

SECOND DIVISION

[G.R. No. 115689, June 30, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LINO ARTIAGA, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from a decision of the Regional Trial Court, Branch 2 of Tagum, Davao, convicting accused-appellant Lino Artiaga of murder and sentencing him to reclusion perpetua. The information filed against him read:

The undersigned accuses LINO ARTIAGA of the crime of Murder under Article 248 of the Revised Penal Code, committed as follows:

That on or about July 9, 1991, in the Municipality of Pantukan, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, armed with a kitchen knife, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Benjamin Serquiña, thereby inflicting upon him a wound which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

Contrary to law.

Tagum, Davao, Philippines, August 30, 1991.

During the trial, the prosecution presented Ernesto Ductama who testified that on the night of July 9, 1991 he went to attend a meeting of the Gumayan de Mano Mining Association. As the meeting scheduled at eight o'clock that night was not held, he decided to go home. He walked along a trail together with the victim Benjamin Serquiña, Pedencio Amante (who was carrying an improvised lamp) and Albert Gonzales. He saw accused-appellant Artiaga approaching. Accused-appellant came from the creek. According to the witness, as soon as accused-appellant got near Serquiña, accused-appellant placed his right arm over the shoulder of the victim, thrust a knife on the left breast of the latter and then ran away. Serquiña cried that he had been stabbed. Ductama and his companions went to the aid of the victim. Ductama removed the knife from the victim's breast and, with the help of Amante and Gonzales, carried the victim to the side of the road. He and Gonzales went after Artiaga, leaving Serquiña to the care of Amante. Fifteen minutes later, they were told by Amante that Serquiña had died. The three took the body of the deceased to his house thirty meters away and later continued the search for the

accused until one o'clock in the morning. It was not until the next day, however, when accused-appellant was found panning gold in the creek along the mountain and apprehended.

The prosecution also presented Dr. Evangeline D. Hornido, Medical Officer IV of the Pantukan District Hospital at Davao. She testified that on July 10, 1991, she examined the dead body of Benjamin Serquiña and found a wound on his chest which penetrated his heart, causing his instantaneous death. She also affirmed a death certificate she had earlier given.

After the prosecution had rested its case, the defense presented as witness Emeterio Geonzon, a gold panner, who claimed he was panning gold with the accused-appellant when the stabbing incident took place. Geonzon testified that at around six o'clock in the evening of July 9, 1991, he passed by the store of Edita Bacalso at Sitio Tae, Gumayan, Pantukan, Davao. Inside the store drinking were accused-appellant Lino Artiaga and several companions, while outside the store, also drinking, were deceased Benjamin Serquiña together with Yoyoy (Pedencio Amante) and Albert Gonzales. At about eleven o'clock, he and Artiaga went to the nearby creek to pan gold. Later on, Benjamin Serquiña, Yoyoy and Albert arrived. According to Geonzon, when Serquiña saw Artiaga, Serquiña pointed him to his companions, remarking, "Bay, here is the one we are looking for." Then, addressing Artiaga, Serquiña said, "Make haste with your work because I will use the gold." But Artiaga replied, "This might be through by tomorrow yet because it is only now that I have placed it here."^[1] This angered Benjamin Serquiña who yelled and ordered him, "You hurry up because I will use the money because I will be remitting it tomorrow."^[2] After uttering these words, the victim allegedly picked up a stone and tried to hit Artiaga with it. But, according to Geonzon, Artiaga was able to duck the blow. As Serquiña picked up another stone, Artiaga, having nowhere to retreat to, stabbed Serquiña on the chest. After this, the witness testified, he and the accused-appellant fled.

The witness Geonzon claimed that the prosecution witness Ductama was not present during the actual stabbing.^[3]

Accused-appellant Lino Artiaga testified next. He gave substantially the same version of the incident as his witness Emeterio Geonzon. His testimony is different from that of Geonzon, however, with regard to the time when they panned gold in the canal. According to the accused-appellant, they stopped their drinking and went to the canal before it started to rain between seven o'clock and eight o'clock.^[4] Geonzon, on the other hand, testified that he and accused-appellant went to pan gold after the rain had stopped and that was after eleven o'clock.^[5]

On April 23, 1986, the trial court rendered a decision, the dispositive portion of which states:

WHEREFORE, this Court finds accused Lino Artiaga guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code and after appreciating the generic aggravating circumstance of nighttime against him, he is hereby sentenced to suffer the penalty of Reclusion Perpetua, to suffer the accessory penalties provided for by law [and] to

pay the costs.

The accused is further ordered to indemnify the heirs of Benjamin Serquiña in the amount of FIFTY THOUSAND (P50,000.00) PESOS.

Given this 10th day of December 1992 at Tagum, Davao, Philippines.

Hence, this appeal.

As already stated, accused-appellant's claim is self defense and, in his appeal, he contends that the trial court erred in not acquitting him on this ground. Accordingly, the burden is on him to show the elements of self defense, to wit:

- 1 Unlawful aggression;
- 2 Reasonable necessity of the means employed to prevent or repel it; and
- 3 Lack of sufficient provocation on the part of the person defending himself.

First. The defense claims that there was unlawful aggression because Serquiña tried to hit accused-appellant with stones. However, the evidence of the defense is inconsistent and very doubtful. During his cross examination, defense witness Emeterio Geonzon testified that he did not see accused-appellant but only heard him and his companions talking while they were drinking inside the store of Edita Bacalso, because he (Geonzon) was just passing by, on his way to pan gold at the creek. It was accused-appellant who saw this witness and went with him to the panning area.

This testimony is inconsistent with the affidavit executed by Geonzon before the Public Attorney's Office on August 28, 1991, wherein he stated that he was with Lino Artiaga in the store of Edita Bacalso, drinking tuba with six other friends.^[6] His excuse that he had forgotten what he had stated in his affidavit because it had been a year ago only shows that his testimony was false, because had he known he had said he was with the group he would not have said he was not with them in his testimony in this case. If he was telling the truth, he could not have forgotten whether or not he was with the accused-appellant when the latter and others were in the store drinking. A witness who makes two sworn statements (an affidavit and testimony before the court) which are contradictory impeaches his own credit.

Geonzon also testified that Artiaga did not die instantly but was able to run some distance.^[7] However, his succeeding statements contradicted this because he said that after the stabbing, ". . . I don't know what happened anymore because the light was put off and I also ran away."^[8]

As we have noted earlier, although the testimony of the accused recounted the same version of the incident as that narrated by Geonzon, there was also an inconsistency between these two testimonies regarding the time when Artiaga and Geonzon allegedly went to the creek to pan gold, whether it was before or after it had rained on July 9, 1991.