

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEL PEREZ Y ADORNADO, APPELLANT.

G.R. No. 140772. December 10, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the September 27, 1999 Decision[1] of the Regional Trial Court of Pasig City, Branch 156, in Criminal Case No. 110511-H, finding appellant Joel Perez y Adornado guilty beyond reasonable doubt of murder for killing Agapito Saballero. The trial court imposed upon him the penalty of reclusion perpetua and ordered him to pay the heirs of the said victim the amount of P50,000 as civil indemnity.

The accusatory portion of the Amended Information reads as follows:

On or about April 25, 1996 in Pasig City and within the jurisdiction of this Honorable Court, the accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one Agapito Saballero on the chest and abdomen, thereby inflicting the latter mortal stab wounds which directly caused his death.

Contrary to law.[2]

The Case for the Prosecution

Isidro Donoga eked out a living as a shoemaker and repairer, and resided with his wife, his daughter and his son-in-law in a rented apartment in No. 112 Adia Compound, Dr. Sixto Antonio St., Rosario, Pasig City.

On April 25, 1996 at around 8:00 p.m., Isidro was on his way home from Mariwasa when he passed by a group, including his neighbor Agapito Saballero,[3] Joel Perez and Aurelio Ariete, having a drinking spree near their rented apartment. Agapito invited Isidro to join the group. Isidro acceded to the invitation and ended up drinking with the three.[4] By the time they had consumed about two-and-a-half round bottles of gin, Joel started singing on top of his lungs the song "Si Aida, Si Lorna, o Si Fe." He was immediately cautioned by Agapito to lower his voice as the singing might disturb the neighborhood. Peeved, Joel confronted Agapito.[5] An altercation ensued. Joel warned Agapito "Babalikan kita. Makita mo," (I'll get back at you. You'll see.)[6] then left in a huff. The group decided to end their drinking spree.[7] By then, it was past 9:00 p.m.

Isidro advised Agapito to get inside their house. However, Agapito was still upset about his argument with Joel and lingered outside his house. Meanwhile, Isidro went inside their rented apartment at the second floor of the house, while his wife prepared his dinner. At around 10:00 p.m. while he was taking his supper, Isidro heard somebody shouting "Huwag, Joel! Saklolo, may tama ako!" Isidro then peeped outside and saw Joel pulling out from Agapito's chest a bladed weapon.[8] Shocked, Isidro and his wife went down to help Agapito. By then, Joel had already fled from the scene. The couple woke up some of their neighbors to help them carry Agapito and bring him to the hospital. Some neighbors arrived and brought Agapito to the hospital. On the way, Agapito expired.[9]

With the consent of John Saballero, the son of Agapito,[10] Dr. Emmanuel Aranas, the Medico-Legal Officer of the PNP, performed an autopsy on the cadaver of Agapito and incorporated his findings in his report, thus:

FINDINGS:

Fairly nourished, fairly developed male cadaver, in rigor mortis, with postmortem lividity at the dependent portions of the body. Conjunctiva, lips, and nailbeds are pale.

TRUNK AND UPPER EXTREMITIES:

- (1) Multiple abrasions, right deltoid, measuring 2 by 2 cms, 16 cms from the anterior midline.
- (2) Stab wound, left mammary region, measuring 2.4 by 0.6 cm, 5 cms from the anterior midline, 12 cms deep, directed posteriorwards, downwards, and to the right, thru the 4th left intercostal space, piercing the paricardial (sic) sac and right ventricle.
- (3) Stab wound, umbilical region, measuring 5 by 1.5 cm, bisected by the anterior midline, directed posteriorwards, piercing the mesentery and jejunal segment of the small intestines.
- (4) Multiple abrasions, left scapular region, measuring 5 by 2 cms, 11 cms from the posterior midline.
- (5) Multiple abrasions, right antecubital region, measuring 6 by 3 cms, 5 cms from its midline.
- (6) Abrasion, middle 3rd of the right forearm, measuring 2.5 cms by 0.2 cm, 3 cms lateral to its anterior midline.
- (7) Abrasion, left elbow, measuring 5 by 3 cms, 4 cms lateral to its midline.

About 1000 ml of fluid and clotted blood recovered from the thoracic cavity.

Stomach contains a glassful of partially digested food particles and mixed with bloody fluid.

CONCLUSION:

Cause of death is stab wounds of the chest and abdomen.[11]

Dr. Aranas signed the Certificate of Death of Agapito.[12]

When apprised of the stabbing incident, the police investigators, led by SPO1 Mario B. Garcia, learned that the victim was Agapito and the suspect was Joel who fled from the scene after stabbing Agapito three times with an improvised dagger at 10:00 p.m. on April 25, 1996. The police investigation was placed in the police blotter.[13]

Isidro helped out during the burial of Agapito and failed to give his statement to the police but on May 3, 1996, Isidro gave his sworn statement to SPO1 Mario B. Garcia of the Pasig Police Station.[14]

Shortly thereafter, an Amended Information[15] was filed on September 15, 1997. The amendment consisted in the inclusion of the allegation of treachery as a qualifying circumstance.[16]

Assisted by his counsel during arraignment, Joel entered a plea of not guilty.[17] Trial thereafter ensued.

The Case for the Accused

Joel put up the defense of denial and alibi. He testified that he was a regular employee of Hydro Resources Contractor Corporation as a heavy equipment mechanic for four (4) years.[18]

On April 25, 1996 at around 3:00 p.m., his sister, Imelda Perez de Venecia, called him from work and requested him to travel to Bicol the following day to make a delivery of a package to which he agreed. The siblings also agreed that Joel will go to her place at No. 749 Old Balara, Quezon City, after office hours to get the package the

following day because of his trip to Bicol.[19]

From his place of employment, he proceeded to Adia Compound in Rosario, Pasig City, where he saw the victim Agapito and Aurelio, one of his co-workers at Hydro Resources Contractor Corporation, drinking gin.[20] He then joined the group and, in the process, inquired from Aurelio about the status of his application for a job.[21] Thereafter, Isidro arrived and joined the drinking spree upon the invitation of Agapito. While they were drinking, an argument ensued between Agapito and Isidro regarding rentals, as the latter was a tenant of Agapito's sister.[22] Joel tried to pacify the two by singing aloud the song "Si Aida, Si Lorna, o Si Fe." Isidro and Agapito stopped arguing with each other but Agapito told Joel to stop singing. At around 9:00 p.m., Joel bade the group goodbye and proceeded to his sister's house in Old Balara, Quezon City. He boarded four jeeps one after the other and one tricycle. It took him an hour before he arrived at his sister's.

The following day, April 26, 1996, Joel, together with his sister Imelda, went to the Peñafrancia Bus Station, confirmed the ticket bought in advance by Imelda, and changed Imelda's name to that of his name to enable him to use the ticket.[23] Upon his arrival in Bicol, his wife gave him a letter from a company he had applied for work earlier in January, asking him to report for work. Instead of returning to Manila, Joel decided to accept the offer for employment, and stayed in Bicol. Moreover, he tendered his resignation from his work in Manila by sending a telegram to his former employer. It was only when he was arrested on June 7, 1997 that Joel learned about Agapito's demise, and that he was the suspect for his violent death.[24]

Imelda, the sister of Joel, corroborated his alibi that he went to her house on the night of April 25, 1996 arriving thereat at around 9:30 p.m. to 10:30 p.m.[25] She confirmed that she, together with her brother, left the house at around 5:00 a.m. of April 26, 1996 and went to the Peñafrancia Bus Station as his brother will travel to Bicol to deliver a package; and that her brother left for Bicol at around 7:30 a.m.

Joel also presented Aurelio who corroborated his testimony.[26] Aurelio testified that he only reported for work for a half-day from 8:00 a.m. to 12:00 noon on April 25, 1996. Thereafter, Aurelio proceeded to Adia Compound located in Rosario, Pasig City, where he met a certain Roberto Rocabo. Thereafter, they proceeded to the office of one Mr. Dela Cruz located at the back of Mariwasa and inquired about a machine which they were trying to contract. They stayed there until 5:30 p.m., after which, Aurelio and Roberto went back at the latter's house. Aurelio hung about in front of Roberto's house, and there met Agapito who invited Roberto for a drink which the latter accepted.[27] They were later joined by Joel and Isidro. At around 9:00 p.m., Joel bade them goodbye and left the group. Aurelio also left the drinking spree a moment later, and slept at Roberto's house. At around 6:00 a.m. the following day, April 26, 1996, Aurelio was awakened by a commotion outside, in the street, and when he checked the cause, he saw Agapito lying on the ground. A policeman arrived at around 7:00 a.m. and investigated the crime scene. [28]

After trial, the trial court rendered a decision finding Joel guilty beyond reasonable doubt of murder, and imposed upon him the penalty of reclusion perpetua. The decretal portion of the decision reads:

Wherefore, the Court finds accused GUILTY beyond reasonable doubt of the crime of murder, and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Agapito Aballero (sic) in the amount of P50,000.00 conformably with existing jurisprudence. Costs against the accused.

SO ORDERED.[29]

Joel appealed from the decision and alleges that:

B.1.

The trial court erred in giving credence to the supposed lone prosecution eyewitness, Isidro Donoga.

B.2.

The trial court erred in not acquitting the accused because his guilt was not proven beyond reasonable doubt.[30]

Anent the first assigned error, he asserts that the trial court erred in giving weight to the testimony of Isidro, the prosecution's lone eyewitness, despite the inconsistencies in his statement to the police investigators[31] and his testimony during trial. First, in his sworn statement, Isidro declared that the appellant used an "itak" in stabbing Agapito whereas when he testified before the court, he declared that the appellant used a "kutsilyo." Second, when Isidro was asked during the trial if he voluntarily gave his sworn statement to the police, he answered in the affirmative; but during the preliminary investigation of the case, he declared that he gave his sworn statement regarding the case when the policemen arrived in their place.[32] Third, Isidro declared in his sworn statement that he saw the appellant stab the victim, but during clarificatory questioning by the public prosecutor during trial, he declared that he only saw the extraction by the appellant of the knife from the chest of the victim. Moreover, the appellant avers that there is no allegation in the Information that the appellant used any bladed weapon to stab the victim. Isidro's testimony that he heard shouts for help from Agapito at around 10:00 p.m. of April 25, 1996 was merely a fragment of his imagination because the stabbing occurred on April 26, 1996 at around 6:00 a.m. as testified to by Aurelio.

The appeal is without merit.

The inconsistencies catalogued by the appellant referred only to peripheral or minor details which do not destroy or weaken the credibility of the witness of the prosecution.[33] Such inconsistencies are even indicia of honest and unrehearsed declarations and responses of witnesses and thus enhanced their credibility.[34] We note that Isidro sufficiently explained his use of "itak" and "kutsilyo" when he was cross-examined by the appellant's counsel:

Q

In your statement marked as Exhibit F, I am referring to the statement given to the police, there is a question and which I quote: "Nasabi mo nakita si Joel Perez ang siyang sumaksak kay Agapito, nakita mo rin ba naman kung anong klaseng patalim ang ginamit niya?" and your answer was: "Isa pong matulis na itak po ang pinangsaksak niya kay Agapito." Do you remember having given this statement?

A

Yes, sir.

Q

A while ago during the direct examination you were asked what kind of weapon was used and you said, at first "kutsilyo" then later on a pointed weapon. Which is which now?

A

Because in our place a knife is called "Dipang." The "dipang, hindi itak na gaano yon." Dipang, this is the smallest "itak" in our place, sir.

Q

Did I get it from you that "itak" and "kutsilyo" are one and the same in your place?

A

Yes, sir. They are one and the same.[35]

Case law has it that an affidavit given to the police investigator at the police station is generally not prepared by the affiant himself but by another person invariably by the police investigator who uses his own language. Omissions and misunderstandings by the writer usually result. And in case of discrepancy between the sworn statement and those made by the affiant on the witness stand, the latter deserves full faith and credit.[36]

On the apparent inconsistency of Isidro's testimony during the preliminary investigation that his sworn statement to the police investigators on May 3, 1996 was voluntary is not enfeebled by the fact that it was given eight days after the crime was committed when Isidro arrived at the police station to give his statement. Isidro testified that he was then busy helping the family in the burial of the victim.[37] A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory. Witnesses are not expected to remember every single detail of an incident with perfect or total recall.[38]

Isidro's testimony that he saw the appellant pull out the bladed weapon from the chest of the victim is not inconsistent with his sworn statement to the police that it was the appellant who stabbed the victim. Even if Isidro did not see the appellant stab the victim, there can be no other conclusion that it was the appellant who stabbed the victim given the fact that it was the appellant who pulled out the knife from the chest of the victim and fled from the scene thereafter. Isidro saw no other person at the crime scene. He categorically and positively identified the appellant as the assailant of Agapito. He had known the appellant for about two years before the latter stabbed the victim. He often saw the appellant at his place of work where Isidro made some deliveries of shoes thereat.[39] He and the appellant never had any misunderstanding, thus no ill motive can be attributed to Isidro for him to testify against the appellant. This Court has held that absent evidence showing any reason for the prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and his testimony is thus worthy of full faith and credit.[40] With the positive and straightforward identification by Isidro of the appellant as the perpetrator, the latter's defense of alibi must fall.[41]

That the Information does not describe the weapon used by the appellant either an "itak" or "kutsilyo" in stabbing the victim is inconsequential. The kind or nature of the weapon used in the commission of the crime need not be alleged in the complaint or Information. What must be alleged in the Information or complaint are those enumerated in Section 6, Rule 110 of the Revised Rules of Criminal Procedure, viz.:

SEC. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

Aurelio's testimony that the stabbing occurred on April 26, 1996 at 6:00 a.m. is belied by (a) the testimony of Isidro; (b) the request for medico-legal examination[42] in which it is stated that the stabbing incident occurred at around "9:45 p.m. of April 25, 1996 in front of House No. 112-G Dr. Sixto Antonio, Rosario, Pasig City;" (c) the spot investigation report[43] of SPO1 Mario Garcia that the crime was committed "on or about 10:00 p.m. of 25 April 1996." The police investigator and the chief of police who prepared the request and the spot investigation report, respectively, are disinterested witnesses. Moreover, the entries therein were made by the police

investigator and the chief of police in their official capacities; thus, such entries have in their favor the presumption of regularity and are prima facie evidence of the facts therein stated.[44] It bears stressing that the appellant's witness Aurelio was a close friend of his; hence, his testimony must be considered by the court with extreme caution.

We agree with the appellant that the prosecution failed to prove treachery. It behooved the prosecution to prove that the appellant deliberately and consciously adopted such means, method or manner of attack as would deprive the victim of an opportunity for self-defense or retaliation.[45] In this case, Isidro, the prosecution's lone eyewitness, testified as follows:

Q

More or less, what time was that when you had that dinner at that time?

A

Passed (sic) 10:00 o'clock, sir.

Q

What time was that when you took your supper?

A

My wife, sir.

Q

You mean to tell us that your wife was also with you while you were taking your supper?

A

No, sir. She was just with me in the table.

Q

While eating on that said evening of April 25, 1996 which you came around passed (sic) 10:00 o'clock in the evening, do you recall of any unusual incident that happened in the vicinity of your house?

A

Yes, sir.

Q

And what was that unusual incident that took place while you were taking your supper?

A

I heard somebody shouted: "Huwag, Joel. Saklolo, may tama ako."

Q

When you heard this shout of a person, what was your reaction then?

A

When I heard that, "dumungaw po ako."

Q

And what did you find out, if any, after taking that gesture "dungaw?"

A

I saw Joel Perez pulling out from the chest a bladed weapon ("isang patalim"), sir.

Q

And were there other persons aside from Joel Perez there at that time?

A

None, sir.

Q

You claimed that you actually saw Joel Perez pulling out a knife, as if as you were claiming that he had just stabbed somebody?

...

A

Upon peeping, I saw Joel Perez still pulling out a knife, a pointed weapon, sir.

Q

By claiming you actually observed this particular incident, from where was Joel Perez pulling out this pointed or bladed weapon?

A

From Agapito, sir.[46]

Irrefragably, Isidro failed to see how the attack started. When he looked out through the window, he saw Joel pulling out his knife from the chest of the victim. Isidro did not see the initial stage of the stabbing and the particulars of the attack on the victim.[47] Treachery cannot thus be appreciated.[48]

The mere fact that Agapito was unarmed when he was stabbed is not sufficient to prove treachery. The settled rule

is that treachery cannot be presumed. It must be proved by clear and convincing evidence, as the crime itself.[49] Hence, the appellant is guilty only of homicide and not murder.

The penalty for homicide is reclusion temporal which has a range of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the maximum of the imposable penalty shall be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum of the said penalty shall be taken from the penalty next lower in degree which is prision mayor, the range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods. There being no modifying circumstance in the commission of the crime, the appellant may be sentenced to an indeterminate penalty of from ten (10) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period as maximum.

IN LIGHT OF ALL THE FOREGOING, the judgment appealed from is **AFFIRMED WITH MODIFICATION**. The appellant Joel Perez y Adornado is found guilty of homicide under Article 249 of the Revised Penal Code, as amended, and there being no mitigating nor aggravating circumstance in the commission of the crime, is sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum, and to pay the heirs of Agapito Saballero the amount of P50,000 as civil indemnity. Costs de oficio.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Esperanza Fabon-Victorino.

[2] Records, p. 47.

[3] Also known as "Peping."

[4] TSN, 5 November 1997, p. 5.

[5] Ibid.

[6] Exhibit "F."

[7] TSN, 5 November 1997, p. 7.

[8] Id. at 8-9.

[9] Id. at 10.

[10] Exhibit "C."

[11] Exhibit "A."

[12] Exhibit "D."

[13] Records, p. 8.

[14] Id. at 53-55.

[15] Supra.

[16] Id. at 47-48.

- [17] Id. at 57.
- [18] TSN, 29 April 1998, pp. 4, 12, 24.
- [19] Id. at 17.
- [20] Id. at 13.
- [21] Id. at 5.
- [22] Id. at 7.
- [23] TSN, 28 May 1998, p. 8.
- [24] TSN, 29 April 1998, p. 18.
- [25] TSN, 28 May 1998, p. 4.
- [26] TSN, 27 August 1998, p. 4.
- [27] Id. at 8-9.
- [28] Id. at 9-12.
- [29] Records, p. 241.
- [30] Rollo, p. 42.
- [31] Exhibit "F."
- [32] Exhibit "1."
- [33] *People v. Villadares*, 354 SCRA 86 (2001).
- [34] *People v. Mataro*, 354 SCRA 27 (2001).
- [35] TSN, 5 November 1997, pp. 12-13.
- [36] *People v. Herbieto*, 269 SCRA 472 (1997).
- [37] TSN, 5 November 1997, p. 14.
- [38] *People v. Ebrada*, 296 SCRA 353 (1998).
- [39] TSN, 5 November 1997, p. 6.
- [40] *People v. Samudio*, 353 SCRA 746 (2001).
- [41] *People v. Llanita*, 364 SCRA 505 (2001); *People v. Francisco*, 363 SCRA 637 (2001); *People v. Seranilla*, 348 SCRA 227 (2000); *People v. Palijon*, 343 SCRA 486 (2000); *People v. Oliver*, 303 SCRA 72 (1999); *People v. Reduca*, 301 SCRA 516 (1999); *People v. Siguin*, 299 SCRA 124 (1998).
- [42] Exhibit "B."
- [43] *Supra*.
- [44] Sections 43 and 44, Rule 130, Revised Rules of Court.
- [45] *People v. Guzman*, 372 SCRA 344 (2001); *People v. Mendoza*, 369 SCRA 268 (2001); *People v. Dumayan*, 358 SCRA 26 (2001); *People v. Enriquez*, 357 SCRA 269 (2001); *People v. Jariolne*, 331 SCRA 674 (2000);

People v. Jose, 324 SCRA 196 (2000); People v. Mier, 324 SCRA 628 (2000); People v. Molina, 312 SCRA 130 (1999); People v. Piamonte, 303 SCRA 577 (1999); People v. Realin, 301 SCRA 495 (1999).

[46] TSN, 5 November 1997, pp. 8-9.

[47] See People v. Sia, 370 SCRA 123 (2001).

[48] People v. Samudio, *supra*.

[49] People v. Mantes, 368 SCRA 661 (2001).

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