

SECOND DIVISION

[G.R. No. 119942, July 08, 1999]

**FELIPE E. PEPITO, SINONOR E. PEPITO, AND SONNY E. PEPITO,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals, dated March 29, 1995, which affirmed the judgment of the Regional Trial Court, Branch 21, Laoang, Northern Samar, finding petitioners Felipe, Sinonor, and Sonny Pepito guilty beyond reasonable doubt of homicide and sentencing them to an indeterminate penalty of ten (10) years, six (6) months and one (1) day of *prision mayor*, as minimum, and sixteen (16) years and one (1) day of *reclusion temporal*, as maximum, and ordering them to pay the heirs of Noe Sapa, the victim, the amount of P50,000.00 as death indemnity and P10,000.00 by way of moral damages.

Felipe Pepito and Estrella Pepito are husband and wife. Sinonor and Sonny are their children. They were charged with murder in an information, filed on October 5, 1989 by the provincial prosecutor, which alleged

That on or about the 15th day of July, 1989 at about 3:30 in the morning more or less, at Barangay Burabod, Laoang, Northern Samar, and within the jurisdiction of this Honorable Court, the above-named accused persons, conspiring, confederating and helping one another with treachery and evident premeditation and with deliberate intent to kill and taking advantage of superior strength did, then and there wilfully, unlawfully and feloniously attack, assault and stab, NOE SAPA who was then asleep at their house, all of them armed with bladed weapon, an arrow and a spear, which they conveniently provided themselves for the purpose, directing blows against the vital parts of the body, thereby inflicting upon the latter multiple stab, incised and hacking wounds, which directly caused the death of said NOE SAPA.

With the aggravating circumstance of dwelling and abuse of superior strength.

CONTRARY TO LAW.

The evidence for the prosecution shows that, at around 8:30 in the morning of July 15, 1989, while Cynthia Sapa, the wife of the victim, was in her mother's house in Barangay Burabud, Laoang, Northern Samar, where she and her husband were staying, she heard someone on the street calling her husband. The latter was still asleep, having gone to bed late as he had to make rounds in the barangay the

previous night as a member of the local Bantay Bayan. Upon looking out of the window, Cynthia saw accused Felipe, Sinonor, Sonny, and Estrella Pepito armed with various weapons locally known as "depang,"^[2] "indian pana,"^[3] and "sagangat."^[4] Frightened, Cynthia rushed out of the house and ran to her neighbor's house where she sought refuge.^[5]

On her way she met her mother-in-law, Urdanita Sapa, to whom she said, "Mother, Noe is there and somebody went up the house for him."^[6] Whereupon, Urdanita, who had also seen accused Felipe, Sinonor, Sonny, and Estrella, went back to her house and told them: "Noe has not done you any wrong, and you must leave him."^[7]

But Felipe, Sinonor, and Sonny entered the house as Estrella stood by the door, even as she urged them to kill the victim. A commotion inside the house was heard, after which accused Felipe, Sinonor, and Sonny were seen coming out with their weapons bloodied. Then addressing the people outside, Sinonor announced that the victim was already dead.^[8]

The victim was found dead in a pool of blood on the floor of the kitchen.^[9] The autopsy showed that he sustained 19 stab, incise, and hack wounds.^[10]

On the other hand, the defense evidence shows that, between 6 and 7 in the morning of July 15, 1989, the victim, Noe Sapa, drunk and armed with a bolo and an "indian pana," made trouble in the neighborhood, prompting Estrella to report the matter to Godofredo Espino, the barangay captain, who brought the victim home.^[11]

However, half an hour later, Noe Sapa came back and challenged the family of accused to a fight. He chased Felipe, who was then returning home from the seashore. Felipe ran towards their house. Sapa did not pursue any further. He stopped about 8 meters from the door of the Pepito residence and then went home.

Sinonor, who was in the kitchen having breakfast, thought that his father had been hurt. He grabbed a bolo, rushed out of the house, and went after Noe Sapa, eventually catching up with him on the highway. Sapa hit Sinonor with his "indian pana," and struck him with a bolo on the right arm. Somehow, however, Sinonor was able to grab the right arm of the victim, which was holding the bolo, and stab him several times. Sapa tried to flee, but Sinonor pursued him until they reached the former's house. Sapa staggered inside their house, fell on the floor of the kitchen, and died. Felipe, Sonny, and Estrella met Sinonor as he came out, his clothes, hands, and bolo all bloodied.^[12]

The trial court gave credence to the evidence of the prosecution. In its decision, dated November 9, 1992, it stated:

It is a fact undisputed that the victim Noe Sapa was killed inside the house, particularly in the kitchen of spouses Domingo and Myrna Garnudo, a house where a husband Noe and a wife Cynthia resided in Brgy. Burabud, Laoang, N. Samar. This fact is supported by the testimonies of the prosecution's witnesses Cynthia Garnudo Sapa,

victim's widow, Urdanita Sapa, the victim's mother, Genaro Tepace, Brgy. Kagawad of Burabod and Amada Bantilo, a public school teacher and whose house is an armslength to the house of Noe Sapa, the place of incident. This fact is further supported and substantiated by the testimonies of Police Officer Redencio Irinco of the PNP Laoang and Pablo Fulga, who declared that they saw drops of blood or bloodstains inside and not outside the house, particularly in the kitchen. The drops of blood that has been seen inside the house refuted and negated the testimonies of accused Sinonor, Sonny, Felipe and Estrella, all surnamed Pepito and other defense witnesses Venancio Laguitan, Crispulo Renate, Rodolfo Tepace and Andrea Garnudo. The drops of blood or bloodstains were the indicia of truth as to the place of the killing.

. . . .

The RESOLUTION of the Municipal Court dated 22 September 1989 which found Sinonor armed with small bolo, Sonny with a big bolo, Felipe with a bow and arrow and a bolo and Estrella with a spear rushed towards the direction of Noe Sapa and while at the house of Noe, the three accused, Sinonor, Sonny and Felipe, all surnamed Pepito, entered the house, one after the other holding with them their respective weapons. After a short while and some sounds of scuffle, like a butchered chicken, the three assailants came out with their respective weapons bloodied. That ended the tragedy and the life of the victim Noe Sapa.

The finding of the Municipal Court Resolution finds support and is substantiated by the credibility of the prosecution's witnesses and the veracity of the Autopsy Report of Dr. Lucita Lacbanes Ver, marked as Exh. "A" prosecution, which showed nineteen (19) stab and hacking wounds ten (10) wounds at the front and nine (9) at the back of the victim's body which caused his death. According to Dr. Ver and Dr. Leandro Negado, these wounds in a split of a second or a minute attack could not be inflicted by one person, but by more than one, possible two or three persons.

The defense of Felipe Pepito and Sonny Pepito that they did not participate in the killing of the victim as they already appeared at the scene after Sinonor Pepito wounded many times Noe Sapa is incredible, preposterous and not convincing.

. . . .

The plea of self-defense invoked by accused Sinonor Pepito is without merit as in the situation he became an aggressor, he became an offender and not a defender. His role was offense, not defense. Besides, the means employed are not reasonable to prevent or repel is indicated in the nineteen wounds sustained by the victim.

Likewise, the plea of voluntary surrender is not appreciated in favor of the accused as it has not been proved in Court.

. . . .

WHEREFORE, in the light of the foregoing, the case against Sinonor Pepito, Sonny Pepito and Felipe Pepito having been proved beyond a reasonable doubt, this Court hereby sentences the above-named accused to suffer an imprisonment with the aggravating circumstances of abuse of superior strength appreciated against the accused of ten years, six months and one day of prision mayor as minimum, to sixteen years and one day of reclusion temporal as maximum.

To pay the heirs for the death of the victim P50,000.00.

To pay moral damages in the amount of P10,000.00.

Accused Estrella Pepito is acquitted as she did not participate, she just stood by and watched in the fracas inside the victim's house.

The bail bond posted by Sinonor, Sonny and Felipe, all Pepito are hereby cancelled and the bondsman are discharged from their obligation.

Instruments and/or effects used in the commission of the crime are confiscated in favor of the government.

SO ORDERED.

In affirming the judgment of the trial court, the Court of Appeals held:

We are not convinced that Sinonor alone was responsible for the death of Sapa. The number of wounds sustained by the victim support the theory of the prosecution that the three accused attacked Sapa. The witnesses for the prosecution were emphatic that they saw all the four Pepitos go to the house of Sapa, all of them armed.

This fact was also proven by the testimony of Amada Bantilo, a neighbor of the Sapas, who likewise testified that she saw all the four (4) accused armed with deadly weapons going to the house of Noe Sapa and thereafter she heard a commotion, after which she saw Sinonor Pepito with his clothes bloodstained.

The fact that there had been a prior incident when Sapa challenged the Pepitos to a fight and when Felipe fell on the doorway unconscious, all the more leads us to believe that the four of them conspired to kill Noe Sapa. Thus, all the four of them went to his house and as Estrella stood guards outside the house, the three other accused ganged up on Sapa and inflicted the numerous wounds sustained by him.

The desire of Sinonor Pepito to exculpate his father and his younger brother is understandable. But unfortunately, the same cannot be considered in this case where the common design and concerted action is evident.

However, we do believe that the mitigating circumstance of sufficient provocation on the part of the victim should be considered in favor of the

accused. The evidence has established that the victim Sapa challenged the Pepitos to a fight and ran after Felipe Pepito who lost consciousness after the chase. This was what prompted the Pepitos to commit the crime. But the lower court already imposed the correct penalty. In this case, the penalty imposable should range from *prision mayor* of 6 years, 1 day to 16 years as minimum and 14 years, 8 months and 1 day to 18 years and 4 months as maximum. The penalty prescribed by the lower court is therefore already within the range allowable under the law.

WHEREFORE, finding no reason to reverse or modify the decision rendered by the lower court, the same is hereby AFFIRMED.

Costs against accused-appellants.

SO ORDERED.

Hence, this appeal. Petitioners contend:

- I. THE COURT OF APPEALS ERRED BY ADOPTING IN TOTO THE FINDINGS OF THE LOWER COURT HENCE FAILING THEREBY TO CONSIDER THE TESTIMONIES OF THE DEFENSE WITNESSES INDICATING THE INNOCENCE OF THE PETITIONERS, OR AT THE LEAST NEGATING THE FINDINGS OF CONSPIRACY.
- II. THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONERS FELIPE PEPITO AND SONNY PEPITO CONSPIRED WITH PETITIONER SINONOR PEPITO IN KILLING NOE SAPA.
- III. THE COURT OF APPEALS ERRED IN NOT CONSIDERING IN FAVOR OF PETITIONER SINONOR PEPITO THE MITIGATING CIRCUMSTANCES OF UNLAWFUL AGGRESSION AND SUFFICIENT PROVOCATION ON THE PART OF THE VICTIM AS WELL AS PASSION AND OBFUSCATION OF THE PART OF PETITIONER SINONOR PEPITO.
- IV. IN ANY EVENT, THE COURT OF APPEALS ERRED IN NOT REVERSING THE CONVICTION OF THE PETITIONERS BASED, AT THE VERY LEAST, ON REASONABLE DOUBT AND ACCORDING PETITIONERS THE PRESUMPTION OF INNOCENCE.

These contentions can be reduced to two issues: (1) whether the guilt of Felipe and Sonny was proven beyond reasonable doubt, and if so, whether the existence of a conspiracy between Felipe, Sinonor, and Sonny was sufficiently established; and (2) whether the mitigating circumstances of incomplete defense of a relative, sufficient provocation or threat on the part of the offended party immediately preceding the act, and that of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation should be appreciated in favor of Sinonor. We will discuss these issues in the same order.

First. Amada Bantilo testified for the prosecution as follows:

GOVT. PROSECUTOR HERMOSILLA: