

SECOND DIVISION

[G.R. No. 122103, November 04, 2003]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO PABILLO, ACCUSED-APPELLANT.**

D E C I S I O N

TINGA, J.:

Accused-appellant Wilfredo Pabillo together with his father and co-accused Alfredo Pabillo were charged with the crime of simple homicide before Branch IX of the Regional Trial Court of Palo, Leyte, 8th Judicial Region, under an *Information*^[1] dated April 22, 1987. Before the accused could be arraigned, the prosecution amended the *Information* upgrading the crime of homicide to MURDER by alleging treachery as a qualifying circumstance. The accusatory portion of the *Amended Information*^[2] reads:

That on or about the 30th day of November, 1986 in the Municipality of Alangalang, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to kill and with treachery, did, then and there willfully, unlawfully and feloniously, attack, assault, stab and wound one Francisco Ipil with the use of long bolos which the accused had provided themselves for the purpose, thereby hitting and inflicting mortal wounds on the different parts of the body of the said Francisco Ipil which caused his death thereafter.

Contrary to law.

On October 10, 1988, the two accused pleaded "Not Guilty" to the charge.^[3] Accused Alfredo (hereafter, Alfredo) however died during the pendency of the case or before any judgment could be rendered by the lower court;^[4] thus, only appellant Wilfredo Pabillo (hereafter, Wilfredo) elevated the judgment to this Court.

The prosecution's version of how the killing occurred differs from that of the appellant's. Hereunder is the People's version.

At about 8:00 o'clock in the evening of November 30, 1986, Francisco Dador (hereafter, Dador) was at the house of his cousin Eduardo Taborada at Sitio Guintadcan, Brgy. Salvacion, Alangalang, Leyte, on the occasion of the 40th day prayers for the latter's deceased wife.^[5] While he was waiting for supper to be served, the deceased Francisco Ipil (hereafter, Ipil) arrived. Dador invited him in.^[6] Thereafter, the Pabillo father and son arrived. Both men were armed with unsheathed bolos.^[7]

"Baludo,^[8] please come out because I have an important matter to discuss with you," Alfredo called out.^[9] Ipil "slowly" went out. As soon as Ipil neared the duo who were then standing side by side, Wilfredo pushed Ipil forward with his left hand.^[10] Ipil "struggled" and stumbled forward. Suddenly, Wilfredo hacked him on the head with the long bolo he held with his right hand. When Ipil started to fall down, he was hacked on the left arm, this time by Alfredo. Ipil started to run but Wilfredo struck again, hitting Ipil's back. Ipil managed to run towards the back of Eduardo's house, and subsequently fell into the creek.^[11] Alfredo was heard to have uttered, "Never mind him because he is going to die."^[12] Subsequently, the father and son tandem fled the scene towards the ricefield.^[13] All of these Dador, the prosecution's main witness, saw with the aid of the light coming from the house and the flashlight carried by the accused^[14].

When everything quieted down, Dador went to the creek to look for Ipil. He found him lying on his back. He pulled Ipil from the creek and put him on dry ground. Thereafter, he went to see Constanica Ipil, the victim's mother, to inform her of the incident. Constanica then requested her other son, Samuel, to go with Dador.^[15]

Ipil was lying face up and was still breathing when Samuel reached him. He asked Ipil who hacked him and the latter answered, "Sammy, I was hacked by Wilfredo Pabillo and Alfredo Pabillo and bring me to the hospital because I might die."^[16] Samuel and Dador put Ipil on a sledge and they proceeded to bring him to the hospital. Unfortunately, Ipil expired before reaching the National Highway.^[17]

The *Post-Mortem Examination Report*^[18] prepared by Dr. Edilberto Trinidad showed that Ipil died of hemorrhage due to the following hacking injuries:

1. Hacking wound, 6 inches long, 2 inches wide and 3 inches deep located on the left elbow cutting muscles, blood vessels and the bone.
2. Hacking wound, 5 inches long, 1 inch wide and 3 inches deep located on the head, right frontal region cutting muscles, blood vessels, skull and the brain.
3. Wound, 1 ½ inches long, ½ inch wide and ¼ inch deep located at the left scapular region cutting muscles and blood vessels.

On the other hand, the defense weaved a different tale.

Testifying on his own behalf, Wilfredo made this narration: At approximately 8:00 o'clock in the evening of November 30, 1986, Wilfredo, together with one Rodrigo Caones, was visiting Dadoy Aporada's daughter, Belinda Aporada at their house situated at Sitio Guintadcan, Barangay Salvacion, Alangalang, Leyte.^[19] Alfredo was also in the same house attending the 40th day prayer for the deceased wife of Dadoy Aporada. Alfredo was having a drinking spree with Dadoy Aporada, Ipil who was Alfredo's nephew by affinity, and some other men.^[20]

Wilfredo heard his father and Ipil arguing so he went downstairs.^[21] He did not know how the argument started or what they were arguing about.^[22] He proceeded

to pacify his father and convinced him to come with him. Ipil, together with Rogelio Brizo and Eleazar Sabela, left ahead of them.^[23]

While they were walking away from the house, Ipil came back and challenged his father to a fight.^[24] Wilfredo tried to calm them down but he failed. He ran to the neighboring house to ask for help but the occupants were also afraid to intercede so he came back alone.^[25] On his way, he met his father who admitted having inflicted wounds upon Ipil.^[26] They also met Dador, who inquired from Wilfredo what had happened. He explained that his father and Ipil had a fight. Dador left them and proceeded to Dadoy's house.^[27] His father surrendered to the authorities the following day.^[28]

Clara Bisio also testified for the defense. She narrated that in the evening of November 30, 1986, she was at the house of Dadoy Tampurada attending a rosary prayer. Also present were Ipil, Alfredo and Wilfredo.^[29] When she went home, Alfredo and Wilfredo were with her in a group.^[30] Suddenly, she heard a commotion and people ran in different directions. She had no knowledge about the incident subject of the case because she did not see to which direction Wilfredo had ran.^[31]

The Regional Trial Court found the accused guilty of murder in a *Decision*^[32] dated January 14, 1994, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds accused Wilfredo Pabillo guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code and there being no aggravating or mitigating circumstances to off-set the same, the Court hereby imposes upon said accused the penalty of RECLUSION PERPETUA and to indemnify the heirs of the deceased Francisco Ipil the sum of P50,000.00 for the death of the latter and to pay the costs. The bail bond of the accused is hereby ordered cancelled and the convicted accused is hereby ordered committed immediately (*sic*) to jail pursuant to the Supreme Court Circular to that effect.

SO ORDERED.

Wilfredo elevated to this Court the RTC judgment and assigned as sole error the following:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF TREACHERY AS ATTENDANT IN THE COMMISSION OF THE CRIME.^[33]

We do not entertain any doubt that Wilfredo delivered the fatal bolo blows on Ipil in the evening of November 30, 1986. This conclusion can be drawn from the direct, positive and categorical assertions made by prosecution witness Dador regarding the identity of the assailants, the details of the assault, and the weapons used.

Dador narrated that when Ipil reached the duo, Wilfredo suddenly got hold of Ipil's arm, pushed him towards the front, and hacked him on the head. This was followed

by Alfredo's hacking blow on Ipil's left arm when the latter was about to fall. When Ipil tried to run, he was again hacked at the back by Wilfredo. This straightforward account of how Ipil was killed very closely corresponded with the descriptions of Ipil's wounds as detailed in the *Post-Mortem Examination Report*^[34] as follows: hacking wound located on the left elbow, hacking wound on the head, right frontal region, and wound at the scapular region. This physical evidence speaks more eloquently than a hundred witnesses.^[35] Consistent with the testimony of the principal prosecution witness, it establishes beyond reasonable doubt the culpability of accused-appellant.

Moreover, the ante-mortem statement of the victim, made under consciousness of imminent death, pointed to Wilfredo and his father as the perpetrators of the crime. The trial court correctly considered the declaration of the victim "*Sammy, I was hacked by Wilfredo Pabillo and Alfredo Pabillo and bring me to the hospital because I might die*" as Ipil's dying declaration. The Court in a number of cases^[36] consistently upheld the admissibility of a dying declaration, the requisites of which are: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and, that the declaration is offered in a criminal case for homicide, murder or parricide, in which the declarant is a victim.

The established facts in this case show that all these requisites concur. When he made the statement, Ipil was conscious of his impending death. This may be gleaned not only from his insistence that he should immediately be brought to the hospital, but also from the serious nature of his wounds and the fact that he died shortly afterwards.

It is well to point out that at the trial, Wilfredo firmly maintained that he did not participate in the killing of Ipil. He claimed that he was a mere spectator and conveniently shifted the blame to his father Alfredo, whose lips have already been sealed by death. The trial court therefore soundly rejected his version of denial as a plain afterthought, a devised plot to escape punishment that cannot prevail over the positive testimony of the prosecution witness and the physical evidence that supports the judgment of conviction. Now on appeal, he no longer contradicts the theory of the prosecution that he and his father confederated in the attack on Ipil and that he inflicted the fatal injuries which led to death of the victim. Instead, he assigns as the sole error the alleged failure of the prosecution to prove the qualifying circumstance of treachery beyond reasonable doubt. This change of strategy merely accentuates the strength of the prosecution evidence which sufficiently rebutted the constitutional presumption of innocence.

Wilfredo has been charged with and convicted of the crime of murder. Article 248^[37] of the Revised Penal Code, as amended, provides that to be liable for murder, the prosecution must prove that the accused committed the killing of another person under any of the attendant circumstances specified therein. Of these circumstances, the prosecution alleged in the *Amended Information*^[38] the qualifying circumstance of treachery to elevate the killing to murder. Unfortunately, the trial court failed to discuss the presence or absence of treachery in the body of the decision although obviously, it was considered in qualifying the killing and convicting the accused of murder.

Nevertheless, such a lapse is not fatal to the validity of the decision. An appeal in a criminal proceeding throws the whole case open for review of all errors, by commission or by omission, as may be imputable to the trial court.^[39] A painstaking scrutiny of the evidence in this case leads us to agree with the trial court that the accused-appellant is guilty of murder.

Under substantive law, there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.^[40] Two conditions must then concur for treachery to be present, viz., (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and; (2) the deliberate or conscious adoption of the means of execution.^[41]

Upon the facts established by the prosecution, we agree with the trial court that the crime committed by Wilfredo was accompanied by *alevosia*. In this regard, the Solicitor General^[42] agrees that this circumstance has been correctly taken into account in qualifying the crime to murder.

On this point, Wilfredo avers in his appeal brief that the prosecution failed to show that the assault made upon the person of Ipil was not sudden and unexpected as to have caught the deceased unprepared to meet the assault, noting that when Ipil went out to face his assailants, he already sensed the danger upon seeing that both of them were armed with unsheathed bolos. We disagree.

Ipil had no foreboding of the danger he would be facing when he went down to meet Alfredo and Wilfredo. There is nothing in the evidence to indicate that the duo's manner and behavior, when they requested him to come down, was in any way threatening. Alfredo was his uncle by affinity, while Wilfredo was his relative by consanguinity. As correctly pointed out by the Solicitor General, Ipil could not have anticipated that they would hurt or kill him at a place where so many people could witness the crime and where prayers were being held for a departed soul.^[43]

The testimony of the eyewitness, Francisco Dador, sufficiently established the presence of treachery. The following was Dador's testimony:^[44]
called for Francisco Ipil?

. . .

Q: What happened after the two accused both surnamed Pabillo arrived?

A: Alfredo Pabillo called Francisco Ipil to go out of the house.

Q: Who actually called Francisco Ipil alias Baludo?

A: Alfredo Ma'am.

Q: Who is this Baludo?

A: Francisco Ipil ma'am. He was the one.