

## SECOND DIVISION

[ G.R. No. 140772, December 10, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEL PEREZ Y  
ADORNADO, APPELLANT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is an appeal from the September 27, 1999 Decision<sup>[1]</sup> of the Regional Trial Court of Pasig City, Branch 156, in Criminal Case No. 110511-H, finding appellant Joel Perez y Adornado guilty beyond reasonable doubt of murder for killing Agapito Saballero. The trial court imposed upon him the penalty of *reclusion perpetua* and ordered him to pay the heirs of the said victim the amount of P50,000 as civil indemnity.

The accusatory portion of the Amended Information reads as follows:

On or about April 25, 1996 in Pasig City and within the jurisdiction of this Honorable Court, the accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one Agapito Saballero on the chest and abdomen, thereby inflicting the latter mortal stab wounds which directly caused his death.

Contrary to law.<sup>[2]</sup>

#### The Case for the Prosecution

Isidro Donoga eked out a living as a shoemaker and repairer, and resided with his wife, his daughter and his son-in-law in a rented apartment in No. 112 Adia Compound, Dr. Sixto Antonio St., Rosario, Pasig City.

On April 25, 1996 at around 8:00 p.m., Isidro was on his way home from Mariwasa when he passed by a group, including his neighbor Agapito Saballero,<sup>[3]</sup> Joel Perez and Aurelio Ariete, having a drinking spree near their rented apartment. Agapito invited Isidro to join the group. Isidro acceded to the invitation and ended up drinking with the three.<sup>[4]</sup> By the time they had consumed about two-and-a-half round bottles of gin, Joel started singing on top of his lungs the song "*Si Aida, Si Lorna, o Si Fe*." He was immediately cautioned by Agapito to lower his voice as the singing might disturb the neighborhood. Peeved, Joel confronted Agapito.<sup>[5]</sup> An altercation ensued. Joel warned Agapito "*Babalikan kita. Makita mo,*" (I'll get back at you. You'll see.)<sup>[6]</sup> then left in a huff. The group decided to end their drinking spree.<sup>[7]</sup> By then, it was past 9:00 p.m.

Isidro advised Agapito to get inside their house. However, Agapito was still upset

about his argument with Joel and lingered outside his house. Meanwhile, Isidro went inside their rented apartment at the second floor of the house, while his wife prepared his dinner. At around 10:00 p.m. while he was taking his supper, Isidro heard somebody shouting "*Huwag, Joel! Saklolo, may tama ako!*" Isidro then peeped outside and saw Joel pulling out from Agapito's chest a bladed weapon.<sup>[8]</sup> Shocked, Isidro and his wife went down to help Agapito. By then, Joel had already fled from the scene. The couple woke up some of their neighbors to help them carry Agapito and bring him to the hospital. Some neighbors arrived and brought Agapito to the hospital. On the way, Agapito expired.<sup>[9]</sup>

With the consent of John Saballero, the son of Agapito,<sup>[10]</sup> Dr. Emmanuel Aranas, the Medico-Legal Officer of the PNP, performed an autopsy on the cadaver of Agapito and incorporated his findings in his report, thus:

#### FINDINGS:

Fairly nourished, fairly developed male cadaver, in rigor mortis, with postmortem lividity at the dependent portions of the body. Conjunctiva, lips, and nailbeds are pale.

#### TRUNK AND UPPER EXTREMITIES:

(1) Multiple abrasions, right deltoid, measuring 2 by 2 cms, 16 cms from the anterior midline.

(2) Stab wound, left mammary region, measuring 2.4 by 0.6 cm, 5 cms from the anterior midline, 12 cms deep, directed posteriorwards, downwards, and to the right, thru the 4<sup>th</sup> left intercostal space, piercing the paricardial (*sic*) sac and right ventricle.

(3) Stab wound, umbilical region, measuring 5 by 1.5 cm, bisected by the anterior midline, directed posteriorwards, piercing the mesentery and jejunal segment of the small intestines.

(4) Multiple abrasions, left scapular region, measuring 5 by 2 cms, 11 cms from the posterior midline.

(5) Multiple abrasions, right antecubital region, measuring 6 by 3 cms, 5 cms from its midline.

(6) Abrasion, middle 3<sup>rd</sup> of the right forearm, measuring 2.5 cms by 0.2 cm, 3 cms lateral to its anterior midline.

(7) Abrasion, left elbow, measuring 5 by 3 cms, 4 cms lateral to its midline.

About 1000 ml of fluid and clotted blood recovered from the thoracic cavity.

Stomach contains a glassful of partially digested food particles and mixed with bloody fluid.

## CONCLUSION:

Cause of death is stab wounds of the chest and abdomen.<sup>[11]</sup>

Dr. Aranas signed the Certificate of Death of Agapito.<sup>[12]</sup>

When apprised of the stabbing incident, the police investigators, led by SPO1 Mario B. Garcia, learned that the victim was Agapito and the suspect was Joel who fled from the scene after stabbing Agapito three times with an improvised dagger at 10:00 p.m. on April 25, 1996. The police investigation was placed in the police blotter.<sup>[13]</sup>

Isidro helped out during the burial of Agapito and failed to give his statement to the police but on May 3, 1996, Isidro gave his sworn statement to SPO1 Mario B. Garcia of the Pasig Police Station.<sup>[14]</sup>

Shortly thereafter, an Amended Information<sup>[15]</sup> was filed on September 15, 1997. The amendment consisted in the inclusion of the allegation of treachery as a qualifying circumstance.<sup>[16]</sup>

Assisted by his counsel during arraignment, Joel entered a plea of not guilty.<sup>[17]</sup> Trial thereafter ensued.

### The Case for the Accused

Joel put up the defense of denial and alibi. He testified that he was a regular employee of Hydro Resources Contractor Corporation as a heavy equipment mechanic for four (4) years.<sup>[18]</sup>

On April 25, 1996 at around 3:00 p.m., his sister, Imelda Perez de Venecia, called him from work and requested him to travel to Bicol the following day to make a delivery of a package to which he agreed. The siblings also agreed that Joel will go to her place at No. 749 Old Balara, Quezon City, after office hours to get the package the following day because of his trip to Bicol. <sup>[19]</sup>

From his place of employment, he proceeded to Adia Compound in Rosario, Pasig City, where he saw the victim Agapito and Aurelio, one of his co-workers at Hydro Resources Contractor Corporation, drinking gin.<sup>[20]</sup> He then joined the group and, in the process, inquired from Aurelio about the status of his application for a job.<sup>[21]</sup> Thereafter, Isidro arrived and joined the drinking spree upon the invitation of Agapito. While they were drinking, an argument ensued between Agapito and Isidro regarding rentals, as the latter was a tenant of Agapito's sister.<sup>[22]</sup> Joel tried to pacify the two by singing aloud the song "*Si Aida, Si Lorna, o Si Fe.*" Isidro and Agapito stopped arguing with each other but Agapito told Joel to stop singing. At around 9:00 p.m., Joel bade the group goodbye and proceeded to his sister's house in Old Balara, Quezon City. He boarded four jeeps one after the other and one tricycle. It took him an hour before he arrived at his sister's.

The following day, April 26, 1996, Joel, together with his sister Imelda, went to the

Peñafrancia Bus Station, confirmed the ticket bought in advance by Imelda, and changed Imelda's name to that of his name to enable him to use the ticket.<sup>[23]</sup> Upon his arrival in Bicol, his wife gave him a letter from a company he had applied for work earlier in January, asking him to report for work. Instead of returning to Manila, Joel decided to accept the offer for employment, and stayed in Bicol. Moreover, he tendered his resignation from his work in Manila by sending a telegram to his former employer. It was only when he was arrested on June 7, 1997 that Joel learned about Agapito's demise, and that he was the suspect for his violent death.<sup>[24]</sup>

Imelda, the sister of Joel, corroborated his alibi that he went to her house on the night of April 25, 1996 arriving thereat at around 9:30 p.m. to 10:30 p.m.<sup>[25]</sup> She confirmed that she, together with her brother, left the house at around 5:00 a.m. of April 26, 1996 and went to the Peñafrancia Bus Station as his brother will travel to Bicol to deliver a package; and that her brother left for Bicol at around 7:30 a.m.

Joel also presented Aurelio who corroborated his testimony.<sup>[26]</sup> Aurelio testified that he only reported for work for a half-day from 8:00 a.m. to 12:00 noon on April 25, 1996. Thereafter, Aurelio proceeded to Adia Compound located in Rosario, Pasig City, where he met a certain Roberto Rocabo. Thereafter, they proceeded to the office of one Mr. Dela Cruz located at the back of Mariwasa and inquired about a machine which they were trying to contract. They stayed there until 5:30 p.m., after which, Aurelio and Roberto went back at the latter's house. Aurelio hung about in front of Roberto's house, and there met Agapito who invited Roberto for a drink which the latter accepted.<sup>[27]</sup> They were later joined by Joel and Isidro. At around 9:00 p.m., Joel bade them goodbye and left the group. Aurelio also left the drinking spree a moment later, and slept at Roberto's house. At around 6:00 a.m. the following day, April 26, 1996, Aurelio was awakened by a commotion outside, in the street, and when he checked the cause, he saw Agapito lying on the ground. A policeman arrived at around 7:00 a.m. and investigated the crime scene.<sup>[28]</sup>

After trial, the trial court rendered a decision finding Joel guilty beyond reasonable doubt of murder, and imposed upon him the penalty of *reclusion perpetua*. The decretal portion of the decision reads:

Wherefore, the Court finds accused GUILTY beyond reasonable doubt of the crime of murder, and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Agapito Aballero (*sic*) in the amount of P50,000.00 conformably with existing jurisprudence. Costs against the accused.

SO ORDERED.<sup>[29]</sup>

Joel appealed from the decision and alleges that:

- B.1. The trial court erred in giving credence to the supposed lone prosecution eyewitness, Isidro Donoga.
- B.2. The trial court erred in not acquitting the accused because his guilt was not proven beyond reasonable doubt.<sup>[30]</sup>

Anent the first assigned error, he asserts that the trial court erred in giving weight to the testimony of Isidro, the prosecution's lone eyewitness, despite the inconsistencies in his statement to the police investigators<sup>[31]</sup> and his testimony during trial. First, in his sworn statement, Isidro declared that the appellant used an "*itak*" in stabbing Agapito whereas when he testified before the court, he declared that the appellant used a "*kutsilyo*." Second, when Isidro was asked during the trial if he voluntarily gave his sworn statement to the police, he answered in the affirmative; but during the preliminary investigation of the case, he declared that he gave his sworn statement regarding the case when the policemen arrived in their place.<sup>[32]</sup> Third, Isidro declared in his sworn statement that he saw the appellant stab the victim, but during clarificatory questioning by the public prosecutor during trial, he declared that he only saw the extraction by the appellant of the knife from the chest of the victim. Moreover, the appellant avers that there is no allegation in the Information that the appellant used any bladed weapon to stab the victim. Isidro's testimony that he heard shouts for help from Agapito at around 10:00 p.m. of April 25, 1996 was merely a fragment of his imagination because the stabbing occurred on April 26, 1996 at around 6:00 a.m. as testified to by Aurelio.

The appeal is without merit.

The inconsistencies catalogued by the appellant referred only to peripheral or minor details which do not destroy or weaken the credibility of the witness of the prosecution.<sup>[33]</sup> Such inconsistencies are even indicia of honest and unrehearsed declarations and responses of witnesses and thus enhanced their credibility.<sup>[34]</sup> We note that Isidro sufficiently explained his use of "*itak*" and "*kutsilyo*" when he was cross-examined by the appellant's counsel:

Q In your statement marked as Exhibit F, I am referring to the statement given to the police, there is a question and which I quote: "Nasabi mo nakita si Joel Perez ang siyang sumaksak kay Agapito, nakita mo rin ba naman kung anong klaseng patalim ang ginamit niya?" and your answer was: "Isa pong matulis na itak po ang pinangsaksak niya kay Agapito." Do you remember having given this statement?

A Yes, sir.

Q A while ago during the direct examination you were asked what kind of weapon was used and you said, at first "*kutsilyo*" then later on a pointed weapon. Which is which now?

A Because in our place a knife is called "*Dipang*." The "*dipang*, hindi itak na gaano yon." *Dipang*, this is the smallest "*itak*" in our place, sir.

Q Did I get it from you that "*itak*" and "*kutsilyo*" are one and the same in your place?

A Yes, sir. They are one and the same.<sup>[35]</sup>

Case law has it that an affidavit given to the police investigator at the police station is generally not prepared by the affiant himself but by another person invariably by the police investigator who uses his own language. Omissions and