

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADJUTOR TANDUYAN ALIAS "BOT", ACCUSED-APPELLANT.

G.R. No. 108784. September 13, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

In an information dated 10 August 1990, accused-appellant Adjutor alias "Bot" Tanduyan was charged with the crime of murder allegedly committed as follows:

"That on or about the 30th day of July, 1990 in the Municipality of Malita, Province of Davao del Sur, Philippines, and within the jurisdiction of the Honorable Court, said accused did then and there wilfully, unlawfully and feloniously attack, assault and stab, with treachery and evident premeditation, one Benjamin Tanduyan in the different parts of the body while the latter was sleeping and in no position to defend himself which injuries caused his instantaneous death.

CONTRARY TO LAW."^[1]

On 13 August 1990, accused-appellant was arraigned where he pleaded not guilty. Thereafter, trial ensued with the prosecution presenting four (4) witnesses. In turn, the defense rested its case after two (2) witnesses had testified.

The prosecution's version is as follows:

In the evening of 30 July 1990, at around 9:00 p.m., in San Roque, Malita, Davao del Sur, prosecution eyewitness Juvel Rellon, a 13-year old boy and a first year high school student, was tending his father's store and at the same time was busy working on his school assignment.

There were two (2) other persons present in the store that evening. One was Benjamin Tanduyan, an uncle of Juvel, who was then sleeping on the store counter with his head resting on his right forearm. The other was Desiderio "Takol" Geyrozaga, who was smoking a cigarette while idly lying on a wooden bench in front of the store.

Later, Juvel Rellon saw accused-appellant enter the store and approach (Takol) Geyrozaga to light a cigarette. He overheard accused-appellant asking Geyrozaga the identity of the person who was sleeping on the counter. Geyrozaga replied that it was Benjamin Tanduyan. Thereafter, Geyrozaga left the store. Juvel Rellon observed that accused-appellant also followed suit and proceeded to the nearby house of his sister named Garit Lorian.

Moments later, accused-appellant returned to the store brandishing a knife and, without warning, repeatedly stabbed the sleeping and unsuspecting Benjamin Tanduyan in plain view of Juvel Rellon.

Juvel Rellon recounted that after the first two (2) thrusts, he shouted a warning to his uncle and tried to pull him away but failed because his uncle was quite heavy. It was at this moment that accused-appellant told him to keep quiet and not to tell anybody, uttering in the Visayan dialect: "VEL, YAW NG SABA HA?" [Vel, do not tell

anyone ha?] Thereafter, accused-appellant inflicted six (6) more successive thrusts on Benjamin Tanduyan, then fled swiftly.

Juvel Rellon ran to their house upstairs and informed his mother that his uncle was stabbed. His mother then shouted for help to their neighbors who immediately responded and brought Benjamin Tanduyan to the hospital where he expired.[2]

Desiderio Geyrozaga corroborated part of Juvel Rellon's testimony as to his presence in Toting Rellon's store on that fateful night. He testified that accused-appellant went to the store and approached him to ask for a light and asked him if he knew the person sleeping on the store's counter. He told accused-appellant that the said person was Ben Tanduyan, then he proceeded to his house which is located only about thirty (30) meters away from the store.

Geyrozaga noticed that accused-appellant also left the store of Toting Rellon and went to the neighboring store of his sister Garit where he sat on a chair.

After about five (5) minutes, he heard the voice of Juvel shouting, "TABANG KAY SI YOYO SILUBA" [Help! because Yoyo was stabbed.]

Geyrozaga immediately rushed back to Toting Rellon's store where he saw Ben Tanduyan sprawled on the ground, lying over a pool of blood. Together with one Dr. Hortel and an ice cream vendor named Florencio, he borrowed a pedicab and drove the victim, Ben Tanduyan, to the nearest hospital.[3]

Dr. Ma. Luisa Torres, the attending physician who examined Ben Tanduyan in the hospital, testified that the victim died of cardio pulmonary arrest secondary to severe hemorrhage. Based on her post-mortem findings, Ben Tanduyan suffered multiple stab wounds at the back of his body, but the fatal wound that caused the severe hemorrhage was the stab wound that was inflicted through and through from the left cheek extending down to the lateral side of the neck, which hit the victim's carotid artery.[4] From the nature and position of said wound, as well as the other superficial wounds, she opined that the victim was assaulted at his back by the assailant.

With respect to the civil aspect, Felisa T. Mamale, the deceased's eldest daughter, testified on the expenses incurred by the family for the wake and funeral of her father, which amounted to approximately P4,000.00.[5]

On the other hand, accused-appellant anchored his defense on confession and avoidance. He maintained his innocence as he testified that it was Benjamin Tanduyan who attacked him while he was waiting for a ride home in front of Toting Rellon's store.

At that particular time (9 o'clock in the evening), he claimed that Rellon's store, as well as the neighboring stores were already closed. All of a sudden, a man carrying a knife approached him, whom he identified as his uncle, Ben Tanduyan. The latter allegedly angrily shouted, "If I had not killed you then, I would kill you now."

Before the court a quo, accused-appellant demonstrated how he was able to parry Benjamin Tanduyan's thrust as he gripped the latter's hand, thereby causing the knife to fall on the ground. As Benjamin boxed him with his (Benjamin's) left hand, he was allegedly able to pick up the knife, then faced Benjamin and stabbed him three (3) times, the first two (2) hitting the victim's neck. However, Benjamin was able to parry the third blow, then held him by the neck. To free himself, he thrust the knife on Benjamin's back several times and then fled to his sister's house in San Roque. He requested her to accompany him to the police station to surrender himself. This did not, however, happen for no sooner on the same night, the policemen arrived to arrest him.

Accused-appellant denied the allegations of prosecution eyewitness Juvel Rellon as he claimed Toting Rellon's store was already closed on that night and neither Juvel nor Takol Geyrozaga was around the store except himself

and Benjamin Tanduyan. To bolster his claim, he presented Margarita Lorien, an adjacent neighbor of Rellon, who testified that Rellon's store was already closed at 9:00 o'clock on the night of the incident.[6]

Accused-appellant also related that three (3) years prior to the incident, he and Benjamin Tanduyan had figured in a stabbing incident where he was stabbed by the latter. He filed a complaint which caused Ben Tanduyan's imprisonment for more than two (2) years.[7]

On 11 September 1992, the trial court rendered its decision[8] convicting Adjutor Tanduyan of the crime of murder, the dispositive part of which states:

"IN VIEW OF ALL THE FOREGOING, this Court finds (the) Prosecution's evidence to have established beyond reasonable doubt the guilt of the accused Adjutor Tanduyan for the crime of Murder as charged and hereby sentences him to suffer the penalty of Reclusion Perpetua and to indemnify the offended party the sum of P50,000.00 for the loss of life of Benjamin Tanduyan." [9]

Accused-appellant is now before this Court assailing the judgment of conviction and pleading a lone assignment of error:

"THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF MURDER."

In his appeal brief, accused-appellant argues that the testimony of the lone prosecution eyewitness Juvel Rellon should have been received with caution by the trial court inasmuch as Juvel's affidavit executed after the stabbing incident allegedly varied materially from his testimony in open court. He points to the statement of Juvel in his affidavit that Benjamin Tanduyan was sleeping "on top of both his arms placed across his bended knees", while his testimony at the trial was that Benjamin Tanduyan was seated on a chair "with his right arm resting on the display counter with his head resting on top of his right arm."

He further discredits Juvel's testimony by pointing out that Juvel Rellon, who was a mere thirteen-year-old boy, even had the unusual presence of mind to count the number of times Ben Tanduyan was stabbed. He claims that this testimony "defies the approved norm of human conduct and natural phenomenon." [10]

He also makes reference to an incident in the past wherein he allegedly slapped Juvel Rellon for accidentally stepping on his foot. Hence, he concludes that Juvel Rellon harbored a resentment deep enough to falsely testify against him as the author of the crime.

Accused-appellant likewise assails the testimony of the examining physician, Dr. Ma. Luisa Torres. He asserts that since it was established that it was the first time that Dr. Torres handled a medico-legal case, she could not competently give an opinion that the stab wound which severed Benjamin Tanduyan's carotid artery on the left side of the neck was the fatal wound that caused his death.

Inasmuch as accused-appellant claimed to have acted in self-defense, he argues that the trial court entirely based its conclusion on speculation, surmises and conjecture.

These pro-forma protestations of accused-appellant are not only without basis but also indicate the haphazard manner in which accused-appellant seeks to exculpate himself from any criminal liability.

Having admitted that he killed Ben Tanduyan, accused-appellant assumed the burden of proving the elements of self-defense by clear and convincing evidence. He cannot assail the weakness of the prosecution's evidence because such plea (self-defense) has to rely on the strength of his own evidence to establish the claim. Accused-appellant miserably failed to carry this burden during the trial of the case, as he insisted that there were no eyewitnesses to the crime when he was allegedly attacked by the victim, Benjamin Tanduyan. His only

evidence was his own self-serving testimony that he acted in self-defense to repel Benjamin Tanduyan's alleged unlawful aggression.

Contrarily, his positive identification by eyewitness Juvel Rellon cannot be seriously doubted notwithstanding the alleged discrepancy as to the alleged sleeping position of Benjamin Tanduyan as mentioned in Juvel's affidavit vis-à-vis his testimony given in open court. Such inconsistency, it should be pointed out, was readily explained by the prosecution as Juvel himself used the same descriptive word "NAGHUKDONG" to illustrate how his uncle was sleeping.[11] But even assuming for the sake of argument that Ben Tanduyan was sleeping on his lap, this bolsters the prosecution's theory that Benjamin Tanduyan was indeed asleep when attacked and that accused-appellant was the real aggressor.

Corollarily, appellant's claim of self-defense is belied and negated by the number of wounds inflicted on the body of the deceased and their location as shown in the autopsy report of Dr. Ma. Luisa Torres.[12] The number of wounds at the back of the deceased strongly indicate that the assault on the deceased was not an act of self-defense but a determined effort to kill him.[13]

Consequently, the attack on Dr. Ma. Luisa Torres' credibility, i.e., that she has no experience in medico-legal cases, is sorely misplaced. She was the attending physician who conducted the post-mortem examination on the victim's body, which formed the basis of her opinion that the victim was attacked from behind. Evidentially, therefore, when a proper foundation is laid, an opinion as to causation based on knowledge acquired by a physician who had either attended or examined the person, is admissible in evidence.

Furthermore, the Court observes no material variance between the autopsy report and Juvel Rellon's eyewitness account relative to the incident. His testimony was categorical and straightforward as to the identity of his uncle's assailant who also happened to be his first cousin, herein accused-appellant. No motive was proven by the defense as to why Juvel Rellon would falsely implicate a relative to the murder, except the uncorroborated and self-serving testimony of accused-appellant that he slapped Juvel sometime in the past, the exact date of which he could not even recall on the witness stand.

Thus, to argue how a thirteen year old boy could count the number of times a person was stabbed and characterize such testimony as incredible is itself answered by its own puerility. For it should be worth stressing that "children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimony is therefore likely to be more correct in detail than that of older persons; and where once established that they understood the nature and character of an oath, full faith and credit should be given to their testimony." [14]

Another fact left unexplained by the defense, and accurately observed by the trial court, is the following:

"x x x. He (appellant) insisted that there were no people around the premises, no passers-by. The neighboring stores were already closed and the place was hardly lighted. It is, therefore, surprising why he was identified, traced, and arrested shortly thereafter.[15] (Emphasis supplied)

x x x x x x x x

More importantly, the demonstrations made by the accused as to how he stabbed the deceased are clearly unorthodox, defying the route of an impulsive act which should characterize his action under the circumstances he presented. By way of explaining the stab wounds at the back of the deceased, the accused claimed that when the deceased held him by the neck with deceased's left arm still twisted by the accused, he took the chance to stab him at the back, when the more convenient and instinctive act would have been to thrust the knife towards the victim's stomach or chest depending on whether he would thrust upward or downward." [16]

The confluence of circumstances clearly negate accused-appellant's plea of self-defense. Rather, his vengeful act of stabbing Benjamin Tanduyan at the back clearly established the presence of treachery which qualifies the killing to murder. In the final analysis, the trial court's appreciation of the evidence and of the credibility of the witnesses in this case, cannot be set aside, since, in the first place, jurisprudence has assigned them to its primary domain.

PREMISES CONSIDERED, the decision of the trial court convicting accused-appellant Adjutor Tanduyan is hereby AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Rollo, p. 4.

[2] TSN, January 15, 1991, pp. 5-16.

[3] TSN, December 5, 1991, pp. 9-14.

[4] TSN, December 12, 1991, pp. 6-13.

[5] TSN, January 15, 1991, pp. 27-30.

[6] TSN, March 5, 1991, pp. 11-12.

[7] TSN, September 17, 1991, pp. 8-30.

[8] Penned by Judge Magno C. Cruz.

[9] Decision, p. 8; Rollo, p. 18.

[10] Rollo, p. 41.

[11] TSN, January 13, 1991, p. 22.

[12] Exhs. "A", "A-1", "A-3", "A-4".

[13] People v. Sarense, G.R. No. 97433, October 20, 1992, 214 SCRA 780 and People v. Sagadsad, G.R. No. 88042, November 13, 1992, 215 SCRA 641.

[14] People v. Alambra and Garcia, G. R. No. L-33526, January 22, 1931, 55 Phil. 578; People v. Ricaplaza, G.R. No. L--25856, April 29, 1968, 23 SCRA 374.

[15] Decision, pp. 5-6; Rollo, pp. 15-16.

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