

SECOND DIVISION

[G.R. No. 104400, January 28, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. SANTIAGO PADAO Y ELCAMEL ALIAS "SUNNY", ACCUSED-
APPELLANT.**

D E C I S I O N

TORRES, JR., J.:

Assailed in this appeal is the decision of the Regional Trial Court, Branch 7, Dipolog City, Zamboanga del Norte, dated January 30, 1992, convicting the accused-appellant Santiago Padao alias "Sunny" of the crime of murder, and sentencing him to suffer the penalty of *Reclusion Perpetua* and to indemnify the heirs of the deceased in the sum of P50,000.^[1]

On February 29, 1988, accused-appellant was indicted for the crime of murder qualified by treachery and evident premeditation, with the aggravating circumstance of recidivism, for the killing of Perlito Jarmin in an information, viz.:

"That in the evening, on or about the 4th day of February, 1988, in Sitio Mantutugas, Barangay Sulangon, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and stones, with intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, stone, and stab several times one, PERLITO JARMIN y Bayron, hitting him in different vital parts of his body which caused his instantaneous death. That as a result of the criminal acts of the accused, the heirs of the deceased suffered the following damages, to wit:

1. Loss of earning capacity	P12,000.00
2. Moral damages	10,000.00
3. Death Indemnity	30,000.00
TOTAL	P52,000.00

CONTRARY TO LAW, with the aggravating circumstances [sic] of recidivism, accused having been previously convicted by final judgment before the City Court of Dapitan (now MTCC) on the following crimes, to wit:

1. Criminal Case No. 13087, for Slight Physical Injuries, convicted on June 6, 1973;
2. Criminal Case No. 13223, for Resistance; and
3. Criminal Case No. 13224, for Disturbance of Public Order, convicted on March 12, 1975;

4. Criminal Case No. 13536, for Slight Physical Injuries, convicted on January 31, 1978.

City of Dapitan, February 29, 1988." [2]

Upon arraignment, accused-appellant pleaded not guilty. Trial on the merits ensued which found the accused guilty of the crime charged. The trial court's summary of the facts is as follows:

"Arnulfo Lacay, 51 years of age, and a resident of Mantutugas, Sulangon, testified that at about 8:00 o'clock on the night of February 4, 1988, while lying down for a rest, waiting for supper that his wife was then preparing, he heard somebody calling for help about thirty meters away from his house.

For four times he heard the call sounding, "Noy Nulfo, Tabangi ko" (Noy Nulfo, help me), and it kept on nearing. His wife and children got scared, and scampered away. He too was scared, but he got a kerosene lamp, proceeded to the door only to meet the man whom he recognized as-Perlito Jarmin. The man was weak, his face bruised, and his body was soaked with blood. He helped him lay his body on the ground near the rock, as the former fell off from his position. When asked what happened to him, Perlito answered that he was stabbed by Sunny (referring to Santiago Pado, accused). Hearing other voices of two persons coming nearer them (t.s.n., Lago, May 30, 1988, p. 3), he decided to leave Perlito and proceeded to the house of the barangay captain to report the incident. Along the way, he notified some of his neighbors that "Perlito is in their house that he might be dead already."

It took him time to see the barangay captain, as the wife informed him that the latter was not in their house but in the Sulangon market. Having met the barangay captain in the market, the two then proceeded to the Dapitan Police Station to report the incident.

Reacting to the report that same evening, a team of policemen was dispatched to the scene of the crime. The investigation was conducted. Meanwhile, people were already gathered in the area, bringing with them torches and lamps thus illuminating the same. Perlito Jarmin was already dead. There were multiple stab wounds on his body, spurts of blood were found by the walls of the house, a bolo stained with blood was found near the house post, while the kerosene lamp was broken and found about 1.5 meters from the deceased. (Exh. B.)

After the probe, the police team brought the dead body to the house of the deceased, in turn notifying the wife about it. From there, they proceeded to the house of Sunny, called for him of which the wife appeared informing them that Sunny was sleeping inside. Having found nothing from Sunny, they proceeded to the house of Alonzo Elumbaring, and then to the house of Adam Esmade, where the Lacay family took refuge. The time was then eleven in the evening, and the group returned to the Police Station. Arnulfo Lacay passed the night at Adam Esmade's

house, his cousin, together with his family.

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The widow of the deceased, Irene Ramoga, also testified for the prosecution. For one thing she claimed that Sunny and Perlito were not in good terms.

On May 18, 1989, Ronald Lacay testified. He is 13 years of age and the son of Arnulfo Lacay. He revealed that like his mother and the rest of the Lacay household, he heard Perlito's call for help, that all of them scampered away, except him, as he jump out of the window, and hid himself downstairs under the house. Though scared he peeped through the killing incident. He saw his father help Perlito get a better position near the rock on the ground. He heard his father ask about what happened but he couldn't figure out the answer. Why he could identify Perlito, he reasoned out that he is familiar with the man because he is their friend and neighbor, and he was then illuminated by the kerosene lamp and the shining moon. He was only about 5 meters away from the two, and when his father left Perlito, he could still hear him cry for help. "Tabang, Noy Nulfo, tabang Nang Sayo." (Help Noy Nulfo, Help Nang Sayo!) Suddenly, Sunny came to the picture, saying "Unsay Tabang, Noy Nulfo" (What help, Noy Nulfo!), threw the kerosene lamp right away, and crushed something many times to Perlito's body, until no sound could be heard anymore from the former. He claimed that he could identify Sunny for the same reasons that he could identify Perlito. He was so frightened that he went to the house of Adam Esmade, his father's cousin. In his affidavit (dated February 11, 1988), he swore to the details of what he saw. It was then followed by another affidavit (dated February 15, 1988) where he singled out Sunny, and this he maintained during the direct and cross-examination.

On February 5, 1988, Dr. Artemio Nielo, City Health Officer of Dapitan City, conducted the Post Mortem Examination [3] on the victim's body, the result revealed the following:

"1. Rigor mortis was present and complete.

"2. Stab wound, horizontal, about 4 cm. long, directed backwards and upwards at an angle of 30 degrees from the horizontal plane, located at the 6th intercostal space, mammary line.

"3. Stab wound, diagonal with the lower left tip about 10 degrees below the horizontal plane, 4 cm. long, located about 5 cm. below the xiphoid process at the midline, with a portion of the perforated stomach sticking out.

"4. Stab wound, vertical, about 4 cm. long, located about 1½ cm. below wound # 2, and about 2 cm. from the midline, with a portion of the transverse colon sticking out.

"5. Stab wound, horizontal, 4 cm. long, located 2 cm. below wound #3 and 1 cm. left of the midline with a portion of the momentum and small intestines sticking out.

"6. Stab wound, slanting inwards, through and through about 3 cm. long located on the medial aspect of the right forearm, about 2 cm. from the wrist. The cut ends of the tissues were directed towards the tip of the wound.

"7. Stab wound, horizontal, 1½ cm. long, located at the level of the 6th rib, midscapularline, hitting the left scapula.

"8. Stab wound, 1 cm. long, located about 1 cm. below wound #6 and hitting the scapula. "Cause of death: cardiac arrest due to multiple stab wounds." (Exh. C, p. 73)

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The accused's main defense was alibi. His wife Wenifreda Padoa corroborated his testimony and testified that accused was already asleep on the night the crime took place.

On January 30, 1992, the court a quo rendered the assailed decision, thus:

"WHEREFORE, this Court finds accused Santiago Padoa y Elcamel guilty of murder, within the bounds of moral certainty. He is hereby sentenced to reclusion perpetua, including the accessory penalties, with credit to his detention, to such extent as determined, and to indemnify the heirs of the deceased the sum of P50,000.00 and costs.

IT IS SO ORDERED." [4]

On appeal, accused-appellant interposes six (6) assignment of errors, to wit :

1. IN FAILING TO APPRECIATE, CONSIDER OR OTHERWISE HOLD AGAINST THE PROSECUTION ITS FAILURE OR OMISSION TO PRESENT IN EVIDENCE THE BOLO, STONE AND BROKEN PIECES OF BOTTLE THE ACCUSED IS CHARGED WITH HAVING ARMED HIMSELF WITH IN ATTACKING, ASSAULTING, STONING AND STABBING THE VICTIM, THUS MAKING THE RULE OPERATIVE THAT EVIDENCED SUPPRESSED IS ADVERSE TO THE PROSECUTION IF PRESENTED;

2. IN FINDING THAT THE ACCUSED IS THE "UNIDENTIFIED ASSAILANT" RESPONSIBLE FOR THE DEATH OF THE VICTIM;

3. IN HOLDING THAT TREACHERY ATTENDED THE COMMISSION OF THE OFFENSE AND QUALIFIED THE KILLING FROM PLAIN HOMICIDE TO MURDER, AGGRAVATED BY RECIDIVISM;

4. IN GIVING CREDENCE TO THE TESTIMONY OF RONALD LACAY, WHO NOT PLACED UNDER OATH WHEN HE TESTIFIED, EXPRESSLY ADMITTED IN OPEN COURT THAT HIS AFFIDAVIT OF FEBRUARY 11, 1988, WAS NOT TRUE, AS IT WAS HIS SECOND AFFIDAVIT DATED FEBRUARY 15, 1988 THAT CONTAINS THE TRUTH;

5. IN NOT FINDING THAT ACCUSED IS BEING FRAMED-UP BY ARNULFO LACAY, WHO TO EXCULPATE HIMSELF FROM CRIMINAL RESPONSIBILITY, HAD TO IMPUTE THE CRIMINAL ACT TO THE ACCUSED, A POLICE CHARACTER IN THE COMMUNITY WITH A STRING OF CRIMINAL CONVICTIONS FOR VERY SLIGHT OFFENSES; AND

6. IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGE WITHIN THE BOUNDS OF MORAL CERTAINTY DESPITE LACK OF PROOF BEYOND REASONABLE DOUBT.

Appellant contends that the prosecution failed to overcome the constitutional presumption of innocence in the absence of positive evidence, direct or circumstantial that would warrant his conviction. Appellant alleged that the prosecution's witnesses presented inconsistent affidavits and the delay in revealing the identity of the accused would indicate that they were merely concocted. Appellant likewise argued that the testimony of the eyewitness Ronald Lacay was not under oath and that treachery is absent to qualify the crime as murder.

We find the appeal bereft of merit.

It appears on record that the evidence for the prosecution hinges on the testimony of two witnesses, Arnulfo Lacay and his son, Ronald Lacay. Both witnesses testified that they heard the victim asking for help, to wit:

Q Were you able to recognize this person?

A Yes, sir.

Q Who was this person?

A Perlito Jarmin.

Q What did you notice of the body of Perlito Jarmin at the time you saw him near your house?

A He was soaked of his blood and there was bruise on his face.

Q What did Perlito Jarmin do at this juncture when you were already out in the house bringing a lamp?

A When he recognized me, he seated and lay down.

Q You mean he lay on the ground?

A Yes, sir.

Q When he was already on the ground, what did you do?

A I approached and went near him, and elevated himself and asked what happened to you?

Q Did Perlito Jarmin answer you?

A Yes, sir.

Q What did he answer you?

A: That he was stabbed by Sunny." [5]