the food expenses incurred during the wake, estimated at P44,000.00, over a period of nine days, as Isidro was buried on the 28th of June, 1991.[8]

Dr. Rosendo Prades testified that the stab wound sustained by the victim was caused by a sharp bladed instrument, such as a knife, which hit and cut the victim's 10th rib and liver. Dr. Prades concluded that the cause of death was internal hemorrhage, or what is commonly known as massive blood loss inside the body, due to a fatal stab wound.[9]

Accused, the former chief of the barangay tanod of Fabrica, Bula, Camarines Sur, took the witness stand and likewise presented Dominador Villamer as a witness.

Accused admitted that he stabbed the victim, but presented a slightly different version of the incident. According to him, upon request of the victim, Barangay Captain Isidro Odiada, accused went to Isidro's house where accused engaged Dominador Villamer and Wilfredo Miday in a conversation. Isidro then ordered Wilfredo to buy San Miguel gin and beer grande. After Wilfredo left, Isidro informed accused of his removal as chief of the barangay tanod. Accused protested, but Isidro angrily responded that he should be followed. Wilfredo arrived with the gin and proceeded to open the bottles. Then Isidro sent Wilfredo back to the bahay kubo.[10] Isidro drank the first shot, followed by Dominador, while accused did not drink. In the course of the drinking session, Isidro called out to someone inside his house and requested this person to bring mangoes to consume while drinking, together with a knife to peel the mangoes. When these were brought, Isidro told accused to peel a mango, which accused proceeded to do. After peeling a mango, accused placed the knife on top of the table. Isidro drank a second shot, then berated anew the accused, who retorted that Isidro was welcome to remove accused from his position, but not to scold him in the process. Isidro took another shot of gin and subsequently stood up and proceeded to the house. Seeing this, accused touched Isidro's shoulder and told him that they should talk the matter over. This angered Isidro who forthwith ran to the table to get the knife, but accused was faster and was able to grab hold of the knife first. Afraid that Isidro might stab him, or that Isidro, a former member of the Philippine Army, might get his gun inside the house as he was under the influence of liquor, the accused stabbed Isidro.[11] Then accused left the scene of the crime and went to the ferry, but surrendered the day after the incident to P/Cpl. Carlos Pontanal, a policeman of Bula, Camarines Sur. He told the latter that he accidentally stabbed Isidro Odiada.[12]

Accused denied that he had a heated discussion with Isidro which provoked the former to push the latter on to the pavement, hold Isidro's right arm and stab him with the knife accused was carrying in his waist. Accused insisted

that he beat Isidro to the knife when the latter tried to get it from the table.[13]

According to defense witness Dominador Villamer, in the afternoon of 20 June 1991, he was at the house of Barangay Captain Isidro Odiada to follow up some barangay matters with the latter. There Villamer saw Wilfredo Miday, Antonio Undecimo and Lydia Odiada. Later, when accused arrived, Isidro asked accused to sit to right of Isidro, against the wall of the toilet. Isidro and the accused discussed the latter's resentment against the former. A heated discussion transpired between the two, but the misunderstanding was settled. Isidro then requested Wildredo to buy some gin and beer, and later, accused peeled a mango with a knife. While Isidro, the accused and Dominador were drinking, the accused asked Isidro why he removed accused as chief barangay tanod. Isidro confirmed that he indeed removed accused from the position. Upon hearing this, accused got mad and an exchange of words ensued between him and Isidro. Accused then held the knife and attempted to stab Isidro. Dominador saw Isidro wave both his open palms toward the accused and told the accused: "Do not do that bilas." Dominador then shouted at Isidro to run away. Isidro did and proceeded in the direction of the kitchen door, but as he reached it, accused grabbed Isidro's arm and threw him onto the pavement; and while Isidro was attempting to stand, accused approached Isidro and stabbed the latter at his lower right breast.[14]

On 31 May 1993, the trial court promulgated its decision,[15] the dispositive portion of which read:

IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered, finding the accused Juan Peña, Guilty, beyond reasonable doubt of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code, qualified by treachery, aggravated by disregard of the respect due the offended party on account of his rank, and evident premeditation, mitigated by the voluntary surrender of the accused, hereby sentencing the accused to suffer RECLUSION PERPETUA, with all the accessories of the law, and to indemnify the heirs of Isidro Odiada, also known as Proceso Odiada, the sum of P87,000.00 as actual damages, P50,000.00 for the death of the victim, with costs against the accused.

The accused is credited in full for the time he was under preventive detention.

SO ORDERED.

The trial court gave full faith and credit to the testimonies of the prosecution witnesses, finding that Wilfredo Miday testified in a manner bereft of artifice on matters he was in a position to observe. The trial court also pointed out various details in the testimony of defense witness Dominador Villamer which corroborated the prosecution's account of how the attack was carried out when Isidro was down on the pavement, and that the attack was sudden, unexpected and treacherous.

Accused seasonably filed his Notice of Appeal.

In the Appellant's Brief, which accused's counsel, Atty. Manuel P. Teoxon, filed on 5 March 1997 only after he had been fined and ordered arrested for failure to file the Appellant's Brief,[16] accused contends that the trial court erred in: 1) convicting him of murder and sentencing him to suffer the penalty of reclusion perpetua; 2) in finding that the crime was qualified by treachery; 3) in finding that the crime was aggravated by disrespect of rank due the offended party and evident premeditation; and 4) in ordering him to pay the sum of P87,000.00 as actual damages and P50,000.00 for the death of the victim.

As to the first and second assigned errors, accused argues that the crime committed was only homicide since there was no treachery, considering that the stabbing was preceded by a heated discussion; there was a struggle between him and the victim for possession of the knife before accused stabbed the victim; and at the time of the stabbing, he and the victim were facing each other.

As to the third assigned error, accused points out that both he and the victim were officials of the barangay and

there was want of evidence that accused deliberately attacked the victim by reason of his being the barangay captain; and that there was, as well, no proof of evident premeditation.

Anent the fourth assigned error, accused contends that there was no legal nor factual basis for the award of actual damages in the amount of P87,000.00 and P50,000.00 for the death of the victim.

In the Appellee's Brief filed on 17 October 1997, the Office of the Solicitor General sustains the trial court's findings and conclusions and prays that the assailed decision be affirmed in toto.

Although accused did not specifically invoke self-defense, such could be inferred from his testimony. Accordingly, the burden of evidence shifted to him, as is the settled rule. He then had to rely on the strength of his evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. As such, accused had to prove the essential requisites of self-defense, to wit: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression; and (c) lack of sufficient provocation on the part of the accused.[17] A thorough examination of the records shows that accused failed to discharge this burden.

Accused resolutely maintains that the aggression originated from the victim, and justifies stabbing the victim by asserting that he and the victim were struggling for possession of the knife and accused was just fortunate that he was able to wrest the knife from the victim before stabbing the latter. This, however, is inconsistent with his testimony that when the victim attempted to grab the knife on the table, accused rushed to it and got the knife ahead of the victim. This is likewise contradicted by prosecution witness Wilfredo Miday's testimony that accused suddenly pushed the victim and the latter fell, face down, on the pavement, whereupon accused held the victim's right arm and stabbed him; and by the testimony of accused's witness,[18] Dominador Villamer, that accused all of a sudden held a knife and attempted to stab Odiada, who then ran to the kitchen door where he was grabbed by accused, thrown down onto the pavement and subsequently stabbed while in that position.[19] It is then all too apparent that the first requisite of self-defense is absent. The unlawful aggression did not come from the victim; rather, it came from the accused himself. The aggression not having come from the victim, it logically follows that the second requisite is likewise inexistent and any claim of self-defense cannot prosper.

Having established that accused was not entitled to the justifying circumstance of self-defense, the next issue was whether the killing was qualified by treachery or evident premeditation. The trial court found the presence of both, but considered the latter a generic aggravating circumstance, which was correct if, indeed, both were present.

For treachery to be appreciated against the accused, two conditions must concur, namely: a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and b) the means of execution were deliberately or consciously adopted.[20] Moreover, treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing itself.[21]

We find that treachery was not established in this case. The victim was neither caught completely off guard, nor unaware of accused's attack, as a heated argument immediately preceded said attack. Secondly, it was disclosed by prosecution witness Aristeo Odiada that accused had mentioned his intention to kill the victim, which Aristeo reported to the victim who, in turn, did not take it seriously. This already served as notice to the victim and should have made him conscious of such threat every time he would meet the accused. In addition, accused first pushed the victim and the latter fell to the ground before he was stabbed, and they were facing each other. Lastly, there is at all no showing that the accused deliberately or consciously adopted the means of execution.

The prosecution likewise failed to prove evident premeditation.[22] There are three requisites which must be duly

proven before evident premeditation may be appreciated as an aggravating circumstance, namely: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[23] While the testimony of Aristeo Odiada would seem to indicate that accused had planned to kill the victim as early as ten days before the incident, there is a paucity of evidence as to acts of the accused manifestly indicating that he clung to his determination. Evident premeditation must be clearly proven, established beyond reasonable doubt and must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning.[24]

We likewise cannot uphold the lower court's finding of the aggravating circumstance of disregard of respect due to the offended party on account of his rank. There is no doubt that the victim was of higher rank than the accused since the former was the barangay captain, while the latter, as chief barangay tanod, was the former's subordinate. However, there is no proof of the specific fact or circumstance that the accused deliberately intended to insult the rank of the victim as barangay captain.[25]

The mitigating circumstance of voluntary surrender was duly proven and even admitted by the prosecution.[26]

In view of the foregoing, the crime proven in this case is not murder, but only homicide with the mitigating circumstance of voluntary surrender. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. With the mitigating circumstance of voluntary surrender, the penalty which may be imposed pursuant to the second paragraph of Article 64 of the Revised Penal Code is reclusion temporal in its minimum period. Accused is as well entitled to the benefits of the Indeterminate Sentence Law, which allows the imposition of an indeterminate sentence, with the minimum period within the range of the penalty next lower to that prescribed by law and the maximum period within the range of the latter after appreciating any modifying circumstances. Accused can thus be sentenced to an indeterminate penalty ranging from eight (8) years of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum.

As to the civil liability imposed by the trial court, some modifications are in order. The award for actual damages in the amount of P87,000.00 is reduced to P61,269.39, for such was the amount duly proved and supported by receipts presented in the course of the trial.[27] The civil indemnity for death in the amount of P50,000.00 is affirmed in accordance with the established policy of this Court.[28] Finally, accused's objection to Lydia Odiada allegedly being named the beneficiary of said amounts is totally baseless. The trial court did not specifically designate her as beneficiary; it awarded the civil indemnity to "the heirs of Isidro Odiada, also known as Proceso Odiada."

WHEREFORE, the judgment of Branch 32 of the Regional Trial Court of Pili, Camarines Sur in Criminal Case No. P-2069 is **AFFIRMED** subject to the above modifications. As modified, accused-appellant JUAN PEÑA is found guilty beyond reasonable doubt as principal of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code, instead of murder. Applying the Indeterminate Sentence Law and taking into account the mitigating circumstance of voluntary surrender, accused JUAN PEÑA is hereby sentenced to suffer an indeterminate penalty ranging from Eight (8) years of prision mayor minimum, as minimum, to Fourteen (14) years and Eight (8) months of reclusion temporal minimum, as maximum. The award of actual damages is likewise reduced from P87,000.00 to P61,269.39. Except as so modified, the rest of the challenged judgment stands.

Costs against accused-appellant.

SO ORDERED.

Bellosillo, Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Original Record (OR), 256-258; Rollo, 14-16. Per Judge Nilo A. Malanyaon.

[2] OR, 8.

[3] OR, 20-21.

[4] Id., 25.

[5] Id., 28-29.

[6] Id., 1.

[7] Id., 35.

[8] OR, 257; Rollo, 15.

[9] TSN, 27 November 1991, 10-12.

[10] From a reading of the transcripts, it would appear that this nipa hut was actually a makeshift structure which resembled a waiting shed.

[11] TSN, 4 February 1993, 3-13.

[12] Id., 17; TSN, 24 March 1993, 12.

[13] Id., 16.

[14] TSN, 15 December 1992, 2-20.

[15] Supra note 1.

[16] Rollo, 21, 22, 27, 32, 38, 43-45.

[17] Article 11 (1), Revised Penal Code; *People v. Boniao*, 217 SCRA 653 [1993]; *People v. Gomez*, 235 SCRA 444 [1994].

[18] TSN, 15 December 1992, 15-18.

[19] TSN, 4 December 1991, 7-8.

[20] Article 14(16), Revised Penal Code. See *People v. Estrellanes, Jr.*, 239 SCRA 235, 249 [1994]; *People v. Silvestre*, 244 SCRA 479, 494 [1995]; *People v. Hubilla, Jr.*, 252 SCRA 471, 481 [1996].

[21] *People v. Silvestre*, supra note 20.

[22] Article 14(13), Revised Penal Code.

[23] *People v. Narit*, 197 SCRA 334, 349 [1991]; *People v. Buka*, 205 SCRA 567, 587 [1992]; *People v. Castor*, 216 SCRA 410, 421 [1992]; *People v. Cruz*, 262 SCRA 237, 244 [1996].

[24] *People v. Florida*, 214 SCRA 227, 240-241 [1992].

[25] *People v. Talay*, 101 SCRA 332, 347 [1980].

[26] TSN, 24 March 1993, 18-19.

[27] OR, 120-146.

[28] People v. Taneo, 218 SCRA 494, 510 [1993]; People v. Rostata, 218 SCRA 657, 681[1993]; People v. Gornes, 230 SCRA 270, 280 [1994].

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