

SECOND DIVISION

[G.R. No. 124475, November 29, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. JOHN PANELA, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision,^[1] dated January 24, 1994, of the Regional Trial Court, Branch 26, Surallah, South Cotabato, finding accused-appellant John Panela guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay to the heirs of the victim, Blas Augusto, the amounts of P50,000.00 as civil indemnity, P22,750.00 as actual damages for funeral services, and P10,000.00 as moral and exemplary damages.

The information against the accused-appellant alleged:

That on or about the 27th day of November, 1992, at around 3:45 o'clock in the afternoon in Barangay Dumaguil, Municipality of Norala, Province of South Cotabato, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an iron bar and a bladed weapon (bolo), in company with Rene Gaza^[2] and Romulo Publico, who were then both armed with pieces of wood and who are now at large and their exact whereabouts unknown, conspiring, confederating, and mutually helping one another, with treachery and abuse of superior strength, did then and there willfully, unlawfully, and feloniously attack, assault, strike, and slash the throat of BLAS AGUSTO with the use of the said weapons thereby inflicting injuries on different parts of the body of BLAS AGUSTO which caused his death thereafter.^[3]

As the other accused remained at large, only accused-appellant was arraigned on February 18, 1993. He pleaded not guilty to the charge against him, whereupon he was tried.^[4]

The prosecution presented five witnesses. The first to testify was an eyewitness, 16-year old Alex M. Lagunsay. He testified that on November 27, 1992, after releasing ducks from the corral so that they could feed in a ricefield at Barangay Dumaguil, Municipality of Norala, Province of South Cotabato, he and the victim rode a tricycle to the house of Romulo Publico for some refreshments. He said they found Publico, Rene Gaza, and accused-appellant John Panela there, having a drinking session. Accused-appellant invited the victim to join them and asked for two ducks to be served as appetizer with their Tanduay rum, to which request the victim agreed. Lagunsay, who did not drink, was a mere spectator as the drinking session progressed. After a while, however, things turned ugly when Lagunsay heard accused-appellant challenge the victim to a fight. ("Blas, let us fight.")

Sensing trouble, Lagunsay told the victim that they should be on their way home. For this reason, they proceeded towards their tricycle. Before leaving, however, the victim asked Lagunsay to get the power tiller. Lagunsay did so. After he had gone five meters away, he turned around and saw accused-appellant holding the victim's hands, while Gaza and Publico took turns hitting the victim with pieces of wood. Even after the victim had fallen to the ground, the assault continued. Accused-appellant struck the victim on the face, head, and other parts of the body with a round bar. Then, bending over the victim, accused-appellant slashed the victim's neck and right wrist, as he warned those around not to come near. ("*Wala sing may magpalapit.*")

Lagunsay fled on the tricycle. He went to look for the victim's son-in-law, Edwin Delejero, to whom he reported the incident. On November 29, 1992, he gave a sworn statement concerning the incident to the police (Exh. A).^[5] Lagunsay identified in court pictures (Exhs. B-B-2)^[6] taken of the crime scene.

Responding to the report, Edwin Delejero and two companions from the CAFGU (Citizen's Armed Forces Geographical Unit) went to Romulo Publico's house. Accused-appellant, Gaza, and Publico were not there. It appears that accused-appellant had sought refuge in the house of Efren Alarilla, about 300 meters away, where he later gave himself up to the police.^[7] Delejero gave a sworn statement to the police (Exh. C).^[8]

SPO1 Eduardo Paulo of the Philippine National Police (PNP) was one of the policemen who rushed to the scene of the crime the same day the incident happened. He testified^[9] that they found a round bar, about an inch in diameter and four feet in length (Exh. G),^[10] beside the body of the victim, three to four meters from the house of Romulo Publico. Also found near the body of the victim was a bloodstained bolo (Exh. H).^[11]

Dr. Daniel Aguilar, a resident physician at the Norala District Hospital, conducted the postmortem examination of the victim. His findings (Exhs. D and E) reveal that the victim sustained the following:

- Linear hematoma, 2.0 inches, right jaw.
- Linear hematoma, 1 inch chin.
- Incised wound, 5.75 inches, neck.
- Right anterior shoulder: multiple hematoma
- Incised wound, right wrist, 2.75 inches.^[12]

In the victim's death certificate (Exh. F),^[13] Dr. Aguilar listed "hacked (sic) wounds neck" as the cause of death. He testified that a blunt instrument caused the hematomas, while a sharp-edged instrument "like the bolo" caused the incised wounds. He opined that wound no. 3 (the neck wound) was the fatal one as the esophagus, trachea, and major blood vessels had been severed.^[14]

The last to testify for the prosecution was the victim's widow Susana Agosto.^[15] She presented receipts (Exh. J-J-6)^[16] to show the expenses incurred by her for her husband's wake and burial.

For his defense, accused-appellant interposed denial and alibi. He claimed that, at the time of the incident, he was in his house taking a nap. He was awakened by his wife who told him that, according to Lilia Porrás, a person had been killed by accused-appellant's stepfather Romulo Publico, at the latter's house. Because the family of the victim might seek revenge against them, she and accused-appellant sought refuge in the house of the *purok* president, Efren Alarilla. Accused-appellant said that when he arrived at the house, he found Alarilla and his wife there and told them of the incident. Later that afternoon, at around 5:00 p.m., he was taken to the police station of Norala.^[17]

For his part, Efren Alarilla testified that at around 5:00 p.m. of November 27, 1998, he had just reached his house from his father-in-law's place when he saw policemen. They asked him whether accused-appellant was in his house, to which he answered in the negative. Later, however, he learned that accused-appellant was in his house, together with the latter's wife and child. Alarilla said that when he told accused-appellant to surrender, the latter replied, "I have been waiting for so long already because I would like to surrender." Alarilla said that he then went out of his house to tell the police that accused-appellant was going to surrender. But Alarilla claimed that the moment accused-appellant stepped out of his house, he was beaten by the police.^[18]

Lilia Porrás corroborated accused-appellant's testimony. She testified that, at 3:00 p.m. of November 27, 1992, she went to the house of Romulo Publico to ask for rice. She saw the deceased, Publico, and Gaza having drinks at the back of the house. She also saw Romulo's wife, Angel, and Romeo Dayaday. Lilia said she was not able to get rice because the Publicos had none. So she proceeded to the house of accused-appellant, 50 meters away, where she was able to get some rice from accused-appellant's wife Nona. Lilia said that accused-appellant was sleeping at that time. While in accused-appellant's house, Lilia said she heard someone coming from the Publico residence crying for help. ("*Tabang!*") Alarmed, Lilia left the rice behind in accused-appellant's house and rushed towards Romulo Publico's house. She only reached as far as the gate when she saw Rene Daza and Romulo Publico running away, the latter carrying a scythe. Afraid, Lilia hid behind a tree and "then went home running." The next day, she learned that accused-appellant had been arrested for the killing of the victim. She said she went to the police to tell them that accused-appellant could not have been the culprit but did not give a sworn statement there.^[19]

Romeo Dayaday corroborated Lilia Porrás' testimony that accused-appellant was not at the drinking session in Romulo Publico's house. He said that he went to Publico's house at 3:00 p.m. of November 27, 1992 to get the payment for fish he had sold to Romulo Publico earlier that day. He found the victim, Rene Gaza, and Romulo Publico having a drinking session at the back of the house. As he was about to leave, Romeo said he heard a commotion inside, and he fled.^[20]

On January 24, 1994, the trial court rendered a decision. The dispositive portion of the decision reads:

Wherefore, the court finds that the accused, John Jun [sic] Panela guilty beyond reasonable doubt of the murder of Blas Augusto, and hereby sentences him to the penalty of reclusion perpetua and to indemnify the

heirs of the victim the sums of P50,000.00 for the death of the victim; P22,750.00 for the expenses for the tomb and funeral services; and P10,000.00 for moral and exemplary damages.^[21]

The trial court did not give credence to accused-appellant's defense of alibi. It found accused-appellant guilty of murder qualified by abuse of superior strength. Although the trial court found that there was treachery, it held that the same was absorbed in the qualifying circumstance of abuse of superior strength.

The basic issue in this case is whether accused-appellant's guilt has been established beyond reasonable doubt. Accused-appellant contends that it has not for the following reasons:

First. Accused-appellant contends that the testimony of eyewitness Alex Lagunsay is unreliable as his description of the attack on the victim is at variance with the sworn statement he gave on November 29, 1992 (Exh. A).^[22] In his sworn statement, Lagunsay said that he saw accused-appellant "embrace" the victim as Rene Gaza and Romulo Publico took turns hitting him (the victim), but in his testimony in court he said that accused-appellant "held" the victim's hands.^[23]

The inconsistency is more apparent than real. What Lagunsay said was that accused-appellant and the victim were facing each other in close proximity, with accused-appellant holding the victim's hands, so that accused-appellant would appear to be embracing the victim. In any case, the term "embrace" was in all probability the term used by the police investigator who took down Lagunsay's statement after hearing Lagunsay describe how accused-appellant restrained the victim. Indeed, affidavits are usually not prepared by the affiant himself but by another who uses his own language in taking down the affiant's statement and, therefore, they must be understood with some degree of latitude.^[24]

It is noteworthy that Lagunsay's description of how accused-appellant was killed is corroborated by the findings (Exhs. D and E) of Dr. Daniel Aguilar who conducted the postmortem examination of the victim and by the weapons found by the police at the crime scene (Exhs. G and H). The Court, therefore, is satisfied with the truth of his testimony, especially as accused-appellant has not shown any motive for Lagunsay to perjure himself.^[25]

Second. Accused-appellant insists that he was in his house taking a nap when the incident happened. But, as against his positive identification by Lagunsay, accused-appellant's alibi cannot prevail. Nor is accused-appellant's house located so far away from the scene of the crime so as to render it impossible for him to be present at the latter place at the time of its commission.^[26] By accused-appellant's own testimony, the distance from his house to the house of Romulo Publico is only 50 meters.^[27] As the trial court pointed out, the distance could easily be covered in two or three minutes.^[28]

Accused-appellant unwittingly gave himself away when he testified that the victim was killed under the tree at the back of Romulo Publico's house and even drew a sketch of the same (Exh. 1).^[29] He could not have gotten detailed information from Lilia Porras because, by Lilia Porras' own account, the latter did not witness the