

EN BANC

[G.R. Nos. 115008-09, July 24, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANIELQUIJADA Y CIRCULADO, ACCUSED-APPELLANT.**

DECISION

DAVIDE, JR., J.:

Accused-appellant Daniel Quijada appeals from the decision of 30 September 1993 of Branch 1 of the Regional Trial Court (RTC) of Bohol convicting him of the two offenses separately charged in two informations, viz., murder under Article 248 of the Revised Penal Code and illegal possession of firearm in its aggravated form under P.D. No. 1866, and imposing upon him the penalty of *reclusion perpetua* for the first crime and an indeterminate penalty ranging from seventeen years, four months, and one day, as minimum, to twenty years and one day, as maximum, for the second crime.^[1]

The appeal was originally assigned to the Third Division of the Court but was later referred to the Court en banc in view of the problematical issue of whether to sustain the trial court's judgment in conformity with the doctrine laid down in *People vs. Tac-an*,^[2] *People vs. Tiozon*,^[3] *People vs. Caling*,^[4] *People vs. Jumamoy*,^[5] *People vs. Deunida*,^[6] *People vs. Tiongco*,^[7] *People vs. Fernandez*,^[8] and *People vs. Somooc*,^[9] or to modify the judgment and convict the appellant only of illegal possession of firearm in its aggravated form pursuant to *People vs. Barros*,^[10] which this Court (Second Division) decided on 27 June 1995.

The informations read as follows:

CRIMINAL CASE NO. 8178

That on or about the 30th day of December, 1992, in the municipality of Daus, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill and without any justifiable motive, with treachery and abuse of superior strength, the accused being then armed with a .38 cal. revolver, while the victim was unarmed, suddenly attacked the victim without giving the latter the opportunity to defend himself, and with evident premeditation, the accused having harbored a grudge against the victim a week prior to the incident of murder, did then and there willfully, unlawfully and feloniously attack, assault and shoot Diosdado Iroy y Nesnea with the use of the said firearm, hitting the latter on his head and causing serious injuries which resulted to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the provision of Art. 248 of the Revised Penal

Code, with aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime.^[11]

CRIMINAL CASE NO. 8179

That on or about the 30th day of December, 1992, in the municipality of Dauis, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously keep, carry and have in his possession, custody and control a firearm (hand gun) with ammunition, without first obtaining the necessary permit or license to possess the said firearm from competent authorities which firearm was carried by the said accused outside of his residence and was used by him in committing the crime of Murder with Diosdado Iroy y Nesnea as the victim; to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of P.D. No. 1866.^[12]

Having arisen from the same incident, the cases were consolidated, and joint hearings were had. The witnesses presented by the prosecution were SPO4 Felipe Nigparanon (Acting Chief of Police of Dauis, Bohol), SPO Gondalino Inte, Dr. Greg Julius Sodusta, Rosita Iroy, and Teodula Matalinis. The defense presented as witnesses Alfred Aranzado, Edwin Nistal, Julius Bonao, Saturnino Maglupay, and the appellant himself.

The evidence for the prosecution is summarized by the Office of the Solicitor General in the Brief for the Appellee as follows:

On 25 December 1992, a benefit dance was held at the Basketball Court of Barangay Tinago, Dauis, Bohol. On this occasion, a fist fight occurred between Diosdado Iroy and appellant Daniel Quijada as the latter was constantly annoying and pestering the former's sister. Rosita Iroy (TSN, Crim. Cases 8178 & 8179, June 8, 1993, pp. 32-35; August 5, 1993, pp. 14-15).

In the evening of 30 December 1992, another benefit dance/disco was held in the same place. This benefit dance was attended by Rosita Iroy, Ariel Dano, Teodora Badayos, Ado Aranzado, Largo Iroy and Diosdado Iroy.

While Rosita Iroy and others were enjoying themselves inside the dancing area, Diosdado Iroy, Eugene Nesnea and Largo Iroy, who were then sitting at the plaza (the area where they positioned themselves was duly lighted and was approximately four meters from the dancing hall), decided to just watch the activities in the dance hall directly from the plaza.

After dancing, Rosita Iroy decided to leave and went outside the gate of the dance area. Subsequently, or around 11:30 of the same night, while facing the direction of Diosdado Iroy, Rosita Iroy saw appellant surreptitiously approach her brother Diosdado Iroy from behind. Suddenly, appellant fired his revolver at Diosdado Iroy, hitting the latter

at the back portion of the head. This caused Rosita Iroy to spontaneously shout that appellant shot her brother; while appellant, after shooting Diosdado Iroy, ran towards the cornfield.

Diosdado Iroy was immediately rushed by Elmer Nigparanon and Largo Iroy to the hospital but the injury sustained was fatal. In the meantime, Rosita Iroy went home and relayed to her parents the unfortunate incident (TSN, Crim Case Nos. 8178 & 8179, June 8, 1993, pp. 9-22, inclusive of the preceding paragraphs).

At around midnight, the incident was reported to then Acting Chief of Police Felipe Nigparanon by Mrs. Alejandra Iroy and her daughter Teodula Matalinis. The police officer made entries in the police blotter regarding the shooting and correspondingly, ordered his men to pick up the appellant. But they were unable to locate appellant on that occasion (TSN, Crim. Case Nos. 8178 & 8179, June 9, 1993, pp. 2-6).

In the afternoon of 31 December 1992, appellant, together with his father Teogenes Quijada went to the police station at Dauis, Bohol. There and then, appellant was pinpointed by Elenito Nistal and Rosita Iroy as the person who shot Diosdado Iroy. These facts were entered in the police blotter as Entry No. 1151 (TSN, Crim. Case Nos. 8178 & 8179, *ibid.* p. 14, June 14, 1993, pp. 4-6).^[13]

The slug was embedded at the midbrain.^[14] Diosdado Iroy died of

Cardiorespiratory arrest, secondary to tonsillar herniation, secondary to massive intracranial hemorrhage, secondary to gunshot wound, 1 cm. left occipital area, transacting cerebellum up to midbrain.^[15]

The firearm used by the appellant in shooting Diosdado Iroy was not licensed. Per certifications issued on 26 April 1993, the appellant was not a duly licensed firearm holder as verified from a consolidated list of licensed firearm holders in the province^[16] and was not authorized to carry a firearm outside his residence.^[17]

The appellant interposed the defense of alibi, which the trial court rejected because he was positively identified by prosecution witness Rosita Iroy. It summarized his testimony in this wise:

Daniel Quijada y Circulado, the accused in the instant cases, declared that in the afternoon of December 30, 1992 he was in their house At 6:00 o'clock in the afternoon he went to Tagbilaran City together with Julius Bonao in a tricycle No. 250 to solicit passengers. They transported passengers until 10:30 o'clock in the evening. They then proceeded to the Tagbilaran wharf waiting for the passenger boat Trans Asia Taiwan. Before the arrival of Trans Asia Taiwan they had a talk with Saturnino Maglopay. They were able to pick up two passengers for Graham Avenue near La Roca Hotel. They then returned to the Tagbilaran wharf for the arrival of MV Cebu City that docked at 12:10 past midnight. They had a talk with Saturnino Maglopay who was waiting for his aunties scheduled to arrive aboard MV Cebu City. They were not able to pick up passengers which, as a consequence, they went home. They had on their way home

passengers for the Agora Public Market. They arrived at the house of Julian Bonao at Bil-isán, Panglao, Bohol at 3:00 o'clock in the morning of December 31, 1992 where he passed the night. He went home to Mariveles, Dauis, Bohol at 9:00 o'clock in the morning.^[18]

The trial court gave full faith and credit to the version of the prosecution and found the appellant guilty beyond reasonable doubt of the crimes charged and sentenced him accordingly. It appreciated the presence of the qualifying circumstance of treachery considering that the appellant shot the victim at the back of the head while the latter was watching the dance. The dispositive portion of the decision dated 30 September 1993 reads as follows:

PREMISES CONSIDERED, in Criminal Case No. 8178, the court finds the accused Daniel Quijada guilty of the crime of murder punished under Article 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of Reclusion Perpetua, with the accessories of the law and to pay the cost.

In Criminal Case No. 8179, the Court finds the accused Daniel Quijada guilty of the crime of Qualified Illegal Possession of Firearm and Ammunition punished under Sec. 1 of R.A. No. 1866 as amended, and hereby sentences him to suffer an indeterminate sentence from Seventeen (17) years Four (4) months and One (1) day, as minimum, to Twenty (20) years and One (1) day, as maximum, with the accessories of the law and to pay the cost.

The slug or bullet which was extracted from the brain at the back portion of the head of the victim Diosdado Iroy is hereby ordered forfeited in favor of the government.

It appearing that the accused Daniel Quijada has undergone preventive imprisonment he is entitled to the full time he has undergone preventive imprisonment to be deducted from the term of sentence if he has executed a waiver otherwise he will only be entitled to 4/5 of the time he has undergone preventive imprisonment to be deducted from his term of sentence if he has not executed a waiver.^[19]

On 29 October 1993, after discovering that it had inadvertently omitted in the decision an award of civil indemnity and other damages in Criminal Case No. 8178, the trial court issued an order directing the appellant to pay the parents of the victim the amount of P50,000.00 as indemnity for the death of their son and P10,000.00 for funeral expenses.^[20] The order was to form an integral part of the decision.

The decision was promulgated on 29 October 1993.^[21]

The appellant forthwith interposed the present appeal, and in his Brief, he contends that the trial court erred

II

. . . IN NOT CONSIDERING THE TESTIMONIES OF DEFENSE WITNESSES EDWIN NISTAL AND ALFRED ARANZADO, AND IN DISREGARDING THE PICTORIAL EXHIBITS OF THE ACCUSED-APPELLANT PARTICULARLY THE RELATIVE POSITIONS OF DIOSDADO IROY, ROSITA IROY, EDWIN NISTAL, AND ALFRED ARANZADO.

III

. . . IN FAILING TO CONSIDER THAT PROSECUTION WITNESSES ROSITA IROY AND SP04 FELIPE NIGPARANON HAD MOTIVES IN FALSELY TESTIFYING AGAINST ACCUSED-APPELLANT.^[22]

The appellant then submits that the issue in this case boils down to the identity of the killer of Diosdado Iroy. To support his stand that the killer was not identified, he attacks the credibility of prosecution witnesses Rosita Iroy and SP04 Felipe Nigparanon. He claims that the former had a motive "to put him in a bad light" and calls our attention to her direct testimony that her brother Diosdado, the victim, boxed him on the night of 25 December 1992 because he allegedly "bothered her." He further asserts that Rosita could not have seen the person who shot Diosdado considering their respective positions, particularly Rosita who, according to defense witnesses Nistal and Aranzado, was still inside the dancing area and ran towards the crime scene only after Diosdado was shot. And, the appellant considers it as suppression of evidence when the prosecution did not present as witnesses Diosdado's companions who were allegedly seated with Diosdado when he was shot.

As to SPO4 Nigparanon, the appellant intimates improper motives in that the said witness is a neighbor of the Iroys, and when he testified, a case for arbitrary detention had already been filed against him by the appellant. The appellant further claims of alleged omissions and unexplained entries in the police blotter.

Finally, the appellant wants us to favorably consider his defense of alibi which, according to him, gained strength because of the lack of evidence on the identity of the killer. Furthermore, he stresses that his conduct in voluntarily going to the police station after having been informed that he, among many others, was summoned by the police is hardly the actuation of the perpetrator of the killing of Diosdado Iroy -- specially so if Rosita Iroy's claim is to be believed that moments after the shooting she shouted that Daniel Quijada shot Diosdado Iroy.

In its Appellee's Brief, the People refutes every argument raised by the appellant and recommends that we affirm in toto the challenged decision.

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, we find this appeal to be absolutely without merit.

The imputation of ill-motive on the part of Rosita Iroy and the basis therefor hardly persuade. The appellant was the one who was boxed by and lost to Diosdado Iroy in their fight on the night of 25 December 1992. It is then logical and consistent with human experience that it would be the appellant who would have forthwith