

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLITO GADIN, JR. ALIAS "AY-AY", ACCUSED-APPELLANT.*G.R. No. 130658. May 04, 2000*

Ponente: PARDO, J.

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The case is before the Court on automatic review of the decision of the Regional Trial Court of Catbalogan, Samar, Branch 28 convicting Orlito Gadin, Jr. alias "Ay-Ay" of murder and sentencing him to death, to indemnify the heirs of the victim Elito Pajanustan in the amount of Thirty Two Thousand Four Hundred Pesos (P32,400.00) as actual damages and Two Hundred Thousand Pesos (P200,000.00) as exemplary and moral damages, and to pay the costs.[1]

On June 6, 1995, Samar Provincial Prosecutor Juan C. Latorre, Jr. filed with the Regional Trial Court, Branch 28, Catbalogan, Samar an information charging Orlito Gadin, Jr. alias "Ay-Ay" with homicide. However, after reinvestigation of the case, on February 6, 1996, Assistant Provincial Prosecutor Wayne M. Villarin of Samar filed an amended information charging the accused with murder, committed as follows:

"That on or about the 13th day of March 1995 at nighttime which was purposely sought, at Purok 1, Barangay Muñoz, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Elito Pajanustan with a knife with which the said accused had conveniently provided himself for the purpose, thereby inflicting upon said Elito Pajanustan a stab wound on his chest, which wound directly caused his death."[2]

Thus, on March 13, 1996, accused Orlito Gadin, Jr. was arraigned under the amended information. He pleaded not guilty to the murder charge.[3] Accordingly, trial ensued.

The facts, as found by the trial court, are as follows:

On March 13, 1995, at around 10:00 in the evening, Rowena Dacut, Jessie Mabini and Elito Pajanustan were drinking Tanduay mixed with beer while sitting on benches along the roadside of Purok I, Barangay Muñoz, Catbalogan, Samar. Orlito Gadin, Jr. arrived and stood in front of Elito Pajanustan. Rowena Dacut offered him a drink but Gadin merely stared at them. Suddenly, Orlito Gadin drew a knife from the left backpocket of his pants. He thrust the knife into the chest of Pajanustan, causing the latter to fall down.[4]

Then, Orlito Gadin ran away, still holding the knife. Rowena chased after him, asking him why he stabbed Pajanustan. Orlito did not answer and kept running about half a meter more towards his uncle's house. He entered the house and hid the knife used to stab Pajanustan. Subsequently, he ran out of the house and disappeared. After a few minutes of futile search for Orlito, Rowena returned to the place where Pajanustan was stabbed and found that Jessie Mabini had left the scene. Rowena saw Pajanustan wounded and sprawled on the ground. She told her mother to inform the mother of Elito Pajanustan as to what had just occurred and brought the wounded Elito to

Samar Provincial Hospital.

At the hospital, Nelia Redito arrived and found her son, Elito Pajanustan, in the operating room. She approached him and asked him what happened. He replied, "Ma', Ma', Orlito Gadin Ma', abugho 'Ma guin buno ako.'" ("Mama, Mama, I was stabbed by Orlito Gadin because of jealousy.").^[5] Shortly thereafter, Elito Pajanustan expired.

Dr. Senecia Q. Yong, Municipal Health Officer, conducted a post mortem examination of the body of deceased Elito Pajanustan and concluded that the cause of death was shock, irreversible, due to profuse external and internal hemorrhage from a stab wound. The wound, measuring 2 cm. in length, 0.5 cm. in width and 17 cm. in depth located along the right sternal border and at the level of the 2nd ICS, was directed laterally hitting the right lung parenchyma.^[6] There were no other marks or contusions on the body of the deceased.^[7]

Accused Orlito Gadin, Jr., however, narrated a different version of the events.^[8] At around 9:30 in the evening of March 13, 1995, Orlito went to Barangay Muñoz to buy barbecue. While at the barbecue stand, Rowena Dacut, from across the street, called Orlito. He knew Rowena, since she was his godsister.^[9] He saw her sitting with two other persons, drinking Tanduay with beer. He approached them but refused their offer to drink with them. He conversed with Rowena for approximately thirty minutes. In the course of the conversation, he noticed that one of the drinking companions of Rowena kept interrupting them and insulting him. This person was Elito Pajanustan.

Orlito then requested permission to leave. Suddenly, Elito Pajanustan grabbed a glass and banged it on the table. Then, he stood up and punched Orlito on his left chest. Orlito returned the punch given him. Elito saw a knife on top of the table which was used to crack ice. He took the knife and tried to stab Orlito with it. Using both of his hands, Orlito grasped the hand of Elito and tried to twist his arm. In the course of the struggle, Orlito managed to take hold of the knife. Elito grabbed a bottle of beer and tried to hit Orlito with it. The latter moved backward to avoid the advancing Elito, but realized that a bench obstructed his path. He pushed Elito using both his hands in order to avoid tripping backward over the bench, unmindful that he was still holding the knife. Orlito thrust the bladed instrument into Elito's chest. Elito fell on his back towards the adjacent table. Orlito stood his ground, not knowing what happened, until he heard someone declare that Elito had been wounded. Orlito ran from the scene, accidentally dropping the knife. He ran until he reached his house, located in the same barangay. He hid behind his house, fearful of the persons chasing him.

Afterwards, he hid beneath the swamps of Barangay Muñoz until policemen arrived and surrounded the area. Orlito, after ascertaining that the companions of Elito were not within the vicinity, came out and surrendered to the police. The policemen never found the knife used to stab Elito Pajanustan.

Orlito testified that he never met Elito Pajanustan before the incident. He also alleged that Rowena Dacut was his godsister and that he did not know any reason why she would testify falsely against him.^[10]

On April 23, 1997, the trial court rendered decision,^[11] the dispositive portion of which reads:

"WHEREFORE, premises considered, it appearing that the prosecution had adequately proven the guilt of the accused beyond reasonable doubt to the crime of murder which is a capital offense, there being presence of the aggravating circumstances of treachery and evident premeditation, the accused Orlito Gadin, Jr. is hereby sentenced to suffer a penalty of DEATH; to indemnify the heirs of the deceased Elito Pajanustan, represented by his mother, Nelia C. Redito in the amount of Thirty Two Thousand Four Hundred (P32,400.00) Pesos for actual damages and Two Hundred Thousand (P200,000.00) Pesos for exemplary and moral damages. No subsidiary imprisonment in case of insolvency on the part of the accused; and to pay the cost."^[12]

Hence, this automatic review.

In his brief, accused-appellant Orlito Gadin, Jr. claimed that he merely acted in self-defense. He alleged that the killing was accidental since he was parrying the blows of the deceased Elito Pajanustan, who insulted and punched him without provocation.

We have consistently held that in invoking the justifying circumstance of self-defense, the burden of evidence is shifted to accused to prove all the elements of self-defense by clear and convincing evidence, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[13] He must rely on the strength of his own evidence, and not on the weakness of that of the prosecution.[14]

After a review of the record, we find accused-appellant's plea of self-defense untenable.

Accused-appellant failed to prove satisfactorily that Elito Pajanustan was the unlawful aggressor. He presented no other witness to corroborate his testimony. On the contrary, positive testimony of eyewitness Rowena Dacut pointed to accused-appellant as the one who stabbed Elito Pajanustan, unexpectedly and without provocation.

She declared in a straightforward and candid manner that accused-appellant delivered the fatal blow on Elito Pajanustan. Dacut was in the best position to witness the event, since she was sitting beside the victim and was only about two meters away from accused-appellant. No motive was given for her to testify falsely against accused-appellant. Notably, Dacut was in congenial terms with accused-appellant, and even engaged in conversation with him prior to the stabbing incident. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.[15]

The trial court gave credence to the testimony of Rowena Dacut. We find no reason to overturn such assessment of credibility.[16]

Contradicting accused-appellant's narration of events is the medico-legal report stating that no other marks or contusions on the body of the deceased had been detected except for the single fatal stab wound. Such findings belie the testimony of accused-appellant that he grappled for possession of the knife and that there was an exchange of blows and punches prior to the stabbing.

Accused-appellant fled from the scene of the stabbing after realizing that he had wounded the victim and admitted that he hid beneath the swamps, refusing to come out until he was certain that the friends of Elito were not looking for him. Flight is evidence of consciousness of guilt and betrays the existence of a guilty conscience.[17]

Regarding the aggravating circumstance of treachery, clear and convincing evidence must be given to show that the following elements existed: (a) the accused employed means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (b) that the means of execution were deliberately or consciously adopted.[18]

In this case, accused-appellant stabbed the victim when the latter was merely drinking with his friends. The attack was sudden and unprovoked, giving the victim no opportunity to repel the attack. Although the stabbing was done frontally, the victim had no chance to offer any defense. Thus, treachery attended the commission of the crime.[19]

We can not, however, agree with the trial court that evident premeditation attended the commission of the crime. For evident premeditation to be appreciated, the following elements must exist: (a) the time when the accused decided to commit the crime; (b) an overt act showing that the accused clung to his determination to commit the crime; and (c) the lapse of a sufficient period of time between the decision and the execution of the crime, to

allow the accused to reflect upon the consequences of the act.[20] In this case, the record is bereft of sufficient evidence as to the time when accused-appellant decided to commit the crime. Eyewitness Rowena Dacut could not remember a prior incident which could incite accused-appellant to attack the victim. There was no proof when the intent to commit the crime was engendered in the mind of accused-appellant, or when he meditated and reflected on his intention to kill the victim. Evident premeditation must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning.[21] There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim.[22] When there is no showing as to how and when the plan to kill was decided or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist.[23]

It is basic that qualifying and aggravating circumstances must be proven with equal certainty as the commission of the act charged as criminal offense.[24] Since the commission of the crime is qualified by treachery, accused-appellant is liable for murder.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for murder is reclusion perpetua to death. Considering the absence of any other aggravating or modifying circumstance, the penalty imposable is reclusion perpetua, not death.[25]

As to the amount of actual damages, we find the amount awarded by the trial court to be unsubstantiated. The mother of the deceased Elito Pajanustan testified that she spent one thousand four hundred pesos (P1,400.00) for the seven-day wake, fifteen thousand pesos (P15,000.00) for funeral service expenses, and sixteen thousand pesos (P16,000.00) for the first death anniversary.[26] However, no receipts were ever presented during the trial to prove the actual damages incurred.

To justify an award of actual damages, it is necessary "to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss." [27] The award of actual damages can not be sustained without any tangible document to support such claim.[28] Thus, we delete the amount of actual damages, for lack of supporting evidence.[29]

Moral damages awarded by the trial court are proper. Moral damages are recoverable in criminal offenses resulting in physical injuries, or the victim's death.[30] No proof of pecuniary loss is necessary; however, there must be satisfactory showing of factual basis for the moral injury.[31] Nelia Redito, mother of deceased Elito Pajanustan, has testified having suffered pain and sorrow from the loss of her son.[32] Thus, we find the award of fifty thousand pesos (P50,000.00) as moral damages to be reasonable and adequate.

Exemplary damages given by the trial court must be deleted, considering the absence of aggravating circumstances which would justify such an award.[33]

However, civil indemnity is automatically awarded to the heirs of the victim without need of proof other than the fact of commission of the crime.[34] Thus, we award the amount of fifty thousand pesos (P50,000.00) as civil indemnity for the death of Elito Pajanustan, in line with current jurisprudence.[35]

WHEREFORE, the Court hereby AFFIRMS the appealed decision convicting accused-appellant Orlito Gadin, Jr. of murder, with the MODIFICATION that the death penalty imposed by the court a quo is reduced to reclusion perpetua. The Court further orders accused-appellant to pay the heirs of the victim Elito Pajanustan the amount of fifty thousand pesos (P50,000.00) as civil indemnity and fifty thousand pesos (P50,000.00) as moral damages. The award of actual and exemplary damages is deleted. With costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Melo, Kapunan, and Purisima, JJ., on leave.

[1] Decision denoted as "Sentence", Criminal Case No. 4053, Original Record, pp. 78-84. Judge Sibanah E. Usman, presiding.

[2] Original Record, p. 38.

[3] Certificate of Arraignment, Original Record, p. 43.

[4] TSN, July 2, 1996, pp. 3-4 and p. 11.

[5] Testimony of Nelia Redito, TSN, August 21, 1996, p. 14.

[6] Post-Mortem Examination Report, Original Record, p. 58.

[7] TSN, January 17, 1997, p. 8.

[8] TSN, February 16, 1997, pp. 2-18; TSN, February 17, 1997, pp. 2-8.

[9] TSN, February 17, 1997, p. 7.

[10] TSN, February 18, 1997, pp. 6-8.

[11] Denoted as "Sentence", Original Record, pp. 78-84.

[12] Original Record, p. 84.

[13] People vs. De la Cruz, G. R. No. 130608, August 26, 1999; People vs. Bitoon, G. R. No. 112451, June 28, 1999; People vs. Villamor, 292 SCRA 384 (1998)

[14] People vs. Tan, G. R. No. 132324, September 28, 1999; People vs. Tomolin, G. R. No. 126650, July 28, 1999; People vs. Carpio, 282 SCRA 23 (1997)

[15] People vs. Nava, G. R. No. 123148, April 20, 1999; People vs. Alfeche, 294 SCRA 352 (1998)

[16] People vs. Perez, G. R. No. 130501, September 2, 1999.

[17] People vs. Borreros, G. R. No. 125185, May 5, 1999.

[18] People vs. Emberga, G. R. No. 116616, November 26, 1999; People vs. Caisip, 290 SCRA 451 (1998)

[19] People vs. Dando, G. R. No. 120646, February 14, 2000; People vs. Suelto, G. R. No. 126097, February 8, 2000.

[20] People vs. Virtucio, Jr., G. R. No. 130667, February 22, 2000; People vs. Pinca, G. R. No. 129256, November 17, 1999; People vs. Padama, Jr., G. R. No. 132137, October 1, 1999; People vs. Quinao, 269 SCRA 495 (1997)

[21] People vs. Sison, G. R. No. 119307, August 20, 1999.

[22] People vs. Asto, 277 SCRA 697 (1997)

[23] People vs. Sambulan, 289 SCRA 500 (1998)

[24] People vs. Piamonte, G. R. No. 91999, February 25, 1999.

[25] People vs. Yam-Id, G. R. No. 126116, June 21, 1999.

[26] TSN, August 21, 1996, pp. 9-10.

[27] People vs. Rosario, 246 SCRA 658 (1995)

[28] People vs. Sanchez, G. R. No. 118423, June 16, 1999, citing David vs. Court of Appeals, 290 SCRA 727 (1998)

[29] People vs. Silvestre, G. R. No. 127573, May 12, 1999; People vs. Nialda, 289 SCRA 521 (1998)

[30] People vs. Bromo, G. R. No. 97914, November 22, 1999; People vs. Tambis, G. R. No. 124452, July 28, 1999.

[31] People vs. Villamor, 284 SCRA 184 (1998)

[32] TSN, August 21, 1996, pp. 9-10.

[33] People vs. Bergante, 286 SCRA 629 (1998); People vs. Reyes, 287 SCRA 229 (1998)

[34] People vs. Obello, 284 SCRA 79 (1998)

[35] People vs. Catampongan, G. R. No. 131732, November 19, 1999; People vs. Cayago, G. R. No. 128827, August 18, 1999; People vs. Heredia, G. R. No. 110001, July 28, 1999.

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