

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO TAYLARAN ALIAS “GORING”;
DEFENDANT-APPELLANT.**

G.R. No. L-49149. October 23, 1981

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DE CASTRO, J.:*

Charged with murder in the Court of First Instance of Bohol, appellant was convicted and sentenced to life imprisonment, and to indemnify the heirs of the deceased in the sum of P12,000 and to pay costs. Appealing to this Court, appellant insists on his defense of accidental, not deliberate killing.

We quote hereunder from the appealed decision the versions of both the prosecution and the defense, as set forth therein:

"EVIDENCE FOR THE PROSECUTION"

"At about 10:00 P.M. of November 5, 1976 accused called at the house of deceased Ofremia Atup y Sarabosing located in barrio Binliw, Ubay, Bohol for the purpose of submitting himself to the latter for treatment of his snake-bite located at his left foot. His announced purpose being good, the deceased opened the door for him. Once inside, the deceased took her medicine paraphernalia (she being a local quack doctor) and started treating the accused. Then all of a sudden the accused drew his small bolo (Exhibit A) and stabbed the deceased several times causing her to fall on the floor dead. After killing the deceased accused proceeded to the house of the son of the deceased for the purpose of killing him and his wife but accused did not accomplish his purpose because the deceased's son refused to let him enter his house. After that the accused surrendered himself with his bolo to policeman Demetrio Basilad who was then on guard at the municipal hall of Ubay. When asked why he killed the deceased who was also his grandmother-in-law, accused answered, 'because she promised to kill me with a 'barang' hence I killed her first.' (Testimonies of Salvador Atup, policeman Demetrio Basilad and Juanita Busalia)

"EVIDENCE FOR THE DEFENSE"

"At about 9:00 P.M. on November 5, 1976 accused went to tend to his carabao. On the way, he was bitten by a snake at the smallest toe of his left foot. Hence, he proceeded to the house of his grandmother-in-law, Ofremia Sarabosing which was located in barrio Binliw, Ubay, Bohol for treatment of snake-bite. Ofre-mia Sarabosing was a quack doctor known to cure snake-bites. He arrived at deceased's house at about 10:00 P.M. The deceased opened the door to let him enter. Once inside he and the deceased stood on the floor facing each other. Then the deceased instructed accused to open his snake-bite with a bolo (Exhibit A) so that the venom can be drained out. While he was opening his snake-bite with a bolo, he accidentally put out the light of the kerosene lamp which was placed on the floor. This prompted the deceased to relight said lamp. She bended her body down with her two hands extended towards the floor to light said lamp. At the very time that deceased was bending her body downward, accused lifted his right hand which was holding the bolo, upward, so that the point of the bolo accidentally hit deceased's right chest penetrating the nipple and resulting in her death. Upon realizing that the deceased was fatally wounded, accused asked for her forgiveness and after that he ran away.

(Testimonies of accused himself and Elpidio Mendez)."[1]

As the trial court prefaced its decision, which version is correct?

That the deceased died from wounds inflicted by the appellant is not disputed. As gleaned from the opposing versions set forth above, the conflict is in how the wounds were inflicted - whether with deliberate intent, or purely by accident.

It is extremely difficult to accept the accident version of appellant which he purveyed without corroboration. More than one wound was found sustained by the deceased, on different parts of the body. One single stroke could not have inflicted all of them. The first wound could possibly have been accidentally inflicted, but the other wounds could not have been similarly inflicted if, as just pointed out, they did not result from the first blow. Their locations preclude that a single blow produced all the wounds. This fact robs the accident theory of appellant of any plausibility.

The explanation of appellant as to how the wounds other than that located on the right chest was inflicted simply cannot inspire belief. In trying to succor the old woman when she fell upon being hit accidentally with the point of the bolo, as appellant alleged, he could not have kept on holding the bolo. He would have dropped it instantly, as instinct would have made him do so. The infliction of more wounds after the first was therefore deliberate and not by mere accident. It is, likewise, hard to believe that a mere accidental hitting with the point of the small bolo, and therefore not with so much force, would inflict a wound that is so fatal as that sustained on the chest.

That the wounding was with intent to kill is reflected by appellant's statement that he killed the old woman because she had allegedly promised to kill him by "barang" or by witchcraft, which he gave upon surrendering to Pat. Demetrio Basilad at the Municipal Building. It was just natural for appellant to explain to the police why he was surrendering. For Pat. Basilad to testify on what appellant said on this score is thus perfectly proper, and full credence must be accorded to him, being obviously an im-partial witness. It is not a matter of whether the statement is a part of the *res gestae* to be admissible.

Appellant of course denies having made the admission, but in the light of the other evidence of the prosecution, his denial is not convincing. As demonstrated earlier, his accident theory of the killing merits not much credibility from the mere fact that more than one wound was inflicted which could not have resulted from just one blow. Repeated blows easily negates any claim of wounding by mere accident.

The fact that he was not allowed to enter the house of Juanita Busalla, daughter of the deceased, when he went there directly from the old woman's house, would show that he appeared, by his behavior or words, that he was dangerously in an angry mood, which is indicative of being a deliberate killer rather than a sorrowful and harmless penitent for a killing he has committed only by accident. As Juanita also testified, when appellant was already in jail, he told her that he killed her mother because of witchcraft, corroborating Pat. Basilad's testimony. It would, therefore, be of no avail for appellant to contend that the court *a quo* erred in admitting appellant's statement he made upon surrendering that he killed the deceased because the latter intended to kill him by witchcraft as part of the *res gestae*. The testimony of both Pat. Basilad and Juanita Busalla on the inculpatory statement of appellant is legally admissible not because the statement is part of the *res gestae*, but for said witnesses having heard appellant made the statement on their own perception.

It is hard to see why the aforementioned witnesses testified on the admission of appellant the way they did unless they were prompted only by the truth. If appellant had surrendered with an admission of killing the old woman by accident, as he must have tried to impress upon the authorities if such was the truth, Pat. Basilad had no reason to give the killing the graver character than what it really was. As far as he is concerned, he had no more problem

relative to the solution of the crime, which is the usual cause for police twisting the truth or other form of excesses when conducting investigations-the desire to solve a crime by all means.

That Dr. Silverio Gaviola who issued the post-mortem examination report failed to testify thereon because he died before he could be called to the stand, so unduly stressed to show the quality of his report as hearsay, does not affect the sufficiency of the evidence against appellant to entitle him to the acceptance of his claim of accident to exempt him from criminal liability. As already shown, such evidence is more than adequate to make the mind rest at ease on appellant's guilt as charged. The autopsy report, if not admitted as such, is part of the testimony of Pat. Sarabosing. He testified on the number and location of the wounds, and his testimony, being that of a peace officer with basic knowledge in medico-legal medicine, having taken a course therein (p. 26, tsn, May 21, 1978) may well serve the purpose of the autopsy report, if the report is not itself admissible as independent evidence, as appellant would insist.

Appellant has also invoked the provision of Article IV, Section 20 of the Constitution in trying to block the admission of his declaration to Pat. Basilad that he killed Ofremia Atup because of her alleged vow to kill him by witchcraft, contending that the safeguards therefor have not been made available to him. The cited provision reads:

"Section 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

The applicability of the foregoing provision does not seem to contemplate cases like the present where no written confession was sought to be presented in evidence as a result of formal custodial investigation. What was testified to is only what appellant told the police why he is surrendering to them. It is but natural for one who surrenders to the police to give reason or explanation for his act of surrendering. It can hardly be said that under such circumstance, the surrenderee is already "under investigation", within the meaning of the constitutional provision. As the Solicitor General correctly observes on the circumstances of this case: "If however, he voluntarily admits the killing and it was precisely because he surrendered to admit the killing, the constitutional safeguards to be informed of his rights to silence and to counsel may not be invoked."

In any case, as previously pointed out, another witness, Juanita Busalla, who is not a policeman also testified to appellant telling her when he was already in jail, that he killed Ofremia Atup because of her promise to kill him by means of witchcraft, the same declaration he supposedly made to Pat. Basilad, upon surrendering after the killing. The constitutional safeguard invoked can have no application to Juanita's testimony on what appellant told her not in the course of a police investigation.

At any rate, even without the admission, the accident version of appellant is inherently incredible. As already stated, that he was not allowed by Ofremia's daughter and husband to enter their house when he went there direct from the old woman's house is a strong proof that he did not exhibit the harmless mood of a repentant killer as he should visibly appear to them if the killing was only accidental. On the contrary, he must have appeared so angry, displaying unmistakable intent to kill them, after killing their mother, as the daughter Juanita Busalla, so testified. (pp. 30-39, tsn, Feb. 1, 1978).

Verily, the issue is one of credibility. The lower court gave more of it to the testimony of the prosecution witnesses. We find no reason to disturb the lower court's appreciation of the relative credibility of the opposing witnesses.[2] Moreover, appellant having admitted the killing, the burden of proving the exempting circumstance he has invoked in his defense calls for clear and convincing evidence, as is required of similar defenses as that of

self-defense.[3] This, he failed dismally to fulfill.

WHEREFORE, the appealed decision is affirmed, with costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), in the result.

* Mr. Justice de Castro was designated to sit with the First Division under Special Order No. 225.

[1] Appendix "A" of Appellant's Brief, p. 35, Rollo.

[2] *People v. Arciaga*, 98 SCRA 1; *People v. Abejuela*, 92 SCRA 503; *People v. Bautista*, 92 SCRA 465; *People v. Balmaceda*, 87 SCRA 94; *People v. Molleda*, 86 SCRA 667; *People v. Sales*, 44 SCRA 489.

[3] *People v. Obeda*, 101 SCRA 675; *People v. Verzola*, 80 SCRA 600; *People v. Jamero*, 75 SCRA 137; *People v. Quintab*, 16 SCRA 146; *People v. Libed*, 14 SCRA 410.

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