

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO ACADEMIA, JR. Y BALDADO ALIAS" JUN", ACCUSED-APPELLANT.

*G.R. No. 129251. May 18, 1999*

Ponente: PUNO, J.

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### PUNO, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 39, Dumaguete City, finding accused-appellant guilty of murder.

In an information dated 28 June 1991, Pedro Academia, Jr., alias "Jun", was charged with murder, viz:

"That on May 15, 1991 at about seven o'clock in the evening, at Sitio Elli, Barangay Magsulay, Bayawan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously armed with a short firearm assault, attack and shoot one Edmar Cañete, thereby inflicting on the victim the following injuries, to wit:

`CARDIO-RESPIRATORY ARREST

SEPTICEMIA

GUNSHOT WOUND, LEFT HYPOCHONDRIAC AREA OF ABDOMEN'

which injuries caused his death soon thereafter. Contrary to Article 248 of the Revised Penal Code."[1]

The prosecution evidence show that on 14 May 1991, Emmaculada Academia, the mother of the accused-appellant, Pedro Academia Jr., lost Forty Pesos (P40.00) at the house of Francisco Piñes. Brono Baldado, son of Erlindo Baldado, a brother of Emmaculada Academia, was suspected as the thief.[2]

On 15 May 1991 at about seven o'clock in the evening, accused-appellant, together with his younger brother nicknamed Dungkoy, went to the house of Erlindo Baldado and challenged him to a fight saying, "You come down, Tiyo and let's have a fight." [3] Erlindo Baldado refused.

Accused-appellant and his brother then proceeded to the house of Piñes where they found Brono Baldado. After a while, Brono was heard shouting for help-Tabang! Tabang! Erlindo jumped down from his house and rushed to the direction of his son's cry. He saw the accused-appellant pointing a short firearm at his son. Thereupon, Brono ran toward their house.

An argument about the money that was lost ensued between accused-appellant and Erlindo. The victim, Edmar Cañete, and his wife were present during this episode. Edmar, who was then about five arms length away from accused-appellant, tried to pacify them by pointing out that they were relatives.[4] Accused-appellant is the nephew of Erlindo. Accused-appellant, however, refused to listen to Edmar. He replied, "Edmar, don't intervene on this lest I will (sic) shoot you." [5] Forthwith, he fired twice, hitting Edmar in the stomach. He fled after the shooting.

Edmar was brought to his house and then to the Bayawan District Hospital. He was transferred to the Negros Oriental Provincial Hospital where he died a day after undergoing surgery.[6]

The version of the defense is that accused-appellant is a member of the White Tape Bolo Battalion or Civilian Volunteers Organization which helps in the counter-insurgency drive in Negros Oriental.[7] The victim Edmar Cañete was allegedly a member of the CPP/NPA.[8]

On 15 May 1991, at about seven o'clock in the evening, accused-appellant was at home with his wife, Carmelita Academia, and their three children. The pigs at the back of their house were making noise. Thus, he went down, carrying a shotgun and a flashlight, to investigate.[9] He saw three masked men trying to steal their pigs. He warned them not to move. Shots were fired. All this time, his wife was embracing their children-hiding behind their corn grinder.[10]

After the shots, accused-appellant asked his wife, "Day, were you not hit?" She replied, "Keep quiet, lest you will be fired (sic)."[11] There was silence. Moments later, accused-appellant joined them.

The following morning, they saw spots of blood at the elevated portion of their house. They reported the incident to their barangay captain, Elias Batan Sr., who advised them to go home since they do not know the identity of the masked men. Days later, accused-appellant was arrested for the killing of Edmar Cañete.[12]

On 27 December 1996, accused-appellant was convicted of murder by the trial court. It put great stress on accused-appellant's positive identification. It also found that the killing was attended by treachery as the victim was unaware of the murderous design by accused-appellant. Moreover, the shooting was sudden, without warning, and made at pointblank range, thereby affording the victim no opportunity to put up any defense. Accused-appellant was not exposed to any risk whatsoever. The dispositive portion of the judgement reads:

x x x

"WHEREFORE, in view of the foregoing considerations, there being no attendant mitigating circumstance, the Court finds the accused PEDRO ACADEMIA, JR., GUILTY of the crime of Murder under Article 248 of the Revised Penal Code beyond reasonable doubt and hereby sentences to (sic) the penalty of Reclusion Perpetua although Article 248 has been amended by Republic Act No. 7659 because the offense charged against the accused was perpetrated on May 15, 1991, before Republic Act No. 7659 took effect on December 31, 1993. Accused is likewise ordered to indemnify the heirs of victim EDMAR CAÑETE in the amount of Fifty Thousand (P50,000.00) Pesos and to pay the costs.

SO ORDERED."[13]

Accused-appellant now comes to this Court assigning a sole error, viz:

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT (sic) OF MURDER DESPITE THE ABSENCE OF QUALIFYING CIRCUMSTANCE OF TREACHERY AND EVIDENT PREMEDITATION."[14]

In its Brief, the Office of the Solicitor General agreed with the accused-appellant that the trial court erred in convicting him for murder. The Solicitor General recommended that accused-appellant should be convicted of homicide as the evidence for the prosecution failed to prove treachery and evident premeditation.

We agree.

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 are the offended party might make.[15] Treachery must be proved by clear and

convincing evidence, or as conclusively as the killing itself. And to appreciate it, two conditions must concur, viz.: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) that said means of execution be deliberately and consciously adopted.[16] Its essence lies in the adoption of ways that minimize or neutralize any resistance which may be put up by the offended party.[17]

As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply, however, where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused.[18]

In the case at bar, evidence is wanting that treachery was employed by the accused-appellant when he shot the victim. At the onset of the incident, his ire was directed against Brono and Erlindo. The victim was not the object of accused-appellant's anger. He became so only when he tried to intercede. Accused-appellant could not have carefully thought about the manner on how he will shoot the victim. He could not have consciously adopted his mode of attack for he did it in a fit of uncontrollable rage.

It is unnecessary to consider the presence of evident premeditation for the trial court itself did not consider this circumstance. In any event, for evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements thereof, viz.: 1) the time when the offender determined to commit the crime, 2) an act manifestly indicating that he has clung to his determination; and 3) sufficient lapse of time between determination and execution to allow himself to reflect upon the consequences of his act.[19] The evidence contained in the records do not support evident premeditation.

In sum, the crime committed is homicide and not murder. Article 249 of the Revised Penal Code provides that the penalty for homicide is reclusion temporal. Since neither aggravating nor mitigating circumstances attended the commission of the crime, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum period of the sentence should be in the range of prision mayor.

IN VIEW WHEREOF, the judgment of the trial court is modified. Accused-appellant is found guilty of homicide and is sentenced to an indeterminate penalty of 8 years prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum. The judgment is affirmed in all other respect.

### **SO ORDERED.**

Bellosillo (Chairman), Mendoza, and Quisumbing, JJ., concur.  
Buena, J., on leave.

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[1] Rollo, p. 14; Records, p. 2.

[2] TSN, November 11, 1992, p. 5.

[3] TSN, March 12, 1993, p. 15.

[4] TSN, November 11, 1992, p. 7.

[5] Ibid., p. 28.

[6] TSN, March 12, 1993, pp. 36-37, 41.

[7] Memorandum Exhibits 3, 4, 5 and 6; Records, pp. 224-227.

[8] TSN, November 27, 1995, p. 16; TSN, May 4, 1995, pp. 3-5.

- [9] TSN, July 14, 1995, pp. 3-4.
- [10] TSN, October 5, 1995, pp. 4-6.
- [11] TSN, March 10, 1995, p. 13.
- [12] Ibid., pp. 11-18.
- [13] Judgment, p. 11; Rollo, p. 38.
- [14] Appellant's Brief, p. 1.
- [15] Article 14, par. 16, Revised Penal Code.
- [16] People vs. Porras, 255 SCRA 514 (1996).
- [17] People vs. Ganzagan, Jr., 247 SCRA 220 (1995).
- [18] People vs. Real, 242 SCRA 671 (1995), citing People vs. Aguiluz, 207 SCRA 197 (1992).
- [19] People vs. Baydo, 273 SCRA 526 (1997).

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