

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO PABILLO, ACCUSED-APPELLANT.

G.R. No. 122103. November 04, 2003

Ponente: TINGA, J.

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TINGA, J.:

Accused-appellant Wilfredo Pabillo together with his father and co-accused Alfredo Pabillo were charged with the crime of simple homicide before Branch IX of the Regional Trial Court of Palo, Leyte, 8th Judicial Region, under an Information[1] dated April 22, 1987. Before the accused could be arraigned, the prosecution amended the Information upgrading the crime of homicide to MURDER by alleging treachery as a qualifying circumstance. The accusatory portion of the Amended Information[2] reads:

That on or about the 30th day of November, 1986 in the Municipality of Alangalang, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to kill and with treachery, did, then and there willfully, unlawfully and feloniously, attack, assault, stab and wound one Francisco Ipil with the use of long bolos which the accused had provided themselves for the purpose, thereby hitting and inflicting mortal wounds on the different parts of the body of the said Francisco Ipil which caused his death thereafter.

Contrary to law.

On October 10, 1988, the two accused pleaded "Not Guilty" to the charge.[3] Accused Alfredo (hereafter, Alfredo) however died during the pendency of the case or before any judgment could be rendered by the lower court;[4] thus, only appellant Wilfredo Pabillo (hereafter, Wilfredo) elevated the judgment to this Court.

The prosecution's version of how the killing occurred differs from that of the appellant's. Hereunder is the People's version.

At about 8:00 o'clock in the evening of November 30, 1986, Francisco Dador (hereafter, Dador) was at the house of his cousin Eduardo Taborada at Sitio Guintadcan, Brgy. Salvacion, Alangalang, Leyte, on the occasion of the 40th day prayers for the latter's deceased wife.[5] While he was waiting for supper to be served, the deceased Francisco Ipil (hereafter, Ipil) arrived. Dador invited him in.[6] Thereafter, the Pabillo father and son arrived. Both men were armed with unsheathed bolos.[7]

"Baludo,[8] please come out because I have an important matter to discuss with you," Alfredo called out.[9] Ipil "slowly" went out. As soon as Ipil neared the duo who were then standing side by side, Wilfredo pushed Ipil forward with his left hand.[10] Ipil "struggled" and stumbled forward. Suddenly, Wilfredo hacked him on the head with the long bolo he held with his right hand. When Ipil started to fall down, he was hacked on the left arm, this time by Alfredo. Ipil started to run but Wilfredo struck again, hitting Ipil's back. Ipil managed to run towards the back of Eduardo's house, and subsequently fell into the creek.[11] Alfredo was heard to have uttered, "Never mind him because he is going to die." [12] Subsequently, the father and son tandem fled the scene towards the ricefield.[13] All of these Dador, the prosecution's main witness, saw with the aid of the light coming from the

house and the flashlight carried by the accused[14].

When everything quieted down, Dador went to the creek to look for Ipil. He found him lying on his back. He pulled Ipil from the creek and put him on dry ground. Thereafter, he went to see Constancia Ipil, the victim's mother, to inform her of the incident. Constancia then requested her other son, Samuel, to go with Dador.[15]

Ipil was lying face up and was still breathing when Samuel reached him. He asked Ipil who hacked him and the latter answered, "Sammy, I was hacked by Wilfredo Pabillo and Alfredo Pabillo and bring me to the hospital because I might die." [16] Samuel and Dador put Ipil on a sledge and they proceeded to bring him to the hospital. Unfortunately, Ipil expired before reaching the National Highway.[17]

The Post-Mortem Examination Report[18] prepared by Dr. Edilberto Trinidad showed that Ipil died of hemorrhage due to the following hacking injuries:

- Hacking wound, 6 inches long, 2 inches wide and 3 inches deep located on the left elbow cutting muscles, blood vessels and the bone.
- Hacking wound, 5 inches long, 1 inch wide and 3 inches deep located on the head, right frontal region cutting muscles, blood vessels, skull and the brain.
- Wound, 1 ½ inches long, ½ inch wide and ¼ inch deep located at the left scapular region cutting muscles and blood vessels.

On the other hand, the defense weaved a different tale.

Testifying on his own behalf, Wilfredo made this narration: At approximately 8:00 o'clock in the evening of November 30, 1986, Wilfredo, together with one Rodrigo Caones, was visiting Dadoy Aporada's daughter, Belinda Aporada at their house situated at Sitio Guintadcan, Barangay Salvacion, Alangalang, Leyte.[19] Alfredo was also in the same house attending the 40th day prayer for the deceased wife of Dadoy Aporada. Alfredo was having a drinking spree with Dadoy Aporada, Ipil who was Alfredo's nephew by affinity, and some other men.[20]

Wilfredo heard his father and Ipil arguing so he went downstairs.[21] He did not know how the argument started or what they were arguing about.[22] He proceeded to pacify his father and convinced him to come with him. Ipil, together with Rogelio Brizo and Eleazar Sabela, left ahead of them.[23]

While they were walking away from the house, Ipil came back and challenged his father to a fight.[24] Wilfredo tried to calm them down but he failed. He ran to the neighboring house to ask for help but the occupants were also afraid to intercede so he came back alone.[25] On his way, he met his father who admitted having inflicted wounds upon Ipil.[26] They also met Dador, who inquired from Wilfredo what had happened. He explained that his father and Ipil had a fight. Dador left them and proceeded to Dadoy's house.[27] His father surrendered to the authorities the following day.[28]

Clara Bisio also testified for the defense. She narrated that in the evening of November 30, 1986, she was at the house of Dadoy Tampurada attending a rosary prayer. Also present were Ipil, Alfredo and Wilfredo.[29] When she went home, Alfredo and Wilfredo were with her in a group.[30] Suddenly, she heard a commotion and people ran in different directions. She had no knowledge about the incident subject of the case because she did not see to which direction Wilfredo had ran.[31]

The Regional Trial Court found the accused guilty of murder in a Decision[32] dated January 14, 1994, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds accused Wilfredo Pabillo guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code and there being no aggravating or mitigating circumstances to off-set the same, the Court hereby imposes upon said accused the penalty of RECLUSION PERPETUA and to indemnify the heirs of the deceased Francisco Ipil the sum of P50,000.00 for the death of the latter and to pay the costs. The bail bond of the accused is hereby ordered cancelled and the convicted accused is hereby ordered committed immediately (sic) to jail pursuant to the Supreme Court Circular to that effect.

SO ORDERED.

Wilfredo elevated to this Court the RTC judgment and assigned as sole error the following:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF TREACHERY AS ATTENDANT IN THE COMMISSION OF THE CRIME.[33]

We do not entertain any doubt that Wilfredo delivered the fatal bolo blows on Ipil in the evening of November 30, 1986. This conclusion can be drawn from the direct, positive and categorical assertions made by prosecution witness Dador regarding the identity of the assailants, the details of the assault, and the weapons used.

Dador narrated that when Ipil reached the duo, Wilfredo suddenly got hold of Ipil's arm, pushed him towards the front, and hacked him on the head. This was followed by Alfredo's hacking blow on Ipil's left arm when the latter was about to fall. When Ipil tried to run, he was again hacked at the back by Wilfredo. This straightforward account of how Ipil was killed very closely corresponded with the descriptions of Ipil's wounds as detailed in the Post-Mortem Examination Report[34] as follows: hacking wound located on the left elbow, hacking wound on the head, right frontal region, and wound at the scapular region. This physical evidence speaks more eloquently than a hundred witnesses.[35] Consistent with the testimony of the principal prosecution witness, it establishes beyond reasonable doubt the culpability of accused-appellant.

Moreover, the ante-mortem statement of the victim, made under consciousness of imminent death, pointed to Wilfredo and his father as the perpetrators of the crime. The trial court correctly considered the declaration of the victim "Sammy, I was hacked by Wilfredo Pabillo and Alfredo Pabillo and bring me to the hospital because I might die" as Ipil's dying declaration. The Court in a number of cases[36] consistently upheld the admissibility of a dying declaration, the requisites of which are: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and, that the declaration is offered in a criminal case for homicide, murder or parricide, in which the declarant is a victim.

The established facts in this case show that all these requisites concur. When he made the statement, Ipil was conscious of his impending death. This may be gleaned not only from his insistence that he should immediately be brought to the hospital, but also from the serious nature of his wounds and the fact that he died shortly afterwards.

It is well to point out that at the trial, Wilfredo firmly maintained that he did not participate in the killing of Ipil. He claimed that he was a mere spectator and conveniently shifted the blame to his father Alfredo, whose lips have already been sealed by death. The trial court therefore soundly rejected his version of denial as a plain afterthought, a devised plot to escape punishment that cannot prevail over the positive testimony of the prosecution witness and the physical evidence that supports the judgment of conviction. Now on appeal, he no longer contradicts the theory of the prosecution that he and his father confederated in the attack on Ipil and that he

inflicted the fatal injuries which led to death of the victim. Instead, he assigns as the sole error the alleged failure of the prosecution to prove the qualifying circumstance of treachery beyond reasonable doubt. This change of strategy merely accentuates the strength of the prosecution evidence which sufficiently rebutted the constitutional presumption of innocence.

Wilfredo has been charged with and convicted of the crime of murder. Article 248[37] of the Revised Penal Code, as amended, provides that to be liable for murder, the prosecution must prove that the accused committed the killing of another person under any of the attendant circumstances specified therein. Of these circumstances, the prosecution alleged in the Amended Information[38] the qualifying circumstance of treachery to elevate the killing to murder. Unfortunately, the trial court failed to discuss the presence or absence of treachery in the body of the decision although obviously, it was considered in qualifying the killing and convicting the accused of murder.

Nevertheless, such a lapse is not fatal to the validity of the decision. An appeal in a criminal proceeding throws the whole case open for review of all errors, by commission or by omission, as may be imputable to the trial court.[39] A painstaking scrutiny of the evidence in this case leads us to agree with the trial court that the accused-appellant is guilty of murder.

Under substantive law, there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[40] Two conditions must then concur for treachery to be present, viz., (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and; (2) the deliberate or conscious adoption of the means of execution.[41]

Upon the facts established by the prosecution, we agree with the trial court that the crime committed by Wilfredo was accompanied by alevosia. In this regard, the Solicitor General[42] agrees that this circumstance has been correctly taken into account in qualifying the crime to murder.

On this point, Wilfredo avers in his appeal brief that the prosecution failed to show that the assault made upon the person of Ipil was not sudden and unexpected as to have caught the deceased unprepared to meet the assault, noting that when Ipil went out to face his assailants, he already sensed the danger upon seeing that both of them were armed with unsheathed bolos. We disagree.

Ipil had no foreboding of the danger he would be facing when he went down to meet Alfredo and Wilfredo. There is nothing in the evidence to indicate that the duo's manner and behavior, when they requested him to come down, was in any way threatening. Alfredo was his uncle by affinity, while Wilfredo was his relative by consanguinity. As correctly pointed out by the Solicitor General, Ipil could not have anticipated that they would hurt or kill him at a place where so many people could witness the crime and where prayers were being held for a departed soul.[43]

The testimony of the eyewitness, Francisco Dador, sufficiently established the presence of treachery. The following was Dador's testimony:[44]
called for Francisco Ipil?

...

Q: What happened after the two accused both surnamed Pabillo arrived?

A: Alfredo Pabillo called Francisco Ipil to go out of the house.

Q: Who actually called Francisco Ipil alias Baludo?

A: Alfredo Ma'am.

Q: Who is this Baludo?

A: Francisco Ipil ma'am. He was the one.

Q: What did Alfredo said to Francisco Ipil when he called him to go out of the house?

A: He said, Francisco Ipil alias "Baludo" said (sic), please come out because I have an important matter to discuss with you.

Q: Where was Alfredo when he called for Francisco Ipil?

A: He was in the yard of the house.

Q: Did you see if Alfredo had anything with him while calling for Francisco Ipil?

A: I saw that he was carrying something.

Q: What was he carrying?

A: A bolo.

Q: How was the bolo held?

A: He was holding the bolo with his right hand.

Q: At the time Alfredo was calling Francisco where was he? Wilfredo also?

A: They were standing side by side.

Q: Did you see if Wilfredo was carrying anything also?

A: Yes ma'am.

Q: What was he carrying?

A: A long bolo.

Q: How did Francisco Ipil react when he was called by Wilfredo?

A: He went out of the house slowly.

Q: To what direction?

A: Towards the front of Wilfredo Pabillo.

Q: What happened after Francisco Ipil went out of the house?

A: He was pushed by Wilfredo using his left hand. (witness demonstrating)

Q: To what direction was he pushed?

A: Towards the front.

Q: What happened to Francisco after he was pushed?

A: He struggled.

Q: Then, what happened?

A: He was met with a hacking thrust towards the head.

Q: By whom?

A: Wilfredo Pabillo.

Q: What did Wilfredo Pabillo used in hacking?

A: A long bolo.

Q: How long was the bolo?

A: 39 inches, more or less to (sic) and a half feet.

Q: Was Francisco Ipil hit?

A: On his forehead.

Q: What happened after Francisco was hit?

A: When he was about to fall down he was hacked on his left arm.

Q: Who hacked him on his left arm?

A: Wilfredo.

...

Q: Was he able to retaliate?

A: No ma'am.

Q: Was he carrying anything at the time he was hacked?

A: No ma'am.

Q: What happened after he was hit on the left arm?

A: While Francisco Ipil was about to run, this Wilfredo Pabillo again hacked him hitting on his back.

Dador's straightforward account of the events on that fateful night was consistent even during the cross-examination:[45]

Q:

Did you see any danger when you saw the two holding their bolos while they were calling Francisco Ipil to come down?

A:

No, sir.

Q:

So you did not mind (sic) of any danger?

A:

No, sir.

Q:

And you know these two Pabillos?

A:

Yes, because we are barangay mates.

Q: You did not invite them to the house for supper?

A: No, sir.

Q: You also did not see any danger when you saw Francisco Ipil being pushed by Wilfredo?

A: I was looking at them and I did not say anything.

Q: Of your own knowledge, was there any grudge between them?

A: No, sir.

Q: How did Wilfredo push Francisco Ipil?

A: By using his left hand towards the front of Francisco.

Q: Did you not say that he was holding with his right hand the bolo?

A: Yes, sir.

Q: And this Francisco and Wilfredo were facing each other?

A: They were adjacent to each other.

Q: And with the left hand holding the flashlight he used that flashlight to push Francisco?

A: Yes, it was his knuckles that hit Francisco.

Q: When he was pushed was it backwards or to the front?

A: Towards the front.

Q: Who hacked first?

A: Wilfredo sir.

Q: And as Francisco staggered (sic) forward he was met by Wilfredo?

A: He was met with a hacking thrust by Wilfredo.

Q: And what happened to Francisco?

A: He fell down.

...

Q: And Francisco did not say anything while he was being hacked?

A: No, sir.

Q: Neither did you hear any word from Wilfredo and Alfredo?

A: No, sir.

Q: You mean there was no noise that you heard while the hacking blows was (sic) going on?

A: Alfredo said something.

Q: What did he say?

A: Never mind him because he is going to die.

Q: Is that all what (sic) you heard?

A: That was after Francisco was hit in the head.

Q: And the hacking blows were delivered successively one on the elbow, on the forehead and at the back and then Francisco fell to the creek?

A: Yes, sir.

Q: And you said that you saw Francisco run?

A: Yes, sir.

Q: Even if it was dark you still saw him running?

A: Yes, because the light inside the house illuminated around the house.

...

The foregoing testimony clearly established the presence of the requisites of treachery. The attack by Alfredo and Wilfredo on the victim was sudden, unexpected, without warning, and without provocation. Ipil's action of going out of the house to meet the duo shows that he never expected an assault from them. He did not know what was coming. He was pushed, and immediately hacked without a word being uttered. He was totally unprepared. Thus, he was unable to put up a defense. All that he was able to do after the two (2) mercilessly hacked him on the head and left arm was to run. Without remorse, Wilfredo attacked him from behind.

It is also obvious that the accused-appellant and his deceased father employed means or methods in the execution of the crime which tended directly and specially to insure its execution without risk to themselves arising from the defense which the victim might have made. The combined, unrelenting attack was executed against an unarmed victim in such a manner that the latter had no chance of defending himself, albeit the attack was frontal.

In *United States v. Cornejo*,^[46] this Court ruled that "it is proper to consider treachery as a qualifying circumstance of murder if the attack was sudden and unexpected and not preceded by any dispute and the deceased was unable to prepare his defense though he was face to face with his assailant." In said case, the victim was requested by the two (2) accused to come down from a house. He descended as he was told. One of the accused told the victim that he needed the latter and they, with the other accused, went out of the house. After they had gone a few yards, one of the accused, without uttering a word, turned halfway and struck the victim a blow on the head with a palma brava club and followed it up with two more blows. As the victim stooped over, the other accused struck him several blows in the face with a bolo and then the assailants fled. They were convicted of murder qualified by treachery and aggravated by premeditation.

In *People v. Basadre*,^[47] we likewise found the attack made by the assailant face to face with the victim while the latter was leaning on a juke-box scanning the list of musical selections available to play to be qualified by

treachery, considering that the latter was unarmed, was totally unaware of the coming attack and was not in apposition to defend himself. So is the killing in *People v. Ablao*,^[48] where the accused, after detaching himself from the cluster of people, walked to where the victim was, put his left arm around the victim's shoulder and then whipped out a stainless, pointed, bladed knife and repeatedly stabbed the victim on the front portion of his body.^[49]

In this case, all the elements of treachery as defined in Article 14, paragraph 16, of the Revised Penal Code were likewise established beyond doubt.

On the matter of appellant's civil liability *ex delicto*, it has been the ruling of the Court to outrightly award P50,000.00 as indemnity to the heirs of the victim.^[50] Thus, we uphold the trial court's award of P50,000.00 as damages. Moreover, as ruled in *People vs. De Los Santos*,^[51] an additional award of P25,000.00 as temperate damages is justified in the absence of proof for the award of actual damages, and a further P25,000.00 as exemplary damages, in accordance with our ruling in *People v. Nicolas*.^[52]

WHEREFORE, premises considered, the decision of the RTC convicting Wilfredo Pabillo of murder and sentencing him to reclusion perpetua and to pay the heirs of the victim Francisco Ipil the sum of P50,000.00 as indemnity and damages is hereby **AFFIRMED** with **MODIFICATION**. As modified, appellant is hereby ordered to pay the heirs of Francisco Ipil the additional amount of P25,000.00 as temperate damages and P25,000.00 as exemplary damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Record, p. 1.

[2] *Id.*, p. 39.

[3] Vide Order dated August 10, 1988, Record, p. 76.

[4] Vide Certificate of Death of Alfredo Pabillo, Record, p. 107.

[5] TSN dated January 23, 1989, pp. 3, 7.

[6] *Id.*, p. 3.

[7] *Id.*, pp. 3-4.

[8] The victim's alias as testified to by witness Dador, *Id.*, p. 3.

[9] *Id.*, p. 4.

[10] *Id.*, pp. 4-5.

[11] *Id.*, pp. 5-6.

[12] *Id.*, p. 11.

[13] *Id.*, p. 12.

[14] *Id.*, pp. 5, 12.

[15] *Id.*, pp. 6-7.

[16] TSN dated March 29, 1989, p. 2.

[17] Ibid.

[18] Exhibit "A", Record, p. 6.

[19] TSN dated October 30, 1989, p. 2.

[20] Id., p. 4.

[21] Ibid.

[22] Id., pp. 7-8.

[23] Id., p. 4.

[24] Id., pp. 4-5.

[25] Ibid.

[26] Ibid.

[27] Id., pp. 5-6.

[28] Id., p. 6.

[29] TSN dated March 28, 1990, pp. 2-3.

[30] Id., p. 3.

[31] Ibid.

[32] Record, pp. 150-157.

[33] Rollo, p. 67.

[34] Exhibit "A", supra.

[35] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650.

[36] *People v. Hernandez*, G.R. Nos. 67690-91, January 20, 2002, 205 SCRA 213; *People v. Israel*, G.R. No. 97027, March 11, 1994, 231 SCRA 155; *People v. Apa-ap, Jr.*, G.R. No. 11093, August 17, 1994, 235 SCRA 468; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385.

[37] Art. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

- In consideration of a price, reward or promise.

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a

volcano, destructive cyclone, epidemic or other public calamity.

- With evident premeditation.

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, outraging or scoffing at his persons or corpse.

[38] Amended Information, *supra*.

[39] *People v. Valerio*, 197 Phil. 883 (1982).

[40] Paragraph 16, Article 14, Revised Penal Code.

[41] *People v. Caisip*, G.R. No. 119757, May 21, 1998, 290 SCRA 451, 461 [1998].

[42] *Vide Appellee's Brief*, Rollo, pp. 90-102.

[43] *Appellee's Brief*, *supra*, p. 9.

[44] TSN dated January 23, 1989, pp. 3-6.

[45] *Id.*, pp. 10-12.

[46] 28 Phil. 457 (1914), cited in I Ramon C. Aquino and Carolina Grino-Aquino, *The Revised Penal Code*, 1997 ed., p. 434.

[47] G.R. No. L-36383, April 17, 1984, 128 SCRA 641.

[48] G.R. No. 99839, January 14, 1994, 229 SCRA 280.

[49] *People v. Basadre*, 128 SCRA 641; *People v. Abalo*, 229 SCRA 280.

[50] *People v. Callet*, G.R. No. 135701, 09 May 2002.

[51] G.R. No. 135919, 09 May 2003.

[52] G.R. No. 137782, 01 April 2003.

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