

THIRD DIVISION

[G.R. No. 193085, November 29, 2017]

**PETRONILO NAPONE, JR. AND EDGAR NAPONE, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

MARTIRES, J.:

This is a petition for review seeking the reversal of the 9 December 2009 Decision^[1] and 21 July 2010 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 00384 which affirmed with modification the 14 November 2006 Decision^[3] of the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon (RTC), in Criminal Case No. 1190 finding accused-appellants Petronilo Napone, Jr. (*Junior*) and Edgar Napone (*Edgar*) guilty of the crime of homicide.

THE FACTS

Junior and Edgar, together with their father, Petronilo Napone, Sr. (*Senior*; collectively, *the Napones*), were charged with the crime of murder for the death of Salvador Espelita (*Salvador*) under an information, dated 13 November 1992, the accusatory portion of which reads:

That on or about the 22nd day of September, 1992, in the evening at [B]arangay Mabunga, [M]unicipality of Baungon, [P]rovince of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and superior strength, armed with a bolo, firearm and stone, did then and there willfully, unlawfully and criminally attack, hack, shoot and throw stone at SALVADOR ESPELITA, inflicting mortal wounds to wit:

- Hack wounds, frontal left side of the head, (1) 4 x 1 cm. (2) 2.5 x 1 cm. (3) 3.5 cm. (4) 1 cm.

- Gunshot wound, left chest measuring 8 cm. in diameter, 2 inches from the midline, at the 4th intercostal space [surrounded] by contusion collar, directed straight forward penetrating [and] perforating the left ventricle thru [and] thru, traversing towards the right piercing the intervertebral muscle at the back at the level 5th inter space 4 inches from the vertebral column.

that caused his death thereafter.

To the damage and prejudice [of] the heirs of the deceased SALVADOR

ESPELITA in such sum they are entitled to under the law.

Contrary to and in violation of Article 248 of the Revised Penal Code.^[4]

On 4 May 1993, the Napones were arraigned and pleaded not guilty.^[5] Trial ensued.

On 17 January 2005, the trial court ordered the dismissal of the case against Senior due to his death on 8 October 2003, a month after he completed his testimony.

Evidence for the Prosecution

The prosecution anchored mainly on the testimonies of three (3) witnesses, namely: Jocelyn Janioso (*Janioso*), Dante Sadaya (*Sadaya*), Janioso's storekeeper, and Dr. Apolinar Vacalares, M.D. (*Dr. Vacalares*), the medico-legal officer who conducted the post-mortem examinations on Salvador's cadaver. Their combined testimonies tended to establish the following:

On 22 September 1992, at about 8:00 o'clock in the evening, at Barangay Mabunga, Municipality of Baungon, Province of Bukidnon, Salvador and his son, Robert Espelita (*Robert*) arrived at Janioso's house calling out for help. When Janioso came out of her house, she saw Salvador whose forehead was oozing with blood,^[6] and Calib Napone (*Calib*) likewise bloodied on the face, mud-laden,^[7] and trying to extricate himself from Salvador who held him by the back collar of his shirt.^[8] Calib is the son of Senior and the brother of Junior and Edgar.

When Janioso asked what happened, Salvador replied that Calib waylaid him and struck him with an iron bar while he and Robert were on their way home from their farm.^[9] Salvador turned over to Janioso the iron bar which he allegedly wrested from Calib. Thereafter, Janioso directed one of her employees to find a vehicle to be used to bring Salvador and Calib to the hospital.^[10] Janioso was Salvador's *baiae*.^[11]

After a while, the Napones arrived in a vehicle.^[12] To avoid further conflict, Janioso pulled Salvador inside her house. Unfortunately, Senior followed them and immediately hacked Salvador from behind using a *borak*, a big bolo ordinarily used for chopping wood, hitting Salvador at the back of his head.^[13] Salvador, in retaliation, also hacked Senior.

Meanwhile, Edgar and Junior also alighted from the vehicle. Edgar threw a stone the size of a fist at Salvador.^[14] Junior then shot Salvador three (3) times with a small firearm, hitting the latter on the chest which caused him to fall.^[15] Janioso immediately rushed to Salvador's aid. While she was trying to lift Salvador, she saw Junior running away with the gun. She no longer took notice of Edgar and Senior as her concern was to bring Salvador to the hospital. At the hospital, Salvador was pronounced dead.^[16]

The post-mortem findings on Salvador revealed that he sustained four (4) hack wounds on the left side of his head and a gunshot wound on his chest.^[17] Dr. Vacalares, the medico-legal officer who conducted the autopsy, concluded that the

cause of death was the perforation of the left ventricle due to gunshot wound,^[18] which necessarily proved to be the fatal wound. Dr. Vacalares also took the witness stand where he elaborated that the bullet perforated Salvador's left ventricle resulting in his death in less than ten (10) minutes.^[19] As regards the hack wounds, Dr. Vacalares stated that they were caused by a sharp bladed instrument.^[20] However, he did not state whether these hack wounds were fatal or not.

Evidence for the Defense

The defense presented Senior, Junior, and Johnny Palasan (*Palasan*) as witnesses. Calib was also presented as a witness but his testimony was deemed inadmissible in evidence for being hearsay because he was not sworn in when he took the witness stand. The testimonies of the defense witnesses tended to establish that the Napones acted in self-defense and in defense of a relative, as follows:

On 22 September 1992, at around 8:00 o'clock in the evening, while Senior was chopping firewood, and while Junior and Edgar were conversing inside their house at Mabunga, Baungon, Bukidnon, a certain Ervin "Ungat" Tagocon (*Tagocon*) came and told them that he saw Calib bloodied and dragged by Salvador and Robert to the house of Janioso, located approximately 100 meters from their house. Upon hearing the news, Junior hurriedly ran towards Janioso's house, while Edgar and Senior immediately followed.^[21] Before running to Calib's aid, Senior got hold of his *borak*,^[22] because he suspected that the Espelitas had hacked Calib.^[23]

Upon arriving at Janioso's place, the Napones saw Calib bloodied and being held by the Espelitas who, upon seeing them coming, dropped Calib, who was then prostrate and unconscious. The Espelitas then went inside the fenced premises of Janioso's house. When Senior attempted to lift Calib from the ground, Salvador rushed towards him and hacked him with a bolo multiple times. Senior, unable to retaliate because he was lifting Calib,^[24] parried the attacks with his left hand but was unsuccessful. His ring and middle fingers were severed from his left hand and his forehead was wounded. Thereafter, Senior fell to the ground and lost consciousness.^[25]

Edgar tried to defend his father from Salvador by throwing a stone at the latter. Because of this, Salvador shifted his attention towards Edgar and chased him with a bolo.^[26]

Meanwhile, Junior was about to rush to Senior's aid when a man, later identified to be Palasan, alerted him that Robert was aiming a firearm at him. Junior wrestled with Robert for the possession of the firearm. When Junior got hold of the firearm, Robert allegedly shouted "watch out, my firearm was taken" and ran away.^[27] Salvador stopped chasing after Edgar, turned to Junior, and hacked him three (3) times: the first blow missed, the second hit Junior's belt buckle, but the third struck Junior's left leg.^[28]

Junior fell to the ground face down from the third strike. With Salvador still behind him, he crawled away from his assailant. When he stood up and saw that Salvador was still coming after him, Junior fired his gun at Salvador.^[29] Junior claimed that was the first time he had fired a gun.^[30] Despite the first shot, Salvador kept

advancing towards Junior; thus, he again shot at Salvador hitting him in the chest.^[31] Thereafter, Junior left the gun by Janioso's fence and took Senior and Calib to the provincial hospital in Cagayan de Oro City, for treatment.^[32]

On 23 June 1992, Junior surrendered to the authorities in Baungon, Bukidnon.^[33] However, the firearm he used to shoot Salvador was never recovered.

The RTC Ruling

In its 14 November 2006 decision, the RTC found Junior and Edgar guilty beyond reasonable doubt of the crime of homicide. It gave more weight to the version of the prosecution witnesses finding them to be more credible, straightforward, and duly supported by the post-mortem findings. The trial court rejected petitioners' claim of self-defense and in defense of a relative ratiocinating that they failed to establish the presence of unlawful aggression on the part of Salvador. It further ruled that a conspiracy among the Napones existed as shown by their successive attacks on Salvador. The trial court also ruled that no aggravating or mitigating circumstance attended the felony. The dispositive portion of the decision reads:

WHEREFORE, IN VIEW OF THE ABOVE, judgment is hereby rendered finding the two (2) remaining accused PETRONILO NAPONE, Jr. and EDGAR NAPONE GUILTY beyond reasonable doubt of the felony of HOMICIDE, and applying the indeterminate sentence law, the court hereby sentences the two (2) remaining accused aforecited to suffer the penalty of imprisonment of TWELVE (12) YEARS OF PRISION MAYOR IN ITS MAXIMUM PERIOD AS MINIMUM TO SEVENTEEN (17) YEARS FOUR (4) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM.

The two (2) remaining accused further hereby ordered to PAY, solidarily, the heirs of SALVADOR ESPELITA in the sum of One Hundred Eighty Thousand (P180,000.00) Pesos, as actual damages, Forty Three Thousand (P43,000.00) Pesos, as Attorney's Fees, and the amount of Seventy Five Thousand (P75,000.00) Pesos, as moral damages for the death of SALVADOR ESPELITA. The Bond for the provisional liberty of the accused are hereby CANCELLED. Let warrant of arrest issue and the accused are hereby ordered committed to serve their sentence [at] the DAVAO PENAL COLONY, PANABO, DAVAO DEL NORTE.

Costs against [the] accused.^[34]

Aggrieved, petitioners appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC decision, with modifications.

The appellate court concurred that the testimonies of Janioso and Sadaya were more truthful and candid, but disagreed with the RTC with regard to the appreciation of modifying circumstance. While it conceded that no aggravating circumstance attended the killing of Salvador, it opined that the trial court failed to appreciate the mitigating circumstance of passion and obfuscation. It observed that the unfortunate incident occurred at the "spur of the moment" and because of the

Napones' "impulse reaction" upon seeing Calib wounded and lying on the ground. It also noted that the testimonies of both the prosecution and defense witnesses showed that there was no prior animosity between the Espelitas and the Napones. In fact, Senior testified that Salvador was his friend or "compadre."

Likewise, the CA ruled that conspiracy could not be appreciated considering that the incident happened at "the spur of the moment." Thus, the appellate court reduced Edgar's liability to that of a mere accomplice reasoning that his participation in throwing a stone at Salvador during the incident, while showing community of criminal design, was otherwise not indispensable to the commission of the felony.

The dispositive portion of the assailed decision reads:

WHEREFORE, the assailed Judgment is hereby AFFIRMED with MODIFICATION that appellants Petronilo Napone, Jr. and Edgar Napone are found GUILTY beyond reasonable doubt of HOMICIDE, as PRINCIPAL and ACCOMPLICE, respectively, and accordingly SENTENCED to suffer the penalt[ies] of:

As to PETRONILO NAPONE, JR. - eight (8) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

As to EDGAR NAPONE. - four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.

They are also mandated to PAY jointly the heirs of deceased Salvador Espelita, the following:

1. Fifty Thousand Pesos (P50,000.00) as death indemnity;
2. Fifty Thousand Pesos (P50,000.00) as moral damages; and
3. Twenty Five Thousand Pesos (P25,000.00) as temperate damages, in lieu of the award of actual damages which the prosecution failed to prove.

And, pursuant to the *Tampus*^[35] ruling, (re: graduation of pecuniary penalties vis-a-vis the different degrees of liability in the commission of the felony), Petronilo Napone, Jr. (as a principal) has to pay 2/3 of the sum total of the above-mentioned amounts, i.e., a total of EIGHTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE PESOS and THIRTY-FOUR CENTAVOS (P83,333.34), while Edgar Napone (as an accomplice) shall bear 1/3 thereof, i.e., a total of FORTY-ONE THOUSAND SIX HUNDRED SIXTY-SIX PESOS and SIXTY-SIX CENTAVOS (P41,666.66).

With subsidiary imprisonment, in case of non-payment.^[36]

Petitioners moved for reconsideration, but the same was denied by the CA in its Resolution, dated 21 July 2010.