

FIFTH DIVISION

[CA-G.R. CR. NO. 34031, March 18, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELIMAR NISPEROS Y PADILLA, ACCUSED-APPELLANT.**

DECISION

GARCIA-FERNANDEZ, J.:

This is an appeal from the decision^[1] of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 03 dated January 19, 2011 finding accused-appellant Elimar Nisperos y Padilla guilty beyond reasonable doubt of homicide defined and penalized under Article 249 of the Revised Penal Code in Criminal Case No. 11678.

Accused-appellant was charged with murder in an information,^[2] which reads:

“That on May 5, 2007, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, the accused ELIMAR NISPEROS y PADILLA who was armed with a knife, with intent to kill, qualified with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab the victim Francisco E. Pagulayan, hitting the latter on his chest, thereby inflicting upon him a fatal stab wound that has caused his untimely death.

CONTRARY TO LAW.”

During the arraignment of accused-appellant, he pleaded not guilty to the crime charged.^[3]

The accused-appellant filed a petition for bail^[4] which was granted by the RTC in a resolution^[5] dated November 14, 2008.

Trial ensued thereafter.

The prosecution presented the following witnesses, to wit: a) Chito Padilla; b) P/INSP. Edgar Pattau and PO3 Joseph Curugan; c) SPO1 Dennis Matias; and d) Dr. Eugenio Dayag.

For his defense, accused-appellant presented the following witnesses: a) Imelda Nisperos; b) PO2 Teddy Malana; c) Norma Nisperos; and, d) The accused-appellant himself.^[6]

The prosecution's version of the facts is as follows:

Chito Padilla testified that he had a drinking session with a neighbor in his house

located in Pallua Sur, Tuguegarao City in the evening of May 5, 2007;^[7] that after their drinking session and while cooking his food, he noticed that Francisco Pagulayan and the accused-appellant were chasing each other around the premises of his house;^[8] that he did not notice who went out of the premises first; that after turning off the shellane to see what was happening, he saw Pagulayan running towards him, holding his stomach and told him "I was stabbed;"^[9] that he helped and brought Pagulayan to the van of his neighbor, retired SPO4 Eddie Dejacto, but he did not accompany Pagulayan.^[10]

PO3 Joseph Curugan testified that on May 5, 2007 at about 10:15 in the evening, an individual reported to their office that they saw the accused-appellant on board a tricycle fleeing with other persons;^[11] that he, together with Police Inspector Edgar Pattaui, PO1 Caluza and PO1 Balanggaya chased the tricycle where accused-appellant was riding and flagged it down in front of the old Pantranco Terminal, Don Domingo; that they instructed the passengers to alight from the tricycle and asked who among them is Elimar Nisperos;^[12] that accused-appellant introduced himself as Elimar Nisperos and surrendered to them without any resistance;^[13] and that they brought accused-appellant to the Tuguegarao Police Station for investigation by Police Officer Federico Doca.^[14]

The prosecution and defense entered into stipulation of facts, to wit: 1) The testimony of SPO1 Dennis Matias would corroborate the testimony of PO3 Curugan; 2) SPO1 Matias prepared the excerpt of the police blotter under Entry No. 0305-0306; and 3) Dr. Eugenio Dayag, City Health Officer of San Gabriel, Tuguegarao City issued the autopsy report on May 6, 2007 and found that the victim sustained a single injury located in the chest.^[15]

The defense, on the other hand, presented its version as follows:

Accused-appellant Elimar Nisperos y Padilla testified that on May 5, 2007 at about 7:00 in the evening, he together with Imelda Nisperos (his wife), Rosy (his sister-in-law), and children were at their house in Pallua Norte, Tuguegarao City, Cagayan when Francisco E. Pagulayan arrived and brought food; that Pagulayan is the live-in partner of his mother;^[16] that Rosy got the food from Pagulayan and proceeded to the kitchen; that Pagulayan followed Rosy; that Rosy appeared to be afraid and was trembling upon returning from the kitchen; that accused-appellant inquired as to what happened in the kitchen but Rosy remained silent; that accused-appellant asked Pagulayan, to which the latter answered "Ukinam, may araw ka rin (Son of a bitch, you will have your day)" but he just ignored Pagulayan but advised him instead to go home because he was drunk.^[17]

After eating dinner, accused-appellant boarded his tricycle and proceeded to the house in Pallua Sur, Tuguegarao where Pagulayan and his mother were staying to inquire as to what really happened earlier that evening; that accused-appellant's mother was not home^[18] but he was surprised when Pagulayan tried to hit him with his fist; that he evaded the attack by stepping back; that when he saw Pagulayan holding a pointed object with his right hand, accused-appellant ran and went inside the property of Chito Padilla;^[19] that Pagulayan chased accused-appellant and caught him and tried to thrust the knife at him several times but he was able to

evade successfully^[20]; that he was able to get hold of Pagulayan's hand, turned it around and thrust the knife at the latter^[21]; that accused-appellant ran towards his tricycle, proceeded home^[22] and informed his wife that he accidentally stabbed Pagulayan; that he together with Junjun, his wife, sister-in-law and the brother of his sister-in-law went to the Main Police Station to report the incident but was not able to do so because of a sudden brownout; that they instead proceeded to Don Domingo Police Station but they were flagged down by policemen in front of Babaran Funeral Homes located along Balzain; that the policemen asked accused-appellant and his companions who among them is Elimar Nisperos and he answered "ako;" that they pointed their gun at him; and that they handcuffed him and brought him to the main Police Station.^[23]

On January 19, 2011, the RTC rendered a decision,^[24] the dispositive portion of which reads:

"WHEREFORE, the accused ELIMAR NISPEROS y PADILLA is found GUILTY beyond reasonable doubt, as principal, of the offense of HOMICIDE as defined in Article 249 of the Revised Penal Code and is hereby sentenced:

1) To suffer an indeterminate prison sentence ranging from twelve (12) years of prision mayor, as minimum, up to 17 years and 4 months of reclusion temporal, as maximum; and,

2) To pay the heirs of Francisco E. Pagulayan:

- a. The amount of P50,000.00 as civil indemnity;
- b. The amount of P25,000.00 as temperate damages;
- c. The amount of P50,000.00 as moral damages; and,
- d. The cost of suit.

The bailbond of the accused is cancelled and his commitment to the Bureau of Jail and Management Penology is hereby ordered.

SO ORDERED."

Accused-appellant filed this appeal, assigning the following errors to the RTC:

"I

THE HONORABLE COURT A QUO ERRED IN FAILING TO CONSIDER THE PRESENCE OF THE ELEMENTS OF SELF-DEFENSE; AND

II

THE HONORABLE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED."^[25]

Accused-appellant contends that the trial court erred in convicting him of homicide despite the fact that all the essential elements of self-defense have been proven by him; and that the mitigating circumstance of voluntary surrender should have been appreciated in his favor.