

FIRST DIVISION

[G.R. NO. 165483, September 12, 2006]

**RUJGERIC Z. PALAGANAS,^[1] PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For what is a man, what has he got?
If not himself, then he has naught.
To say the things he truly feels;
And not the words of one who kneels.
The record shows I took the blows -
And did it my way!

The song evokes the bitterest passions. This is not the first time the song "My Way"^[2] has triggered violent behavior resulting in people coming to blows. In the case at bar, the few lines of the song depicted what came to pass when the victims and the aggressors tried to outdo each other in their rendition of the song.

In this Petition for Review on *Certiorari*^[3] under Rule 45 of the Revised Rules of Court, petitioner Rujgeric Z. Palaganas prays for the reversal of the Decision of the Court of Appeals in CA-G.R. CR No. 22689 dated 30 September 2004,^[4] affirming with modification the Decision of the Regional Trial Court (RTC), Branch 46, of Urdaneta, Pangasinan, in Criminal Cases No. U-9608, U-9609, and U-9610 and U-9634, dated 28 October 1998,^[5] finding petitioner guilty beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code, and two (2) counts of Frustrated Homicide under Article 249 in relation to Articles 6 and 50 of the same Code.

On 21 April 1998, petitioner and his older brother, Ferdinand Z. Palaganas (Ferdinand), were charged under four (4) separate Informations^[6] for two (2) counts of Frustrated Murder, one (1) count of Murder, and one (1) count for Violation of COMELEC Resolution No. 2958^[7] relative to Article 22, Section 261, of the Omnibus Election Code,^[8] allegedly committed as follows:

CRIMINAL CASE NO. U-9608

That on or about January 16, 1998, in the evening at Poblacion, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused armed with an unlicensed firearm, with intent to kill, treachery and evident premeditation, conspiring together, did then and there willfully, unlawfully and feloniously shoot SERVILLANO FERRER,

JR. y Juanatas, inflicting upon him "gunshot wound penetrating perforating abdomen, urinary bladder, rectum bullet sacral region," the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless, did not produce it by reason of the causes independent of the will of the accused and that is due to the timely medical assistance rendered to said Servillano J. Ferrer, Jr. which **prevented his death**, to his damage and prejudice.

CONTRARY to Art. 248 in relation with Arts. 6 and 50, all of the Revised Penal Code, as amended.

CRIMINAL CASE NO. U-9609

That on or about January 16, 1998, in the evening at Poblacion, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused armed with an unlicensed firearm, with intent to kill, treachery and evident premeditation, conspiring together, did then and there willfully, unlawfully and feloniously shoot MICHAEL FERRER alias "Boying Ferrer", inflicting upon him gunshot wound on the right shoulder, the accused having thus performed all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of the causes independent of the will of the accused and that is due to the medical assistance rendered to said Michael "Boying" Ferrer which **prevented his death**, to his damage and prejudice.

CONTRARY to Art. 248 in relation with Arts. 6 and 50, all of the Revised Penal Code, as amended.

CRIMINAL CASE NO. U-9610

That on or about January 16, 1998, in the evening at Poblacion, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused armed with an unlicensed firearm, with intent to kill, treachery and evident premeditation, conspiring together, did then and there willfully, unlawfully and feloniously shoot MELTON FERRER alias "TONY FERRER", inflicting upon him mortal gunshot wounds in the head and right thigh which caused the **instantaneous death** of said Melton "Tony" Ferrer, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code, as amended by R.A. 7659.

CRIMINAL CASE NO. U-9634

That on or about January 16, 1998 which is within the election period at Poblacion, Manaoag, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously bear and carry one (1) caliber .38 without first securing the necessary permit/license to do the same.

CONTRARY to COMELEC RES. 2958 in relation with SEC. 261 of the OMNIBUS ELECTION CODE, as amended.^[9] (Underscoring supplied.)

When arraigned on separate dates,^[10] petitioner and Ferdinand entered separate pleas of "Not Guilty." Upon motion of Ferdinand, ^[11] the four cases were consolidated and were assigned to Branch 46 of the RTC in Urdaneta, Pangasinan.
^[12]

The factual antecedents as viewed by the prosecution, are summarized in the Comment dated 18 April 2005 of the Office of the Solicitor General,^[13] to wit:

On January 16, 1998, around 8:00 in the evening, brothers Servillano, [Melton] and Michael, all surnamed Ferrer were having a drinking spree in their house because [Melton], who was already living in San Fernando, La Union, visited his three brothers and mother at their house in Sitio Baloking, Poblacion, Manaoag, Pangasinan. At 9:45 in the evening, the three brothers decided to proceed to Tidbits Videoke bar located at the corner of Malvar and Rizal Streets, Poblacion, Manaoag to continue their drinking spree and to sing. Inside the karaoke bar, they were having a good time, singing and drinking beer.

Thereafter, at 10:30 in the evening, Jaime Palaganas arrived together with Ferdinand Palaganas and Virgilio Bautista. At that time, only the Ferrer brothers were the customers in the bar. The two groups occupied separate tables. Later, when Jaime Palaganas was singing, [Melton] Ferrer sang along with him as he was familiar with the song [My Way]. Jaime however, resented this and went near the table of the Ferrer brothers and said in Pangasinan dialect *"As if you are tough guys."* Jaime further said *"You are already insulting me in that way."* Then, Jaime struck Servillano Ferrer with the microphone, hitting the back of his head. A rumble ensued between the Ferrer brothers on the one hand, and the Palaganases, on the other hand. Virgilio Bautista did not join the fray as he left the place. During the rumble, Ferdinand went out of the bar. He was however pursued by Michael. When Servillano saw Michael, he also went out and told the latter not to follow Ferdinand. Servillano and Michael then went back inside the bar and continued their fight with Jaime.

Meantime, Edith Palaganas, sister of Jaime and the owner of the bar, arrived and pacified them. Servillano noticed that his wristwatch was missing. Unable to locate the watch inside the bar, the Ferrer brothers went outside. They saw Ferdinand about eight (8) meters away standing at Rizal Street. Ferdinand was pointing at them and said to his companion, later identified as petitioner [Rujjeric] Palaganas, *"Oraratan paltog mo lara"*, meaning *"They are the ones, shoot them."* Petitioner then shot them hitting Servillano first at the left side of the abdomen, causing him to fall on the ground, and followed by [Melton] who also fell to the ground. When Servillano noticed that [Melton] was no longer moving, he told Michael *"Bato, bato."* Michael picked up some stones and threw them at petitioner and Ferdinand. The latter then left the place. Afterwards, the police officers came and the Ferrer brothers were brought to the Manaoag Hospital and later to Villaflor Hospital in Dagupan.

Servillano later discovered that [Melton] was fatally hit in the head while Michael was hit in the right shoulder.

On the other hand, the defense, in its Appellant's Brief dated 3 December 1999,^[14] asserted the following set of facts:

On January 16, 1998, at around 11:00 in the evening, after a drinking session at their house, the brothers Melton (Tony), Servillano (Junior) and Michael (Boying), all surnamed Ferrer, occupied a table inside the Tidbits Café and Videoke Bar and started drinking and singing. About thirty minutes later, Jaime Palaganas along with his nephew Ferdinand (Apo) and friend Virgilio Bautista arrived at the bar and occupied a table near that of the Ferrers'.

After the Ferrers' turn in singing, the microphone was handed over to Jaime Palaganas, who then started to sing. On his third song [My Way], Jaime was joined in his singing by Tony Ferrer, who sang loudly and in an obviously mocking manner. This infuriated Jaime, who then accosted Tony, saying, "You are already insulting us." The statement resulted in a free for all fight between the Ferrers', on one hand, and the Palaganases on the other. Jaime was mauled and Ferdinand, was hit on the face and was chased outside of the bar by Junior and Boying Ferrer.

Ferdinand then ran towards the house of the appellant Rujjerio Palaganas, his brother, and sought the help of the latter. Rujjerio, stirred from his sleep by his brother's shouts, went out of his house and, noticing that the van of his uncle was in front of the Tidbits Videoke Bar, proceeded to that place. Before reaching the bar, however, he was suddenly stoned by the Ferrer brothers and was hit on different parts of his body, so he turned around and struggled to run towards his house. He then met his brother, Ferdinand, going towards the bar, so he tugged him and urged him to run towards the opposite direction as the Ferrer brothers continued pelting them with large stones. Rujjerio then noticed that Ferdinand was carrying a gun, and, on instinct, grabbed the gun from the latter, faced the Ferrer brothers and fired one shot in the air to force the brothers to retreat. Much to his surprise, however, the Ferrer brothers continued throwing stones and when (sic) the appellant was again hit several times. Unable to bear the pain, he closed his eyes and pulled the trigger.

On 28 October 1998, the trial court rendered its Decision finding petitioner guilty only of the crime of Homicide and two (2) counts of Frustrated Homicide.^[15] He was, however, acquitted of the charge of Violation of COMELEC Resolution No. 2958 in relation to Section 261 of the Omnibus Election Code.^[16] On the other hand, Ferdinand was acquitted of all the charges against him.^[17]

In holding that petitioner is liable for the crimes of Homicide and Frustrated Homicide but not for Murder and Frustrated Murder, the trial court explained that there was no conspiracy between petitioner and Ferdinand in killing Melton and wounding Servillano and Michael. ^[18] According to the trial court, the mere fact that Ferdinand "pointed" to where the Ferrer brothers were and uttered to petitioner "*Araratan, paltog mo lara!*" (They are the ones, shoot them!), does not in itself

connote common design or unity of purpose to kill. It also took note of the fact that petitioner was never a participant in the rumble inside the Tidbits Cafe Videoke Bar (videoke bar) on the night of 16 January 1998. He was merely called by Ferdinand to rescue their uncle, Jaime, who was being assaulted by the Ferrer brothers. It further stated that the shooting was instantaneous and without any prior plan or agreement with Ferdinand to execute the same. It found that petitioner is solely liable for killing Melton and for wounding Servillano and Michael, and that Ferdinand is not criminally responsible for the act of petitioner.

Further, it declared that there was no treachery that will qualify the crimes as murder and frustrated murder since the Ferrer brothers were given the chance to defend themselves during the shooting incident by stoning the petitioner and Ferdinand.^[19] It reasoned that the sudden and unexpected attack, without the slightest provocation on the part of the victims, was absent. In addition, it ratiocinated that there was no evident premeditation as there was no sufficient period of time that lapsed from the point where Ferdinand called the petitioner for help up to the point of the shooting of the Ferrer brothers.^[20] Petitioner was sleeping at his house at the time he heard Ferdinand calling him for help. Immediately, petitioner, still clad in pajama and sleeveless shirt, went out of his room to meet Ferdinand. Thereafter, both petitioner and Ferdinand went to the videoke bar where they met the Ferrer brothers and, shortly afterwards, the shooting ensued. In other words, according to the trial court, the sequence of the events are so fast that it is improbable for the petitioner to have ample time and opportunity to then plan and organize the shooting.

Corollarily, it also stated that petitioner cannot successfully invoke self-defense since there was no actual or imminent danger to his life at the time he and Ferdinand saw the Ferrer brothers outside the videoke bar.^[21] It noted that when petitioner and Ferdinand saw the Ferrer brothers outside the videoke bar, the latter were not carrying any weapon. Petitioner then was free to run or take cover when the Ferrer brothers started pelting them with stones. Petitioner, however, opted to shoot the Ferrer brothers. It also stated that the use by petitioner of a gun was not a reasonable means to prevent the attack of the Ferrer brothers since the latter were only equipped with stones, and that the gun was deadlier compared to stones. Moreover, it also found that petitioner used an unlicensed firearm in shooting the Ferrer brothers.^[22]

As regards the Violation of COMELEC Resolution No. 2958, in relation to Section 261 of the Omnibus Election Code, the trial court acquitted the petitioner of the offense as his use and possession of a gun was not for the purpose of disrupting election activities.^[23] In conclusion, the trial court held:

WHEREFORE, JUDGMENT is hereby rendered as follows:

1. Under CRIM. CASE NO. U-9608, [Rujjeric] PALAGANAS is hereby CONVICTED beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE (Not Frustrated Murder), with the use of an unlicensed firearm, the Court sentences him to suffer the penalty of Prision Mayor in its maximum period or 12 years of imprisonment and to pay Servillano Ferrer the sum of P163,569.90 for his medical expenses and P50,000.00 for exemplary damages;