

THIRD DIVISION

[G.R. NO. 135222, March 04, 2005]

**PETER ANDRADA, PETITIONER, VS. THE PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* filed by Peter Andrada, petitioner, assailing the Decision^[1] of the Court of Appeals dated September 18, 1997 in CA-G.R. CR No. 15851 and its Resolution^[2] dated August 13, 1998.

In an Information dated January 7, 1987, the Office of the City Prosecutor of Baguio City charged petitioner with frustrated murder committed as follows:

That on or about the 24th day of September 1986, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully, and feloniously attack, assault and hack one ARSENIO UGERIO on the head twice with a bolo thereby inflicting upon latter: hacking wound, head, resulting in 1) skull and scalp avulsion vertex; 2) depressed comminuted skull fracture, right parieto occipital with significant brain laceration; operation done; craniectomy; vertex debridement; craniectomy; right parieto occipital; dural repair; debridement, thus performing all the acts of execution which would produce the crime of Murder as a consequence thereof, but nevertheless, the felony was not consummated by reason of causes independent of the will of the accused, that is, by the timely medical attendance extended to Arsenio Ugerio which prevented his death.

CONTRARY TO LAW.^[3]

When arraigned on February 9, 1987, petitioner, with the assistance of counsel *de parte*, pleaded not guilty to the crime charged. The hearing of the case ensued.

Evidence for the prosecution shows that on September 23, 1986, at around 11:30 in the evening, T/Sgt. Teodolfo Sumabong, of the defunct Philippine Constabulary (PC), was resting in the PC barracks at Camp Dado Dangwa, La Trinidad, Benguet when one Rommel Alcate called up requesting police assistance. Alcate claimed that a group of persons was suspiciously roaming around his boarding house in Ferguson Street, Baguio City.

Sgt. Sumabong and two of his companions, Sgt. Gaces and Cpl. Arsenio Ugerio, went to Alcate's boarding house, arriving there past midnight. However, according to Alcate, the suspicious persons have left.

On their way back to the camp at around 1:15 in the morning, the group dropped by Morlow's Restaurant, Bokawkan Street, Baguio City, for a snack. They ordered coffee and sandwiches.

While they were waiting to be served, a woman passed by their table. While Cpl. Ugerio was talking to her, a man, later identified as Peter Andrada, herein petitioner, approached the former and scolded him. Sgt. Sumabong, identifying himself as a PC non-commissioned officer, advised petitioner to pay his bill and go home as he was apparently drunk.

Petitioner heeded Sgt. Sumabong's advice for he paid his bill and left the restaurant with his companions. While Sgt. Sumabong was paying his bill, he heard Cpl. Ugerio, seated about a meter away, moaning in pain. When Sgt. Sumabong turned around, he saw Cpl. Ugerio sprawled on the floor. Petitioner was hacking him on the head with a bolo. Sgt. Sumabong approached them but petitioner ran away, followed by a companion. Sgt. Sumabong chased them but to no avail.

Upon Sgt. Sumabong's instruction, Sgt. Gaces brought Cpl. Ugerio, the victim, to the St. Louis University Hospital. Then Sgt. Sumabong reported the incident to the police station at Camdas Road and thereafter proceeded to the hospital. When he returned to the police station, he learned that petitioner was arrested in a waiting shed at the corner of Camdas Road and Magsaysay Avenue.

The arresting officers then brought petitioner back to the restaurant where they recovered the bolo used in hacking the victim. Witnesses to the incident were interviewed by the police and they pointed to petitioner as the culprit.

Dr. Francisco Fernandez, a neuro-surgery consultant, found that the victim suffered two (2) major injuries. The first was a "scalping avulsion," around 5 centimeters wide, i.e., the chopping off of a part of the victim's skull. The second was a depressed fracture, about 6 centimeters wide, found on the *right parieto occipital* area of the skull. Either wound, being fatal, would have caused the death of the victim had it not been for a timely medical treatment. After three (3) days, the victim was transferred to the V. Luna Hospital in Quezon City. Because of the injuries he sustained, he has remained incapable to remember or recall visual *stimuli* or information.

Petitioner interposed self-defense and invoked the mitigating circumstance of voluntary surrender. His version is that he and one Romy Ramos were drinking beer with a hospitality girl named "Liza" inside Morlow's Restaurant, when three military men occupied the table next to them. They had pistols tucked in their waists. Without any warning or provocation, two of the men, whom he identified as Cpl. Ugerio and Sgt. Sumabong, approached him, slapped his face several times and pointed their guns to his head. They cursed him and threatened to summarily execute him because he was "so boastful." Cpl. Ugerio then "collared" him and dragged him outside the restaurant, while Sgt. Sumabong followed. Fearful that he might be killed, petitioner pulled out his bolo, wrapped in a newspaper, from his waist and swung it at the two military men. He did not see if he hit any of them. Then he ran to his house in Camdas Subdivision. He checked to see if his mother or grandmother was at home so either of them could assist him in surrendering to the police. But neither was present. On his way to surrender to the police, he met his

mother accompanied by a policeman. They then proceeded to the police sub-station at Magsaysay Avenue where he surrendered.

After hearing, the trial court rendered its Decision, the dispositive portion of which is quoted below, thus:

WHEREFORE, premises considered, the Court finds the accused PETER ANDRADA guilty beyond reasonable doubt of the crime of frustrated murder.

The Court hereby sentences him to suffer the penalty of imprisonment of 8 years and 20 days as MINIMUM to 14 years, 10 months and 20 days as MAXIMUM; to indemnify the sum of P3,000.00, representing part of the victim's expenses for medical services and medicine, and to pay the costs.

SO ORDERED.^[4]

On appeal, the Court of Appeals affirmed with modification the trial court's Decision, thus:

WHEREFORE, THE DECISION APPEALED FROM IS HEREBY AFFIRMED WITH THE MODIFICATION THAT THE APPELLANT IS SENTENCED TO AN INDETERMINATE PENALTY OF FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECCIONAL, AS MINIMUM, TO EIGHT (8) YEARS AND TWENTY (20) DAYS OF PRISION MAYOR, AS MAXIMUM.

SO ORDERED.^[5]

The Court of Appeals, in modifying the imposable penalty, found that petitioner is entitled to the privileged mitigating circumstance of minority as he was only 17 years, 9 months and 20 days old at the time of the incident.

Petitioner then filed a motion for reconsideration, but this was denied by the Appellate Court in its Resolution dated August 13, 1998.

Hence, the instant petition.

The issues for our resolution are: (1) whether petitioner's right to due process was violated; (2) whether his plea of self-defense is in order; (3) whether the crime committed is frustrated murder or frustrated homicide; and (4) whether he is entitled to any mitigating circumstance, assuming he is guilty.

On the *first issue*, petitioner argues that the Court of Appeals erred in not holding that the trial court violated his constitutional right to due process. He contends that his counsel:

1. Failed to present all the witnesses who could have testified that he is innocent of the crime charged;
2. Failed to present the medical certificate showing the injuries inflicted upon him by the victim;