

EIGHTEENTH DIVISION

[CA-GR CEB CR. HC. NO. 01524, February 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMUEL CATIGAY Y PANDAY A.K.A. SAMUEL LATIGAY Y
PATROCINIO, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

Before us is an appeal^[1] seeking to annul and reverse the Decision^[2] dated August 22, 2012 of the Regional Trial Court of Negros Oriental, 7th Judicial Region, Dumaguete City, Branch 39 in Criminal Case No. 20281 for Murder which sentenced the accused-appellant as follows:

"WHEREFORE, premises considered, accused SAMUEL CATIGAY OR SAMUEL LATIGAY Y PATROCINIO, is hereby found guilty beyond reasonable doubt of the crime of MURDER, defined under Article 248 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

Accused is likewise ordered to pay the heirs of the deceased, Antonio Baguio y Abueva, the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages.

SO ORDERED."

An Information^[3] was filed charging appellant with the crime of murder. The Information reads:

"That on or about the 25th day of December, 2010, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused SAMUEL CATIGAY y PANDAY with evident premeditation and with intent to kill one ANTONIO BAGUIO y ABUEVA a.k.a. "Nonoy", armed with a gun did, then and there wilfully, unlawfully and feloniously shoot the said ANTONIO BAGUIO y ABUEVA with the said gun, there(b)y inflicting upon him multiple gunshot wounds which directly caused his death."^[4]

That the crime was committed with the qualifying aggravating circumstance of evident premeditation.

Contrary to law."

Upon arraignment, appellant, assisted by the Public Attorney's Office, pleaded not guilty to the crime charged.^[5]

Pre-trial was thereafter conducted and a Pre-Trial Order^[6] was issued dated April 1, 2011.

Trial on the merits ensued with the prosecution presenting the following witnesses, namely: Lorenzo Brumo,^[7] Conigonda Baguio,^[8] Dr. Virgilio de Guzman,^[9] Police Officer Derek Alcoran,^[10] Dr, Sarah Talla,^[11] and SPO1 Rachel Portada.^[12]

Their testimonies, as succinctly summarized by the Solicitor General in his Appellee's Brief^[13] are as follows:

"On the evening of December 24, 2010, witness Lorenzo Brumo was at his house in Purok Gumamela, Brgy. Bagacay, Dumaguete City, when victim Antonio Baguio called out his name and asked for him to open the gate. Lorenzo let Antonio in and inquired what happened. Antonio told Lorenzo that he had an argument with somebody. Moments later, accused-appellant Samuel Catigay came to the gate of the house thrusting a square bar at Antonio. Lorenzo advised Antonio to get out of his house through the back door. As Lorenzo was talking to Samuel, Antonio arrived from behind and pushed the head of Samuel to the steel gate. Thereafter, Antonio immediately ran away. Samuel immediately went home to have his bleeding head treated.^[14]

The following day, or on December 25, 2010, at around 5:00 o'clock in the morning, Lorenzo was at the waiting shed in front of his house sipping coffee when he noticed Samuel went out of his house (located around one hundred [100] meters from Lorenzo's house), board his tricycle and drove off. Few minutes later, Samuel returned, parked his motorcycle in front of his house, pulled out a firearm and fired the gun at the direction of the riverbank. Samuel then approached Lorenzo and uttered "do" if Antonio Baguio will arrive, I will kill him." Lorenzo advised Samuel not to do it, but the latter ignored him. Lorenzo then saw Antonio walking towards their direction so he shouted for the latter to stop and go back. Samuel looked at the direction of Antonio and uttered "do", I am going to kill you." Antonio ran off. Samuel shot Antonio, hitting the latter at the back and causing him to fall down. Samuel fired another shot. The wounded Antonio stood up and ran towards the house of their policeman neighbor. Samuel proceeded home, boarded his motorcycle and drove off.
^{[15]"}

The accused testified^[16] on his defense. His testimony as summarized by the RTC, is hereunder quoted as follows:

"Accused Samuel Catigay or Latigay testified that at around 6:00 o'clock in the morning of December 25, 2010, he went out of his residence at Purok Gumamela, Brgy. Bagacay, this City, to purchase some *pandesal*. As he was walking on his way towards the highway and at a distance of around 120 meters away from his house, the deceased suddenly waylaid him and mauled him. He then instinctively also struck him back and a

fistfight ensued between them.

In order to obviate further trouble, he immediately rushed home, but as he was nearing the gate of his house, he saw Lorenzo Brumo, his neighbor and co-worker at the construction site, sitting at the waiting shed, a few meters away from his house. In view thereof, he decided not to enter his house because he wanted to tell Lorenzo that the deceased had waylaid him again and had boxed him. As he approached Lorenzo in order that he could talk to him about the matter, the deceased caught up with him and attempted to box him again; and so he instinctively pulled out his firearm and leveled the same at the lower portion of his body, and fired shots at him without intending to harm him.

He averred that after he shot the deceased, he immediately sought the aid of Police Provincial Director Lyndon Lawas so that he could surrender and place himself under his custody, but he met instead Police Officer Derek Alcoran, the close-in security detail of Col. Lawas, and so he readily surrendered to him."

Thereafter, the RTC rendered the assailed decision.

Hence, the instant appeal with the following assignments of error:

- I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER INSTEAD OF HOMICIDE.
- II. THE LOWER COURT GRAVELY ERRED IN NOT FINDING THAT THE MITIGATING CIRCUMSTANCE OF VINDICATION OF A WRONG, SUFFICIENT PROVOCATION AND VOLUNTARY SURRENDER ATTENDED THE COMMISSION OF THE CRIME CHARGED.
- III. THE LOWER COURT FAILED TO IMPOSE THE CORRECT PENALTY ON THE ACCUSED-APPELLANT.

We dismiss the appeal, but modify the awarded indemnities.

Appellant contends that the RTC erred in convicting him for murder considering that the prosecution failed to prove the elements of evident premeditation.

We do not agree with appellant.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.^[17]

The above elements have been duly established in the instant case as shown by the following testimony of the eyewitness to the crime, Lorenzo Brumo, to wit:

"PROS. ASENIERO:

Q. In the morning of December 25, 2010 at around 5:00 o'clock

in the morning, where were you?

A. I was at the place called waiting shed.

XXX

Q. After Samuel went somewhere else, what happened next, if any?

A. After a while, Samuel returned.

Q. Where did he go? (SIC)

A. Samuel proceeded home. He stopped his motorcycle and turned off the engine. He pulled out his firearm and fired it at the direction to the riverbank.

XXX

Q. At the time when Samuel fired his gun at the direction of the riverbank, where was he standing?

A. Right in front of his house, sir.

Q. And after that, what happened next?

A. He came near me.

XXX

Q. Now, you said Samuel approached you at the waiting shed where you were sitting, what happened there, if any?

A. He went near me and he told me, "do" if Antonio Baguio will arrive, I will kill him.

XXX

Q. Now, you said that you saw Antonio Baguio approached you, what happened next, if any?

A. I told Antonio Baguio to go back from where he came from, but he did not listen my call. Instead, he continued to approach me.

Q. And what happened next, if any?

A. Then Samuel Latigay looked the direction of Antonio Baguio and said "do," I am going to kill you."

Q. And what happened next, if any?

A. And with that, Antonio Baguio turned around and ran off and Samuel Latigay shot him.

Q. Was Antonio Baguio hit by the shot made by Samuel Latigay?

A. Yes, he was hit at the back, sir.

XXX

Q. And what happened after Samuel shot Antonio for the first time?

A. Antonio ran off, he fell down, and another shot was fired."

The above testimony clearly indicated that first thing in the morning of that fatal day, appellant was determined and had planned to kill the victim; that appellant had armed himself with a gun, a clear indication that he was indeed determined to kill. In fact, he even tested the gun by firing it towards the direction of the riverbank. In addition to that, he even declared to Lorenzo that he will kill the victim. He also told the victim of his intent to do so.

There was also sufficient lapse of time between appellant's apparent determination to kill and the actual killing as Antonio was not there yet when appellant did all the scheming. Lorenzo even had time to discourage appellant from executing his plans but the latter persisted and insisted on killing the victim to the point of shooting the latter at the back as he tried to run away. Hence, the planning and the preparation stages prior to the killing was clearly shown by the prosecution.

Added to this is the fact that the night before the killing, herein appellant appeared to have chased the victim towards the house of the eyewitness, where the latter sought refuge, and there, thrust a square bar at the victim. The victim was able to hit back and this must have angered appellant. All these circumstances, taken together, indicate the presence of evident premeditation. This is in accordance with the ruling of the Supreme Court in the similar case of *PEOPLE OF THE PHILIPPINES vs. ALBERT SANCHEZ y GALERA*,^[18] to wit:

"For evident premeditation to be considered, the following must be established: (1) the time when the accused determined (conceived) to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime (kill his victim); and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act. Premeditation presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.

In the case at bar, the interplay of the following circumstances indicate the presence of evident premeditation. First, the night before the stabbing incidents, appellant went to the De Leon residence to ask for money. Edgar, with much reluctance, gave appellant only P100. Jeane noted appellant receiving the money with a hostile expression on his face. Appellant was no longer working for the De Leon, so he was not required to go back to the house. But he did return the following morning, January 27, 2006, armed, surreptitiously entering the house and proceeding to Jufer's bedroom while everyone was busy having breakfast and preparing for school.

Second, Jufer told his mother that while relieving himself in the comfort