



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Appellee,

G.R. No. 245922

Present:

-versus-

PERLAS-BERNABE, *Chairperson*,  
GISMUNDO,  
LAZARO-JAVIER,  
LOPEZ, M., *and*  
ROSARIO,\* JJ.

DANILO TORO y DIANO @ "OTO",  
Appellant.

Promulgated:

JAN 25 2021

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DECISION

LAZARO-JAVIER, J.:

The Case

Appellant Danilo Toro y Diano @ "Oto" (appellant) assails the Decision<sup>1</sup> dated August 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02231 entitled *People of the Philippines v. Danilo Toro y Diano @ "Oto"* affirming his conviction for Murder.

\* Designated additional member per Special Order No. 2797 dated November 5, 2020.

<sup>1</sup> Penned by Associate Justice Louis P. Acosta and concurred in by Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, all members of the Twentieth Division, *rollo*, pp. 5-17.

### Antecedents

By Information dated May 31, 2005, appellant and Salvador Cahusay @ Adol (Cahusay) were jointly charged with Murder for the death of Pascualito Espiña,<sup>2</sup> Sr. (Espiña, Sr.), viz.:

That on or about the 21<sup>st</sup> day of March 2004 at around 12:00 midnight more or less at Sitio Pinana-an, Barangay Calantiao, Municipality of Bobon, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a short bolo locally known as “Dipang” conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and stab PASCUALITO CASTILLO ESPINA SR., with the use of said weapon which the accused had provided himself for the purpose, thereby inflicting upon him mortal wounds which caused the instantaneous [*sic*] death of said victim.

CONTRARY TO LAW.<sup>3</sup>

The case was raffled to the Regional Trial Court – Branch 20, Catarman, Northern Samar. On arraignment, appellant initially pleaded guilty to Homicide, which plea, the trial court refused. He then changed his plea to not guilty to the charge of Murder. Cahusay, on the other hand, remained at large.

During the pre-trial, the prosecution and defense stipulated that<sup>4</sup> the incident happened on March 21, 2004 around 12 o'clock midnight at Sitio Pinana-an, Barangay Calantiao, Bobon, Northern Samar; and on March 22, 2004, Espiña, Sr. was found dead inside appellant's house.

#### *The Prosecution's Version*

Municipal Health Officer **Dr. Henry Novales** testified that he conducted the postmortem examination of Espiña, Sr. His autopsy report showed that Espiña, Sr. suffered 33 stab wounds – ten (10) of which were fatal, located in the left side of his body where his heart was. Meanwhile, three (3) stab wounds in the right side of his body punctured his lungs. The assailant and the victim were near each other and the instrument used was a knife. But he could not say if there were more than one (1) assailant.<sup>5</sup>

Then 16-year old **Pascualito Espiña, Jr.** (Espiña, Jr.),<sup>6</sup> the victim's son, testified that Cahusay invited his father to a drinking spree around 4 o'clock in the afternoon of March 21, 2004. The two (2) were enjoying a drinking session inside their house until 7 o'clock in the evening when

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<sup>2</sup> Sometimes referred to as “Espina”.

<sup>3</sup> *Rollo*, pp. 5-6.

<sup>4</sup> *CA rollo*, p. 44.

<sup>5</sup> *Id.* at 45.

<sup>6</sup> *Id.* at 45-46.

appellant invited them to move to his own house just 900 meters away to continue their drinking spree.

By midnight, he decided to fetch his father at appellant's house. There, he saw his father at the "*suy-ab*" (extension of the house) being held by Cahusay by the arms while appellant was stabbing him. At that time, they were the only persons in the *suy-ab*. Since a gas torch illuminated the *suy-ab*, he clearly saw the attack on his father and the assailant's identity. Too, he was only two (2) arms length away from them. Though his father had a knife in a scabbard tucked on his waist, he had no chance to defend himself.

Out of fear, he ran toward the house of their neighbor *Barangay Tanod* Dodoy and sought help, but he was refused. Thus, he asked Dodoy to accompany him to his aunt at *Barangay Trujillo*. They got there around 2 o'clock in the morning.

The following day, his aunt sought assistance from the *Barangay Council of Calantiao* to retrieve Espiña, Sr.'s lifeless body. Inside appellant's house, they saw his father's lifeless body seated on the floor. Appellant and his family and Cahusay were nowhere to be found. They brought the cadaver to Bobon, Samar by boat.<sup>7</sup> The victim's brother, **Paquito** Espiña corroborated Espiña, Jr.'s testimony.

### *The Defense's Version*

**Appellant**<sup>8</sup> testified that Espiña, Sr. and Cahusay came to his house for a drinking spree around 7 o'clock in the evening of March 21, 2004. They brought with them one (1) gallon of *tuba* (coconut wine) which they consumed at the *suy-ab*. He did not recall any verbal altercation with Espiña, Sr. because they only talked about their salaries. After two (2) hours, Espiña, Sr. and Cahusay decided to go home as there was no more *tuba* left to drink. After his visitors left, he and his family went to sleep.

The following morning, his wife was shocked when she saw Espiña, Sr.'s lifeless body at the *suy-ab*. He noticed that Espiña, Sr. sustained several stab wounds. Afraid, he and his family went to their house in *Barangay Salvacion*. They did not inform anyone of the incident. He intended to return to their house to check on other things but decided not to when he got informed that he was the suspect for Espiña, Sr.'s death and the latter's brother was already looking for him for revenge.

### **The Trial Court's Ruling**

By Decision<sup>9</sup> dated November 9, 2013, the trial court rendered a verdict of conviction, *viz.*:

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<sup>7</sup> *Id.* at 46.

<sup>8</sup> *Id.* at 46-47.

<sup>9</sup> *Id.* at 44-48.

**WHEREFORE, the court finds accused DANILO TORO Y DIANO @ OTO guilty beyond reasonable doubt of the crime of MURDER, and hereby sentences him to suffer the penalty of *reclusion perpetua*. Accused is also ordered to indemnify the heirs of Pascualito Castillo Espiña, Sr. the amount of P50,000.00 for his death and P30,000.00 by way of moral damages and to pay the costs.**

**Issue an alias warrant for the arrest of SALVADOR CAHUSAY.<sup>10</sup>**

According to the trial court, treachery qualified the killing of Espiña, Sr. to murder. Espiña, Jr.'s eyewitness account of the incident sufficiently proved the presence of this qualifying circumstance. Helpless, Espiña, Sr. was then under Cahusay's clasp while appellant stabbed him to death. On the other hand, Espiña, Jr.'s narration failed to establish evident premeditation. It did not show when the offenders decided to commit the crime and the sufficient lapse of time between decision and execution which allowed them to reflect on their actions.

### **The Proceedings before the Court of Appeals**

On appeal,<sup>11</sup> appellant faulted the trial court for rendering the verdict of conviction. He argued:

**First.** He should only be convicted of Homicide for the prosecution's failure to sufficiently allege treachery in the Information. At any rate, treachery was not sufficiently proven since the lone prosecution eyewitness did not see how the alleged aggression commenced.

**Second.** Only a gas torch illuminated the place of incident such that it was impossible for Espiña, Jr. to have positively identified him as the assailant.

**Third.** Espiña, Jr.'s reaction after witnessing the incident ran counter to human experience. Ordinarily, a son who witnessed his father being stabbed would run for help. Instead of seeking help, Espiña, Jr. ran to inform his aunt about the incident.

The Office of the Solicitor General (OSG),<sup>12</sup> on the other hand, defended the verdict of conviction. It countered that the prosecution sufficiently established the presence of treachery. Espiña, Jr., who was then only two (2) arm's length away, positively identified appellant as his father's assailant through the gas torch that illuminated the place of the incident.

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<sup>10</sup> *Id.* at 48.

<sup>11</sup> *Id.* at 25-43.

<sup>12</sup> *Id.* at 58-72.

### The Court of Appeals' Ruling

Through its assailed Decision<sup>13</sup> dated August 16, 2018, the Court of Appeals affirmed. It held that the prosecution sufficiently established appellant's guilt. Evident premeditation was apparent when appellant and Cahusay invited Espiña, Sr. to a drinking spree, and in unison over a pre-hatched plan, they inflicted 33 fatal wounds on the victim. Too, the severity and number of wounds inflicted clearly showed treachery.

The Court of Appeals increased the award of civil indemnity and moral damages to ₱100,000.00 each in accordance with *People v. Jugueta*.<sup>14</sup>

### The Present Appeal

Appellant now prays anew for his acquittal. In compliance with Resolution dated June 3, 2019,<sup>15</sup> both appellant<sup>16</sup> and the OSG<sup>17</sup> manifested that in *lieu* of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### The Court's Ruling

Murder is defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, *viz.*:

**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 perpetua*, 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.

x x x x

5. With evident premeditation.<sup>18</sup>

To sustain a conviction, the prosecution must establish the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is not parricide or infanticide.<sup>19</sup>

We focus on the second and third elements.

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<sup>13</sup> *Rollo*, pp. 5-17.

<sup>14</sup> 783 Phil. 806, 849 (2016).

<sup>15</sup> *Rollo*, p. 22.

<sup>16</sup> *Id.* at 38-39.

<sup>17</sup> *Id.* at 30-31.

<sup>18</sup> Death Penalty Law, Republic Act No. 7659, December 13, 1993.

<sup>19</sup> See *People v. Corpuz*, G.R. No. 220486, June 26, 2019.

***Espiña, Jr. positively identified  
appellant as his father's assailant.***

Prosecution's lone eyewitness Espiña, Jr. positively identified appellant as the one who stabbed his father to death:

Q: In fetching your father, where did you go?

A: To the house of Danilo Toro.

x x x x

Q: What happened when you reached the house of D. Toro?

A: I saw that my father was being held by Salvador Cahusay and was stabbed by Danilo Toro.

Q: When you arrived at the place of Danilo Toro, did you enter the house of Danilo Toro?

A: No.

Q: And did you see your father there?

A: Yes.

Q: Where in particular?

A: Inside the extension portion "suy-ab" of Danilo Toro.

x x x x

Q: Were there other persons inside the extension place of the house of Danilo Toro aside from your father?

A: Yes

Q: Who were they?

A: Salvador Cahusay only.

Q: How about Danilo Toro? Did you see him?

A: Yes.

Q: Do you mean to say that only the three of them, your father, Salvador Cahusay and Danilo Toro were there inside the extension place of Danilo Toro?

A: Yes.

Q: Could you see them inside the extension place of the house of Danilo Toro without necessarily entering the door?

A: Yes.

Q: Was there an illuminating light at the place when you saw them?

A: Yes, "sirilya," a sort of gas torch.<sup>20</sup>

x x x x

The trial court and the Court of Appeals uniformly gave credence to Espiña, Jr.'s clear, straightforward, and categorical eyewitness account of the incident. With the light from the *sirilya* (gas torch), Espiña, Jr. was able to

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<sup>20</sup> CA rollo, pp. 67-68.

identify appellant as the one who stabbed his father 33 times while Cahusay held his father to ward off any form of resistance or retaliation. Against appellant's denial and *alibi*, Espiña, Jr.'s positive identification surely deserves greater weight and credit.<sup>21</sup>

Appellant nevertheless attempts to discredit Espiña, Jr. by questioning the latter's reaction after witnessing his father being stabbed to death. According to appellant, it was contrary to human experience for Espiña, Jr. to report the incident to his aunt instead of asking for help.

The argument fails to persuade.

Espiña, Jr. in fact ran for help towards Barangay Tanod Dodoy's house. As he was refused the help he needed, he asked the latter to accompany him to his aunt instead. At any rate, this Court has consistently ruled there is no standard form of human behavioral response when one is confronted with a strange, startling and frightful experience.<sup>22</sup> Sans any ill motive to implicate appellant to this gruesome crime, Espiña, Jr.'s credibility must, perforce, be upheld. Ordinarily, any person, especially a minor, would not point to an innocent person as fall guy as his father's assailant but would want the real killer to be prosecuted to serve justice.<sup>23</sup>

***The lower courts erroneously appreciated treachery.***

The Court agrees with appellant that the Information failed to specify the acts which constitute treachery as required under Section 9,<sup>24</sup> Rule 110 of the Rules of Court. Appellant, however, is deemed to have waived such defect in the Information for his failure to file a motion to quash or motion for bill of particulars before arraignment.

In *People v. Solar*,<sup>25</sup> the Court ruled that appellant Rolando Solar was deemed to have waived his objections against the formal defects in the information, including the supposed lack of particularity in the description of the attendant circumstances, for his failure to question its sufficiency by either filing a motion to quash or by filing a motion for bill of particulars before arraignment. In other words, Solar was deemed to have understood the acts imputed against him by the Information despite its purported insufficiency.

Be that as it may, there is insufficient evidence to establish the presence of treachery here.

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<sup>21</sup> See *People v. Lago*, 292-A Phil. 714, 719 (1993).

<sup>22</sup> See *People v. Alban*, 315 Phil. 597, 607 (1995).

<sup>23</sup> See *People v. Saltarin*, G.R. No. 223715, June 03, 2019.

<sup>24</sup> **SECTION 9. Cause of the Accusation.** — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (9a)

<sup>25</sup> G.R. No. 225595, August 6, 2019.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take.<sup>26</sup> It requires:

- (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and
- (b) that said means of execution were deliberately or consciously adopted.<sup>27</sup>

There must be clear and convincing evidence on how the aggression was made, how it began, and how it developed. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the victim's death began and developed, it cannot be established from suppositions drawn only from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery.<sup>28</sup>

Here, the lone prosecution eyewitness saw his father being held by Cahusay while appellant stabbed him 33 times:

**Q:** In fetching your father, where did you go?

**A:** To the house of Danilo Toro.

x x x x

**Q:** What happened when you reached the house of D. Toro?

**A:** I saw that my father was being held by Salvador Cahusay and was stabbed by Danilo Toro.<sup>29</sup>

Certainly, the number of wounds inflicted reveals a determined intent to kill. Of the 33 stab wounds inflicted, 10 of which were fatal as they got inflicted near the heart while the other three (3) ruptured the victim's lungs. But Espiña, Jr. was not able to witness the commencement of the aggression or initial attack, hence, he was not able to testify thereon. He did not give an account either on how the attack resulted in the victim's death. As it was, his eyewitness account was limited to the stabbing incident itself. There was no mention at all that the attack was sudden and unexpected, leaving the victim totally unable to defend himself or even ran away. Treachery, therefore, cannot be appreciated to qualify the killing to murder. As brought to fore by the esteemed Associate Justice Mario V. Lopez, the victim's son only chanced upon a slim portion or momentary episode of the attack against his father, raising doubt whether the victim was indeed deprived the opportunity to defend himself.

<sup>26</sup> See *People v. Fieldad*, 744 Phil. 790, 803 (2014).

<sup>27</sup> See *People v. Aquino*, 396 Phil. 303, 307 (2000).

<sup>28</sup> See *People v. Enriquez, Jr.*, G.R. No. 238171, June 19, 2019.

<sup>29</sup> CA rollo, p. 67.

In *People v. Enriquez, Jr.*,<sup>30</sup> the Court refused to appreciate treachery because the prosecution witnesses, Luisa and Jessica, did not see how the attack commenced or how the events leading to the victim's death unfolded as the attack started inside the victim's home. The evidence presented by the prosecution only proved the events **after** the initial attack had already happened, *i.e.*, they merely saw Dela Cruz, already bloodied, coming out of his house. Treachery, according to the Court, cannot be considered where the lone witness did not see the commencement of the assault.

At best, the prosecution merely proved that appellant and Cahusay took advantage of their superior strength and employed means to weaken the victim's defense – circumstances which would have qualified the killing to murder were they alleged in the Information. The Court, nevertheless, is not precluded from considering this circumstance in awarding exemplary damages pursuant to *People v. Jugueta*.<sup>31</sup>

***The killing was not premeditated.***

Records, too, do not show evident premeditation. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts.<sup>32</sup>

Here, the Court of Appeals erroneously appreciated the presence of evident premeditation in the killing of Espiña, Sr. The eyewitness account of the incident simply failed to establish when the assailants decided to commit the offense and the lapse of sufficient time from such decision until the commission of the offense, necessary for the assailants to have reflected on their actions.

Sans any of the circumstances to qualify Espiña, Sr.'s death to Murder, appellant may only be convicted of Homicide.<sup>33</sup>

***Penalty***

Under Article 249 of the Revised Penal Code, Homicide is punishable with *reclusion temporal*, *viz.*:

**Art. 249. Homicide.** — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any

<sup>30</sup> G.R. No. 238171, June 19, 2019.

<sup>31</sup> If an aggravating circumstance was proven during the trial, even if not alleged in the Information, in addition to the above mentioned amounts as civil indemnity and moral damages, **the amount of ₱50,000.00 exemplary damages for consummated; ₱30,000.00 for frustrated; and ₱20,000.00 for attempted**, shall be awarded. (Supra note 12 at 853)

<sup>32</sup> See *People v. Sebastian*, 428 Phil. 622 (2002)

<sup>33</sup> See *People v. Julio*, G.R. No. 225063, November 28, 2019.

of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Applying the Indeterminate Sentence Law and in the absence of any aggravating or mitigating circumstance, appellant should be sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.<sup>34</sup>

Meanwhile, the awards of civil indemnity and moral damages should be reduced to ₱50,000.00 each in accordance with *People v. Jugueta*.<sup>35</sup> Meanwhile, the presence of the aggravating circumstances of abuse of superior strength and employing means to weaken the defense, though not alleged in the Information, warrants the award of exemplary damages of ₱50,000.00. The Court, too, awards temperate damages of ₱50,000.00 pursuant to *People v. Racal*.<sup>36</sup>

These amounts shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.<sup>37</sup>

**ACCORDINGLY**, the appeal is **PARTLY GRANTED**. The Decision dated August 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02231, **AFFIRMED with MODIFICATION**.

**DANILO TORO y DIANO @ “OTO”** is found **GUILTY** of **HOMICIDE only**. He is sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. He is further **ORDERED** to **PAY the Heirs of Pascualito Espiña, Sr.:**

- 1) Civil indemnity of ₱50,000.00;
- 2) Moral damages of ₱50,000.00;
- 3) Exemplary damages of ₱50,000.00;
- 4) Temperate damages of ₱50,000.00.

These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.

**SO ORDERED.**

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<sup>34</sup> *Id.*

<sup>35</sup> V. In other crimes that result in the death of a victim and the penalty consists of divisible penalties, *i.e.*, Homicide, Death under Tumultuous Affray, Infanticide to conceal the dishonour of the offender, 127 Reckless Imprudence Resulting to Homicide, Duel, Intentional Abortion and Unintentional Abortion, *etc.*:  
1.1 Where the crime was consummated:  
a. Civil indemnity — P50,000.00  
b. Moral damages — P50,000.00 (Supra note 12 at 852).

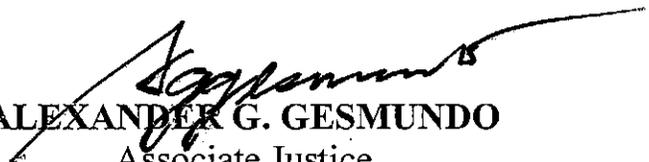
<sup>36</sup> 817 Phil. 665, 686 (2017).

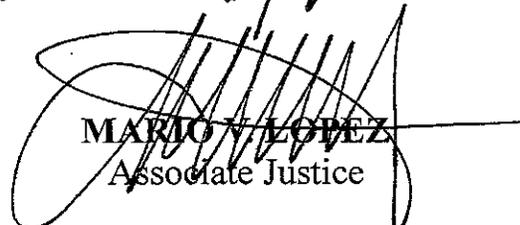
<sup>37</sup> When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

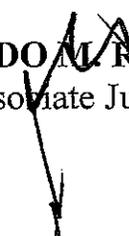
  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson

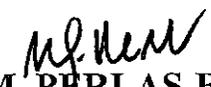
  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

*See concurring opinion*  
  
**MARIO LOPEZ**  
 Associate Justice

  
**RICARDO M. ROSARIO**  
 Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice

