

## SECOND DIVISION

[ G.R. No. 245922, January 25, 2021 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO TORO Y  
DIANO @ "OTO", APPELLANT.**

### 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.

#### 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 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.:

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, Espitia, 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.

## 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 prehatched 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 P100,000.00 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:

I. 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.

***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 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