

FIRST DIVISION

[G.R. Nos. 154348-50, June 08, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PABLO DELA CRUZ,
APPELLANT.**

D E C I S I O N

YNARES-SATIAGO, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 34 in Criminal Case Nos. 12445, 12446 and 12452 which found appellant Pablo dela Cruz alias "Pablito dela Cruz" guilty of the crimes of murder and two counts of frustrated murder, respectively.

The Information^[2] in Criminal Case No. 12445 charged appellant with the crime of murder committed as follows:

That on or about 11:00 o'clock in the morning of December 15, 1995, at the public market of Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously ATTACK, ASSAULT and STAB one Victoriano Francisco, a sickly old man aging 81 years, with the use of a hunting knife with which said accused provided himself at that time, thereby causing a fatal injury on the body of said Victoriano Francisco, who died instantaneously as a result thereof, to the damage and prejudice of the heirs of the same victim.

An Act defined and penalized by Article 248 of the Revised Penal Code.

In Criminal Case No. 12446, appellant is charged with the crime of frustrated murder, in an Information^[3] which reads:

That on or about 11:00 o'clock in the morning of December 15, 1995, at the public market of Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously ATTACK, ASSAULT and STAB one Felipe Pajunar with the use of a hunting knife with which said accused provided himself at that time, thereby causing a fatal injury on the body of said Felipe Pajunar, thus performing all the acts of execution which would produce the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the perpetrator, that is, by the timely medical attendance, to the damage and prejudice of the same offended party.

An Act defined and penalized by Article 248, in relation to Article 6 and Article 50, of the Revised Penal Code.

The third Information,^[4] charging appellant with the crime of frustrated murder in Criminal Case No. 12452, reads:

That on December 15, 1995, at about 11:00 o'clock in the morning at Santa Catalina, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one WILLIAM TACALDO, with the use of a deadly weapon with which said accused was then armed and provided, thereby inflicting upon the latter--

1. Stab wound, left subcostal area, penetrating thoraco abdominal cavity with injury to kidney left, jejunum #1;
2. hacking wound, anterior middle third forearm 4 cm sutured—

thus performing all the acts of execution which would produce the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of the timely medical treatment of said victim, to his damage and prejudice.

That the crime was attended by the aggravating circumstance of disregard of the respect due the offended party on account of his age who, at the time of the incident, was already an old man 68 years old.

CONTRARY TO ARTICLE 248, IN RELATION TO ARTICLE 6, SECOND PARAGRAPH OF THE REVISED PENAL CODE OF THE PHILIPPINES, AS AMENDED.

The three cases were consolidated and tried jointly upon agreement of the parties.

Felipe Pajunar, the victim in Criminal Case No. 12446, testified that on December 15, 1995, at past 11:00 o'clock in the morning, he was at the public market of Sta. Catalina to buy biscuits and candies for his child's exchange gift. When he was about to leave the market, he was summoned by his cousin, Paulino Tabuay, to join his group for a round of local wine ("tuba"), to which Felipe acceded. The other men in the group were Victoriano Francisco, the victim in Criminal Case No. 12445, and Agaton Rubia. All three of them were seated outside the store of a certain Julie Calidquid.^[5]

While the group was conversing, two unidentified men approached their table. One of the men, whom Felipe later identified as appellant Pablo dela Cruz, asked for a glass of "tuba" from Paulino. Paulino willingly obliged but appellant refused to accept the glass offered to him, saying it might contain poison. To show appellant that it did not, Paulino drank the glass of "tuba" he was offering and refilled it for appellant, who then drank without hesitation. Appellant joined the group and sat with Felipe on his right and Victoriano on his left. Suddenly, appellant placed his right arm around Felipe and, with his left hand, stabbed him, whispering, "*Pinaskuhan nako nimo Brod.*" (This is my Christmas gift to you, Brod.) Felipe was wounded on his left chest and fell down. Immediately thereafter, appellant turned to Victoriano and stabbed

him. Victoriano was rushed to the Bayawan District Hospital where he was declared dead on arrival. Felipe recalled that appellant used a hunting knife, more or less six inches long.^[6] He also recalled having seen victim William Tacaldo with Juan Florencio inside the public market stall typing some documents.^[7]

For his injuries, Felipe was brought to the Bayawan District Hospital where he was treated by Dr. Lydia Villaflores. He was later transferred to the Negros Oriental Provincial Hospital where he was confined for four days. Felipe learned that the name of his and Victoriano's attacker was Pablo dela Cruz. Later, he identified appellant in open court. Felipe testified that due to the incident he was unable to work for almost a year and thus lost his P200.00 per week income for plowing services. He also presented receipts of his expenses for medicines totaling P1,600.00 and claimed that he spent P10,000.00 for hospitalization and traveling expenses to and from the hospital.^[8]

William Tacaldo, the victim in Criminal Case No. 12452, testified that he made a living from his typing services in one of the stalls of the Sta. Catalina public market. On the day of the incident, he was typing a church program for Juan Florencio when a commotion broke out about two meters away. He continued with his typing until he was suddenly stabbed right below his heart. He stood up, pressed his wound to control the bleeding and cried for help. He was brought to the Bayawan District Hospital and was later transferred to the Negros Oriental Provincial Hospital where he was operated on.^[9]

Tacaldo testified that he failed to recognize the person who stabbed him since he was concentrated on his typing when the incident happened. During the police investigation, he learned the name of his assailant. Tacaldo alleged that as a result of his injury, he lost his eyesight and could no longer type, resulting in the loss of his income of around P200.00 to P250.00 a day.^[10]

Juan Florencio was also stabbed but did not file a complaint against appellant. He corroborated the testimonies of Felipe and Tacaldo. He narrated that in the morning of December 15, 1995, he was in one of the stalls of the public market dictating a document to Tacaldo. He noticed Felipe, Victoriano and two other persons drinking at a store about two meters away. Shortly after, there was a commotion in front of the store. He saw Felipe being stabbed by a person whom he later learned was appellant Pablo dela Cruz. Appellant also stabbed Victoriano, who became unconscious and fell down. Thereafter, appellant stabbed Tacaldo while he was seated in front of his typewriter.^[11]

After stabbing Tacaldo, appellant turned his attention to Florencio, who then ran away. Appellant was able to catch up with Florencio and stabbed him on the back. Appellant stumbled and fell to the ground, and Florencio was able to escape from further harm. He was treated at the Bayawan District Hospital by Dr. Lydia Villaflores.^[12]

PO3 Rolando Gomez, who was in the vicinity of the market place, heard people shouting and saw some persons scampering away. Several by-standers told him that there was a stabbing incident and that the assailant ran away. At that instant, he saw appellant Pablo dela Cruz running away brandishing a hunting knife. He chased

appellant and fired a warning shot. Instead of yielding, appellant turned around and started to attack PO3 Gomez, who shot appellant on the left thigh. PO3 Gomez confiscated the hunting knife and brought appellant to the Sta. Catalina Police Station where PO3 Louie Bantuto conducted an investigation. Subsequently, he brought appellant to Bayawan District Hospital for medical treatment.^[13]

PO3 Bantuto corroborated the testimony of PO3 Gomez that an investigation was conducted when the appellant was brought to the police station. PO3 Bantuto reflected the stabbing incident in the police blotter,^[14] a copy of which was presented as evidence in court.^[15]

Dr. Lydia Villaflores was presented to testify on the death of Victoriano Francisco as well as the injuries suffered by Felipe Pajunar, William Tocaldo and Juan Florencio. Victoriano suffered a two-inch long incised wound at the anterior chest and a similar wound at the arm. The wound on Victoriano's chest was fatal as it damaged blood vessels in the abdomen causing a massive loss of blood. Victoriano was pronounced dead on arrival.^[16]

Dr. Villaflores further testified that Felipe Pajunar suffered an incised wound on the left side of the lumbar area, which was fatal since it was located at the anterior chest. On the other hand, William Tocaldo suffered an incised wound on the anterior chest and another on the arm. The wound on the anterior chest was dangerous and could have caused instantaneous death if left untreated. Juan Florencio sustained an incised wound on the left lumbar area.^[17]

Another medical expert, Dr. Henrissa M. Calumpang, testified that she examined Felipe, and found that the latter's wound was already sutured. She opined that the wound was not fatal and could not cause instantaneous death as it was only superficial.^[18] Tocaldo, on the other hand, was confined in the hospital for a longer period of time due to the stab wound he sustained at the back that also injured his left kidney. Dr. Calumpang stated that this wound was fatal since Tocaldo's abdominal and thoracic cavities were penetrated. Likewise, as a result of the accumulation of blood in his abdominal cavity, Tocaldo experienced shock due to the loss of blood.^[19]

Evangeline Mira testified that she is the daughter of the deceased Victoriano Francisco who was 81 years old when he died. Their family spent P30,000.00 for her father's coffin and embalment, P1,000.00 per day of the wake which lasted for nine days, P6,000.00 for the burial expenses and P10,000.00 for the tombstone. She likewise claimed that they spent P6,000.00 during the last prayer for her father and P400.00 for the funeral mass.^[20]

Appellant Pablo dela Cruz testified and admitted that he inflicted wounds on Tocaldo and another person who boxed him outside the public market of Sta. Catalina on December 15, 1995. He denied any involvement in the death of Victoriano and in the wounding of Felipe on the date of the incident, saying he did not even know them. Appellant testified that on the day of the incident, he went to the public market to buy fish. While he was there, he was boxed by a drunken person whom he could only recognize by face. This person was in the same line of work as he was and they had a previous altercation. Appellant testified further that upon being

boxed by said person, he immediately ducked under a table and when he came out at the other side, he saw a butcher's knife and picked it up. He used this to ward off his attackers.^[21]

Dr. Angel V. Somera, a witness for the defense testified that based on his examination, appellant is essentially normal considering that no gross pathological or abnormal thought processes like delusions, hallucinations and illusions were revealed. Appellant was coherent in answering the questions Dr. Somera asked during the examination and his memory of the past as well as recent events were well within normal bounds. However, according to Dr. Somera, appellant has a certain degree of paranoia which may be attributed to his level of education. This paranoia, however, is still normal for a person who is uneducated and has been living in the mountains. Thus, appellant is non-psychotic, meaning he is not insane.^[22]

The defense also recalled to the witness stand PO3 Louie Bantuto to testify on the mental condition of appellant at the time he was investigated by the police. PO3 Bantuto admitted that he indicated in the police blotter his observation that appellant was mentally ill because of appellant's appearance. He noticed that when appellant was brought to the police station, he had bottles containing oil around his waist.^[23]

A decision was rendered by the trial court finding appellant guilty of the crime of Murder in Criminal Case No. 12445 and sentenced to suffer the penalty of *Reclusion Perpetua*; guilty of the crime of Frustrated Murder in Criminal Case No. 12446 and sentenced to suffer the indeterminate penalty of 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; and guilty of the crime of Frustrated Murder in Criminal Case No. 12452 and sentenced to suffer the indeterminate penalty of 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 Victoriano Francisco the sum of P50,000.00 as civil indemnity, and to pay Felipe Pajunar the sum of P1,495.60 as actual damages.

Hence, this appeal, on a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We agree with the Solicitor General's observation that while appellant assails the decision of the trial court, the discussion in the Appellant's Brief was limited to the trial court's findings that treachery attended the crimes. The defense argues that treachery was not present since the victims Victoriano and Felipe ought to have been put on guard by the appearance and actuations of appellant when the latter approached them. Tacaldo was already aware of the commotion moments before he was stabbed, giving him sufficient time to prepare and defend himself. Thus, the defense prays that appellant be found guilty of the lesser offenses of homicide, frustrated homicide and attempted homicide in the respective cases.

There is sufficient evidence on record showing that appellant Pablo dela Cruz is