

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN PANAGA AND PABLO PANAGA, ACCUSED-APPELLANTS.

G.R. Nos. 125967-70. May 05, 1999

Ponente: VITUG, J.

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VITUG, J.:

On 12 January 1996, the Regional Trial Court, Branch 3, of Tuguegarao, Cagayan, rendered in Criminal Cases No. 661, No. 663, No. 664 and No. 665 a decision finding accused Pablo Panaga and Juan Panaga, father and son, guilty beyond reasonable doubt of the crime of murder in all the four criminal cases and imposing upon them the penalty of RECLUSION PERPETUA in each of said cases plus various civil liabilities; viz:

"WHEREFORE, finding the two accused Pablo Panaga and Juan Panaga guilty beyond all reasonable doubt of the crime of murder as defined and penalized by Art. 248 of the Revised Penal Code they are hereby sentenced to the following prison terms:

"1. In Criminal Case No. 661, Pablo Panaga and Juan Panaga are hereby sentenced each to RECLUSION PERPETUA.

"2. In Criminal Case No. 663, Pablo Panaga and Juan Panaga are hereby sentenced each to RECLUSION PERPETUA.

"3. In Criminal Case No. 664, Pablo Panaga and Juan Panaga are hereby sentenced each to RECLUSION PERPETUA.

"4. In Criminal Case No. 665, Pablo Panaga and Juan Panaga are hereby sentenced each to RECLUSION PERPETUA.

"In all the four (4) above criminal cases Pablo Panaga and Juan Panaga are hereby ordered to pay the following:

"1. In Criminal Case No. 661, to pay jointly the heirs of Jeofrey La Madrid the amount of P50,000.00 for the death of Jeofrey La Madrid;

"2. In Criminal Case No. 663, to pay jointly the heirs of Rolando Balisi the amount of P50,000.00 for the death of Rolando Balisi;

"3. In Criminal Case No. 664, to pay jointly Agustina Cagurungan the amount of P50,000.00, for the death of Pedro Cagurungan; and further to pay Agustina Cagurungan the amount of P31,000.00, for the actual and compensatory damages, P4,132,800.00 for loss of earnings;

"4. In Criminal Case No. 665, to pay jointly the heirs of Zaldy Binarao the amount of P50,000.00 for the death of Zaldy Binarao;

"5. P50,000.00 as moral damages in Criminal Case No. 664;

"6. P10,000.00 as attorney's fees; and

"7. Costs of suit." [1]

The two accused were priorly indicted in four (4) separate informations for murder; to wit:

In Criminal Case No. 661 -

"That between 7:00 o'clock to 8:00 o'clock in the evening of November 9, 1991 in Brgy. Baliuag, Peñablanca, Cagayan, Philippines and within the investigative jurisdiction of this Honorable Court, above-named accused conspiring, confederating and mutually agreeing and helping one another, with intent to kill, evident premeditation, treachery and aggravated by nocturnity, did then and there willfully, unlawfully and feloniously attacked, assaulted and shot with the use of an M-16 armalite rifle one after the other the following victims, to wit: Pedro Cagurungan, Zaldy Binarao, Rolando Balisi alias Rolly, Jeofrey La Madrid alias Jojo all of Brgy. Baliuag, Peñablanca, Cagayan, inflicting upon the victims gunshot wounds which caused their instant death, as evidenced by a Post Mortem Cert and Death Certificate of the victims respectively, and also inflicting gunshot wound on Joemar Banag also of the same barangay which could have died as a consequence if not for the immediate attendance of a Physician as evidence on his Medical Certificate, which are all made an integral part of this complaint." [2]

In Criminal Case No. 663 -

"That on or about November 9, 1991, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Pablo Z. Panaga and Juan Panaga y Agub, armed with guns, conspiring together and helping each other with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and shoot one Rolando Balisi, inflicting upon him gunshot wounds on the different parts of his body which caused his death." [3]

In Criminal Case No. 664 -

"That on or about November 9, 1991, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Pablo Z. Panaga and Juan Panaga y Agub, armed with guns, conspiring together and helping each other with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and shoot one Pedro Cagurungan, inflicting upon him gunshot wounds on the different parts of his body which caused his death." [4]

In Criminal Case No. 665 -

"That on or about November 9, 1991, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Pablo Z. Panaga and Juan Panaga y Agub, armed with guns, conspiring together and helping each other with intent to kill, with evident premeditation and with treachery did then and there willfully, unlawfully and feloniously attack, assault and shoot one Zaldy Binarao, inflicting upon him gunshot wounds on the different parts of his body which caused his death." [5]

When arraigned on 21 May 1993, both accused pleaded not guilty to all the above charges.

The Solicitor General detailed the facts, hereunder quoted, given by the prosecution during the trial that followed the arraignment.

"On November 9, 1991, at around six o'clock in the evening, Jomar Banag, Johnny Baquiran, Junior Agustin and Jeofrey La Madrid arrived at the house of spouses Pedro Cagurungan and Agustina Cagurungan in Baliuag, Penablanca, Cagayan. They came to visit the helpers of the couple by the names of Sally Balisi and Zaldy Binarao whom they invited to a dance party in nearby Barangay Bical, Penablanca, Cagayan. The helpers however, rejected the invitation and instead played cards with them (pp. 27-28, TSN, August 23, 1993).

"Meanwhile, Agustina and Pedro Cagurungan started preparing food for supper when they heard their dogs

barking. Agustina got a flashlight, switched it on and trained, it outside. Seeing nobody, she went back to her cooking. Afterwards her family and the two helpers took supper while the visitors continued playing cards. Then the barking of their dogs resumed (p. 29, TSN, August 23, 1993).

"Zaldy Binarao was the first one to finish eating. Agustina ordered him to see if their carabao was still tied outside their house adjacent to the kitchen, as she was worried because of the continuous barkings of the dogs. Binarao saw no one outside. But still curious, Agustina held a flashlight, turned it on and trained it on the east direction where the camarin of her father-in-law, Pablo Cagurungan, was located about eight (8) meters away. While in that position, Agustina heard a gunfire and saw Zaldy fall to the ground. Immediately, she told Pedro of the presence of some intruders (pp. 29-30, TSN, August 23, 1993).

"Agustina and Pedro ran to the sala of their house with their two children. When they noticed their other two children on top of the table, they returned and got them. Agustina did not notice where their visitors ran. While in the sala, Agustina heard rapid bursts of gunfire in the kitchen prompting them to transfer to the annex of the house (pp. 30-31, Ibid). The intruders also went to the annex of the house and tried to force open its door. Agustina and Pedro rushed back to the sala. The intruders also returned to the kitchen. Agustina noticed the intruders' movements because of their flashlight. Then, the intruders went back to the main house, forcibly opened the door and went inside. Agustina and Pedro hid in one corner of their room in a sitting position. When Agustina stood beside the door of the room, she saw the intruders go to the kitchen. With their flashlight, the intruders saw her husband Pedro. They got him and brought him outside the house beside kitchen (pp. 30-33, TSN, Ibid.).

"Agustina recognized the faces of appellants Pablo and Juan Panaga when they got her husband because of the light coming from the kerosene lamp placed in the middle of the divider of the room where they were hiding. Pablo and Juan were wearing dark jackets and holding long firearms. Agustina also noticed the combat shoes of Pablo (pp. 30-33, TSN, August 23, 1993).

"Shortly after Pedro was brought outside the house by appellants, Agustina heard bursts of gunfire. When she proceeded to the scene, she saw Pedro lying prostrate with several gunshot wounds in his body. Pedro asked for a glass of water which she readily gave. After drinking the water, Pedro told her that 'Bondying' and 'Uncle Ifan' shot him. Agustina recognized 'Bondying' as Pablo Panaga and 'Ifan' as Juan Panaga (pp. 35-36, TSN, August 23, 1993).

"Later, Agustina found the dead body of Rolando Balisi at the 'azotea' of her father-in-law, Pablo Cagurungan. Joefrey La Madrid's body was likewise found inside their kitchen, and that of Zaldy Binarao outside their kitchen (pp. 37-38, TSN, August 23, 1993).

"On November 11, 1991, Dr. Mila Simangan, Municipal Health Officer of Solana, Cagayan, conducted a post mortem examination on the cadaver of Pedro Cagurungan and Rolando Balisi. Her examination revealed the following results:

"Pedro Cagurungan:

1. Gunshot wound located at the 5th and 6th rib; 2. gunshot wound located 5 cm. above the umbilicus; 3. gunshot wounds located 3 cm. above the umbilicus; 4. gunshot wound, 1 cm. above the iliac spine; 5. gunshot wound 2 cm. above the iliac spine; 6. gunshot wound located 4 cm. above the iliac spine. Cause of death was internal hemorrhage due to gunshot wounds. (p. 17, Record)

"Rolando Balisi:

1. Gunshot wound penetrating the intercostal space; 2. Gunshot wound penetrating the intercostal space 5 cm. from midsternal line; 3. Gunshot wound located at the level of the 6th intercostal space; 4. Gunshot wound located at the tip of the 12th left rib. Cause of death was internal hemorrhage due to gunshot wound. (p. 18, Record)

"Dr. Simanagan also issued death certificates of Pedro Cagurungan, Rolando Balisi, Zaldy Binarao and Joefrey La Madrid. The death certificate of Joefrey La Madrid was issued based on the information given by his father, Venerado La Madrid. Said death certificate states his cause of death as 'Cerebral Hemorrhage secondary to gunshot wounds.' On the other hand, the data appearing on the death certificate of Zaldy Binarao was sourced from Agustina. His cause of death was 'Internal Hemorrhage' secondary to gunshot wounds (pp. 19-22, Record)."[6]

The defense, represented by attorney Luis B. Donato, gave an account of its own submissions consisting mainly of denial and alibi on the part of the accused.

"ACCUSED Juan Panaga is a farmer, married to Dita Zilappo, and the father of ACCUSED Pablo Panaga. He was 70 years old at the time of the alleged commission of the offenses, and is a resident of Barangay Baliuag, Penablanca, Cagayan. ACCUSED Juan Panaga and his wife, Dita Zilappo, live all by themselves in said place as all their children, including ACCUSED Pablo Panaga, are residing in Barangay Nattapian, Solana, Cagayan.

"On November 9, 1991, ACCUSED Juan Panaga tended to his farm which is about 500 meters from their house. In view that he was sick, he went home after working in his farm. ACCUSED Juan Panaga was seen by his niece-in-law, Milagros Panaga and her husband, whose farm is north of the farm of the ACCUSED Juan Panaga.

"In the night of November 9, 1991, at around past 7:00 P.M., Milagros Panaga and her husband, went to visit ACCUSED Juan Panaga bringing with them vegetables for the Panaga couple.

"On their way home, they met 8 to 10 armed men believed to be elements of the New People's Army, and shortly upon arriving home, they heard gun reports. Later, they learned that four (4) people died, one of whom is the son of the barangay captain, whose residence is about a kilometer from the house of ACCUSED Juan Panaga.

"ACCUSED Pablo Panaga was an enlisted man, since April 1, 1982, of the Armed Forces of the Philippines under the Philippine Army with the rank of Corporal.

"He used to be assigned at the 54th Infantry Battalion, stationed at Flora, Kalinga-Apayao. On September 12, 1991, he was transferred to Kasibu, Nueva Viscaya and was assigned at the 4th Caggu Co., under the immediate supervision of Sgt. Uroa. Kasibu, Nueva Viscaya is about 200 kilometers from Tuguegarao, Cagayan.

"After marriage, ACCUSED Pablo Panaga resided in Barangay Nattapian, Solana, Cagayan.

"From November 1 to November 7, 1991, ACCUSED Pablo Panaga was at Barangay Nattapian, Solana, Cagayan, on a personal visit to his family with the approval of his immediate superior, Sgt. Uroa. After his visit to his family, he left for Kasibu, Nueva Viscaya in the morning of November 7, 1991, and arrived at said station in the afternoon of November 7, 1991.

"From November 7 to 10, 1991, ACCUSED Pablo Panaga did not leave camp and was in Kasibu, Nueva Viscaya. After proper permission, he left his station last November 10, 1991, for Cato, Tuao, Cagayan, to secure the required medical tag preparatory for medical treatment at the Camp Melchor De La Cruz Hospital at Echague, Isabela.

"He was treated for 'malaria' and confined in said hospital for more than one (1) week, and attended to by a lady doctor by the name of 'Herrera.' After his discharge from the hospital in Echague, Isabela, ACCUSED Pablo Panaga went to Cato, Tuao, Cagayan, and stayed there for a week, after which, he was called at the 5th IB in Camp Upi, Gamu, Isabela.

"ACCUSED Pablo Panaga was confined to stockade upon orders of the Provost Marshall, 5th Infantry

Battalion, Camp Upi, Gamu, Isabela.

"Sgt. Uroa was summoned to appear before the office of the Provost Marshall, and in consonance with the orders of the Provost Marshall, Sgt. Uroa issued a certification as to the whereabouts of Pablo Panaga.

"That prior to November 9, 1991, the Panaga's family and the Cagurungan family had no misunderstanding."[7]

In their appeal, the two convicted accused insist on their innocence and aver that the lower court has erred in convicting them.

The Court is not convinced of the above plea of appellants.

Agustina Cagurungan recounted the events that had transpired in the early evening of 09 November 1991 when her husband, Pedro Cagurungan, and three others, namely, Zaldy Binarao, Rolando Balisi and Jeofrey La Madrid, were shot to death. Minutes before the incident, the family was having dinner when they heard the continuous barking of dogs. Agustina asked Zaldy Binarao, who had by then finished eating, to see if their carabao was still tied at the yard. Agustina herself focused a flashlight outside the house to check the surroundings. Everything seemed all right until she heard a rapid burst of gunfire and saw Zaldy fall to the ground. After hearing a second burst of gunfire, Zaldy, Agustina and Pedro gathered the children and ran to the sala. Moments later, Agustina heard another burst of gunfire in the kitchen. The malefactors forcibly opened the main door of the house and entered. Wielding firearms and using a flashlight to look around, the intruders saw Pedro cowering in one side of the house. Pedro was forcibly brought outside. Shortly thereafter, Agustina heard a burst of gunfire. Agustina was able to identify appellants with the aid of a lighted bottle lamp placed on top of the divider in the room where she and the children tried to seek cover. Agustina rushed out of the house and saw her husband lying on the ground with several gunshot wounds on his body. Pedro asked for a glass of water from her. After taking a sip, Pedro told Agustina that "Bondying" and "Uncle Ifan" had shot him. Agustina identified "Bondying" as accused-appellant Pablo Panaga and "Uncle Ifan" as accused-appellant Juan Panaga. Nearby were the lifeless bodies of Rolando Balisi, Jeofrey La Madrid and Zaldy Binarao.

While Agustina herself may not have seen the actual killing of the victims, the evidence is replete with enough proven details to sustain the guilt of accused-appellants at the very least on the basis of circumstantial evidence. The totality of such evidence would be sufficient for conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[8] All these circumstances, evident from the recital of facts heretofore given, sufficiently justify the finding of guilt beyond reasonable doubt made by the trial court. Agustina's testimony, unmistakably identifying the appellants to be the only possible culprits, is clear and straightforward.

"Q. Did you see the person who went to get your husband?

"A. Yes, Sir.

"Q. Have you seen their faces?

"A. Yes, Sir.

"Q. How?

"A. With bottle lamp.

"Q. Where is the bottle lamp placed in connection with the place of your husband?

"A. There is a division inside the house and we placed that bottle lamp.

"Q. How many persons or people who went to get your husband?

"A. Two (2), Sir.

"Q. You said that you were able to identify these two, if you can see them again can you identify them?

"A. Yes, Sir.

"Q. Will you please see around if these two persons are around?

"A. That person, Sir.

And also that person.

"INTERPRETER:

The witness stood up and pointed to the person and this person stood up and gave his name as Pablo Panaga and also pointed to a person and this person stood up and gave his name as Juan Panaga.

"Q. When you saw these two accused inside your house what was their appearance?

"A. Dark jacket.

"Q. What have you observed from them if any?

"A. They were holding firearm.

"Q.

Who among was holding firearm?

"A. Pablo.

"Q. Will you please point again the person of Pablo Panaga?

"A. That person, Sir.

"INTERPRETER:

Witness pointed to Pablo Panaga.

"Q. How long was the firearm that Pablo Panaga was holding?

"A. Long firearm.

"Q. How about the other accused what was he holding also?

"A. The same.

"Q. At the time that you saw

At the time that they saw your husband and took your husband where did they bring your husband?

"ATTY. DONATO:

No basis.

"COURT:

She said they were inside and when they saw the husband they took him.

"PROS. REMUDARO:

"Q. Where?

"A. They brought my husband outside my kitchen.

"Q. Outside or what?

"A. Outside.

"Q. After taking your husband downstairs what have you heard?

"A. I heard gun report.

"Q. After the gun report what happened next?

"A.

When he was shot he called me and asked for a glass of water and I went out with a glass of water and my husband told me its Bondying and Uncle Juan were the one who shot me.

"Q. Do you know this Bondying and Uncle Ifan?

"A. I know.

"Q. Who are these people whom he referred to?

"A. Those two persons.

"INTERPRETER:

The witness pointing to Pablo Panaga.

"Q. How about this Ifan?

"A. Juan Panaga."[9]

Certainly not insignificant was the identification made by Pedro himself of his own assailants. His statement, given in the brink of death, constituted a dying declaration that should be entitled to highest credence.[10] The declaration of the victim was made under consciousness of an impending death; it referred to the cause and surrounding circumstances of the declarant's injury and impending death; and it was from a declarant who could have been a competent witness.[11]

The postmortem examinations conducted by Dr. Mila Simangan, the Municipal Health Officer of Solana, Cagayan, on the bodies of Pedro Cagurungan and Rolando Balisi revealed that both died of internal hemorrhage due to multiple gunshot wounds.[12] The other victims, Jeofrey La Madrid and Zaldy Binarao, died of "cerebral hemorrhage secondary to gunshot wounds and internal hemorrhage secondary to gunshot wound," respectively.[13]

The testimony given by Agustina Cagurungan, along with the dying declaration of one of the victims, must prevail over the defense proffered by appellants of denial and alibi.[14]

Treachery attended the killing of the victims. Appellants, who were all armed, carried out and ensured the execution of their nefarious deed evidently without risk to themselves and without affording the victims any real chance to defend themselves.[15]

Article 248 of the Revised Penal Code, before its amendment by Republic Act No. 7659 on 31 December 1993, provides:

"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 temporal in its maximum period to death if committed with any of the following attendant circumstances:

"1. 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.

"2. In consideration of a price, reward or promise.

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

"4. 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.

"5. With evident premeditation.

"6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

There being neither mitigating circumstance nor aggravating circumstance shown to have been in attendance in the commission of the crimes charged and proven, the trial court has aptly imposed the penalty of reclusion

perpetua,[16] i.e., the medium period of the prescribed penalty.

The Court, however, finds the award of P31,000.00 for actual and compulsory damages and P4,132,800.00 for loss of earnings not to have been properly substantiated by evidence. The award of actual and compensatory damages may not be made on the basis alone of a handwritten enumeration[17] of the supposed expenses incurred. Actual or compensatory damages must be duly proved and established with reasonable degree of certainty, and courts cannot rely on conjecture or guesswork on the fact and extent of damages.[18] The Court can only give credence to those supported by receipts and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim.[19] No document whatsoever has been submitted to support the trial court's award of P4,132,800.00 for loss of earnings. The alleged monthly income of P7,000.00 of Pedro Cagurangan as a chainsaw operator and his other income from the family's farmland have not been properly substantiated and appear to be more speculative than not.

WHEREFORE, the decision of the Regional Trial Court, Branch 3, of Tuguegarao, Cagayan, in Criminal Cases No. 661, No. 663, No. 664, and No. 665 is AFFIRMED, except insofar as the awards of P31,000.00 for actual and compensatory damages and P4,132,800.00 for loss earnings are concerned which are DELETED. Costs against appellants Pablo Panaga and Juan Panaga.

SO ORDERED.

Romero, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 48-49.

[2] Records of Criminal Case No. 661, p. 1.

[3] Records of Criminal Case No. 663, p. 1.

[4] Records of Criminal Case No. 664, p. 1.

[5] Records of Criminal Case No. 665, p. 1.

[6] Rollo, pp. 140-144

[7] Rollo, pp. 69-72

[8] People vs. Prado, 254 SCRA 531; People vs. Porras, 255 SCRA 514; People vs. Magana, 259 SCRA 380.

[9] TSN, Agustina Cagurangan, 23 August, 1993, pp. 33-36.

[10] People vs. Esquilona, 248 SCRA 139; People vs. Salazar, 221 SCRA 170.

[11] Section 37. Dying Declaration. - The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (Rule 130 of the Revised Rules of Court)

[12] Records, pp. 11-12.

[13] Ibid., pp. 20-21.

[14] People vs. Abronica, 252 SCRA 54; People vs. Balisnomo, 265 SCRA 98.

[15] People vs. Retuta, 234 SCRA 645.

[16] The provisions of R.A. 7659 which took effect on 31 December 1993, modifying the penalty for murder under Article 248 of the Revised Penal Code, it being more onerous to the accused, are here inapplicable.

[17] Records, p. 105.

[18] Del Rosario vs. CA, 267 SCRA 158.

[19] People vs. Cordero, 263 SCRA 122.

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