

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO TAVAS ALIAS “BOTOG”, ACCUSED-APPELLANT.

G.R. No. 123969. February 11, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision[1] dated January 30, 1995, of the Regional Trial Court, Branch 32, Agoo, La Union, convicting accused Rogelio Tavas alias "Botog" of the crime of murder, the dispositive portion of which states:

"WHEREFORE, in view of all the foregoing consideration, this Honorable Court finds the accused, ROGELIO TAVAS alias 'BOTOG', GUILTY beyond reasonable doubt of the crime of MURDER contrary to Article 248 of the Revised Penal Code. The accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and indemnify the heirs of the victim for damages in the amount of P50,000.00 for the death of the victim; actual damages and expenses in the amount of P11,000.00 and to pay the cost of the proceedings.

"SO ORDERED."[2]

The Information for Murder against the accused reads:

"x x x

"That on or about the 4[th] day of June 1988, in the Municipality of Rosario, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an Armalite rifle, with intent to kill and with Treachery, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence by means of shooting with the said Armalite rifle one ANTONIO DE LA CRUZ Y PANGANIBAN, and as a result of which the said victim suffered fatal gun shot wounds which directly caused his death soon thereafter, to the damage and prejudice of the heirs of the said Antonio de la Cruz y Panganiban.

"Contrary to Article 248 of the Revised Penal Code."[3]

The accused was tried after a plea of not guilty.

The evidence for the prosecution shows that at about 8:30 in the evening of June 4, 1989, Antonio de la Cruz was shot inside the store of Beatriz T. Colcol, sister of the accused. The store was located at Inabaan Sur, Rosario, La Union. Adorada Dulay, the victim's sister, heard the gunshot from her house located about fifty (50) meters away. She rushed to Colcol's house and saw the victim sprawled on the floor and wallowing in his own blood. Adorada embraced him and asked who shot him. The victim answered in a loud voice that it was Botog [referring to the accused] who shot him. Standing five and a half (5 1/2) meters away from the victim and Adorada, the accused retorted that the victim was trespassing and intended to steal. The victim countered that he is not at fault. The other persons present at that time, namely, Sgt. Arturo Tavas, uncle of the accused, Beatriz "Betty" Colcol, sister of the accused, Rodolfo Colcol, brother-in-law of the accused, and Roman Tavas, father of the accused, also

remarked, "Trespassing ka. Agtatakaw ka!" [You are trespassing. You are stealing!][4]

Adorada brought the victim to the Rosario Emergency District Hospital in Rosario, La Union. She was advised to transfer him to the Doña Gregoria Memorial Hospital in Agoo, La Union. They arrived at the Doña Gregoria Memorial Hospital at about 9 o'clock in the evening.[5] Dr. Jose Aspiras, Jr. attended to the victim who was already in critical condition at that time. He was operated on from 12:40 in the evening until 2:30 in the morning of June 5, 1988.[6]

Meanwhile, Pfc. Alfredo Santiago, police investigator of the Rosario INP, was instructed to investigate the shooting incident. He went to the Doña Gregoria Memorial Hospital and saw the victim in serious condition. In the presence of several persons, Pfc. Santiago took the sworn statement of the victim (Exhibit "F") at about 11:20 in the evening. It reads:

"Q - Please state your name, age and other personal circumstances?

"A - ANTONIO DE LA CRUZ Y PANGANIBAN, 22 years old, single and a resident of Inabaan Sur, Rosario, La Union.

"Q - What happened to you?

"A - I was shot, sir, with a gun.

"Q - Who shot you?

"A - Botog Tavas, sir.

"Q - What kind of firearm did Botog Tavas use in shooting you?

"A - Armalite rifle, sir.

"Q - Why did Botog Tavas shot (sic) you with a firearm?

"A - I do not know any reason, sir.

"Q - What did (sic) you feel now?

"A - I am very weak, sir."[7]

Since the victim could no longer write, Pfc. Santiago dipped the victim's right thumb in his own blood and affixed his thumb mark above his written name. Florentino Dulay and Rodolfo Ninalga witnessed the taking of the sworn statement and signed the same.[8]

The victim died at 1:35 in the afternoon of June 5, 1988.[9] His family incurred the following expenses: (a) blood bought from the blood bank in the amount of P1,047.00; (b) medicine in the amount of P752.15; (c) funeral services by Abel's Memorial Service in the amount of P6,000.00; and (d) funeral services by Funeraria Cruz in the amount of P3,200.00.[10]

On the other hand, the accused tried to prove self-defense and defense of a relative to exculpate himself. He testified that on June 4, 1988, at about 8:30 in the evening, he was in the house of his uncle, Sgt. Arturo Tavas, listening to the radio news. Shortly after, he heard his sister Betty shouting, "Agtatakaw!". He took the Armalite rifle (M16) of his uncle below the bed, cocked it in automatic mode and proceeded to his sister's store. He opened its door by means of the rifle and saw the victim brandishing a bolo at his sister. He called the attention of the victim saying, "Oy!". Standing about two (2) meters away, the victim turned and brandished the bolo at him. At that instant, he fired at the victim hitting his left waist. The victim fell down while his sister fainted. Then people

started coming in. He was advised by his uncle Lodring to get a lawyer before surrendering to the police. He hid for more than three (3) months and resurfaced only after his bail bond was approved by the lower court.[11]

Betty Colcol corroborated the accused's testimony. She testified that on June 4, 1988, at about 8:30 in the evening, she was in her store counting the day's earnings when somebody knocked on the door. She opened the door thinking it was a customer. The man, who turned out to be the victim in this case, got inside the store and demanded that she give the money she was then counting. When she was pushed to the corner, she screamed, "Agtatakaw!". The victim then scooped the money [P2,000 in bills and about P25 in coins] from the box. At that instant, the accused arrived. When the victim, holding a bladed weapon about 14 inches long, faced the accused, the latter fired at him. Beatriz then fainted.[12]

The trial court convicted the accused of the crime of murder. Accused is now before this Court raising a lone assignment of error, to wit:

"The lower court erred in finding the accused guilty of murder by appreciating treachery as a qualifying circumstance."

The appeal is partly meritorious.

Firstly, we reject accused-appellant's argument that he shot the victim in self-defense as well as in defense of his sister. There is no proof of unlawful aggression on the part of the victim. His story that the victim turned around, faced him and brandished a bolo to strike him is repudiated by the testimony of Dr. Aspiras regarding the point of entry of the bullet that hit the victim, viz:

"x x x

"Q There are three findings in this Medico Legal Certificate. The first finding - 'Acute hypovolemic shock'. In layman's language, will you explain the meaning?

"A There is a decrease in the circulation of blood volume causing decreased cardiac output and decreased tissue perfusion due to secondary loss of blood.

"COURT:

"Q What was the cause?

"A Secondary to multiple fracture of the iliac crest, left side; the pubis, left side; the ischium, left side; lumbar vertebra; and laceration of muscles.

"Q You just quoted the third finding. In plain layman's language, will you please explain the meaning of these findings of yours and use your body to show the location?

"A There is a broken bone at the iliac, in the pubis upper left hip.

"Q About the pubis, left, the lumbar vertebra and ischium, left?

"A Part of the pubis. (Witness pointing to the lower part of the hip.)

"Q What was the cause of the broken bone?

"A The force of the bullet.

"Q What was your second finding -- 'gunshot wound' poentry - waist above and posterior to superior iliac crest, left?

"A Lacerated wound. When we opened the wound, the muscles were severely lacerated with continuous

oozing of blood.

"Q What was the cause of the lacerated wound?

"A The bullet.

"Q How many did you find - gunshot wound?

"A One wound at the posterior about 6 to 7 centimeters.

"Q The entry point of the bullet?

"A Yes, sir.

"PROSECUTOR HIPOL:

"Q You just mentioned a gunshot wound on the second finding. We have the following entry: 'Gunshot wound; poentry - waist above and posterior to superior iliac crest, left.' Was this the one you have just explained?

"A Yes, sir.

"Q It would appear that there is no point of exit?

"A What we found was fragment of bullets. I did not see any point of exit.

"Q Did you ever recover?

"A Yes, sir. Small fragments.

"Q Where?

"A It is entrusted to the operating room nurse.

"COURT:

"Q Were those fragments submitted to the police?

"A No, sir.

"FISCAL:

"Q Doctor, using your body, will you please show the point of entry?

"A Back of his hip.

"Q About how many fragments were found from the body?

"A I cannot recall because they are so small."[13] (Emphasis supplied)

The foregoing testimony shows that the victim was not facing the accused-appellant when he was shot.

Moreover, the trial court did not give credence to the allegation of the accused-appellant that the victim was armed with a bolo. We agree with the trial court's findings and we quote:

"The Honorable Court is not convinced that there was unlawful aggression on the part of the victim. The alleged robbery appears to have not been committed at all. When the sister of the accused, Beatriz Colcol, testified as to the commission of the robbery, the Honorable Court noticed that she was very nervous and was fidgeting on her seat. She stuttered and stammered in giving her answers. There were many instances when she gave long pauses before answering a question. Sometimes she does (sic) not give an answer at all. Beatriz Colcol appears not to have personal knowledge of the circumstances of the alleged robbery which leads this

Court to conclude that the whole case of robbery was (sic) but a part of the defense concocted and prepared to justify the shooting of the victim. The Court could only conclude after observing the demeanor of the witness Betty Colcol that there was no such robbery at all.

"Robbery was far fetch (sic) to happen at such an hour of the evening. The robbery allegedly took place in the store of Betty Colcol which is located under the house of the father of Betty. The time is (sic) still early. There were other stores and houses nearby and the people are (sic) still awake. Furthermore, there is no evidence that only Betty was in the house at the time of the alleged robbery. What is logical is that at that hour, the people living in the house where the store was located are (sic) already at home. In fact, Adelaida F. Dulay, arrived at the house of the accused, there were many in the house such as Rodolfo Colcol, Roman Tavas, Arturo Tavas and others whose names she could not recall. It is against logic and reason that a man would attempt a holdup under such condition.

"The Honorable Court is convinced that there was no robbery or hold-up. If indeed there was one, the first thing which the accused or his family should have done was to report the alleged hold-up, at least to the barangay officials and later to the police. If it was true that there was a robbery, it would appear that the accused was able to apprehend the holdupper when he fired on the victim. Had he reported the incident to the barangay officials who lived nearby then they could have recovered the alleged bolo used by the victim to allegedly holdup Betty Colcol. They could have also recovered the alleged P2,000.00 in bills and P25.00 in coins from the pocket of the alleged holdupper because Betty Colcol testified that the holdupper pocketed the money after scooping it. Thus, aside from proving that there was a hold-up, then the accused would have been hailed by all as a hero who single-handedly prevented a holdup to happen as well as single-handedly subdued and then captured the holdupper.

"But what did the accused and his family do? Instead of apprehending the alleged holdupper, they did not report the alleged holdup to the police. When the sister of the victim, Adorada Dulay, arrived the accused and his father and uncle were blaming the accused and calling him a trespasser and a robber. They should have arrested or apprehended the victim/holdupper right then and there and brought him to the hospital to be dealt with later by the authorities. Had they done so, they could have shown the bolo right away as well as the money in the pocket of the victim.

"But they did not do this because the truth of the matter was there was no robbery. Thus if there was no robbery, there was no bolo and there was no money. There was no robbery because they have not yet consulted their lawyer and come up with the defense of an alleged robbery. The accused instead surfaced only after his defense was agreed upon and he and his lawyer and a certain Major Tavas surrendered a bolo claiming the bolo was the one used by the victim in the hold-up and in the trying to hack the accused. But the Court is not convinced at all. There is no proof that the bolo belong to the victim. The bolo was surrendered three months after the incident and after they have thought of the defense of self-defense. No amount of persuasion can now convince the court that the bolo is the bolo used by the victim. The bolo is part of the tale concocted for the defense of the accused.

"If there was such a robbery why was it not reported to the police when the policemen went to the house of the accused to investigate the shooting? The alleged hold-up was not entered in the police blotter. If there was a robbery and it was reported to the police, then the police could have found the alleged bolo which would have dropped on the floor when the alleged holdupper was shot. So also, the police could have recovered the P2,000.00 bills inside the pocket of the victim who allegedly robbed Betty Colcol. The police could have recovered the P25.00 in coins from the pocket of the victim or scattered and strewn on the floor if still in the hands of the victim, when he was shot." [14]

However, we find that the trial court misappreciated treachery against the accused-appellant. It is well settled that the circumstances that qualify the killing as murder must be proven as indubitably as the killing itself. Treachery, the qualifying circumstance alleged in the Information, cannot be deduced from mere presumption or sheer

speculation.[15] Article 14 (16) of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make. Two conditions must concur: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or retaliate; and (2) such means, method and form of execution was deliberately and consciously adopted by the accused.[16] Its essence lies in the adoption of ways to minimize or neutralize any resistance which may be put up by the offended party.[17]

We find the evidence of the prosecution insufficient to hold that treachery accompanied the killing. The prosecution merely relies on the suddenness of the attack on the unarmed victim to justify treachery. As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply, however, where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim.[18] In the instant case, the evidence negates the hypothesis that the accused-appellant reflected on the means, method and form of killing the victim. There was absolutely nothing personal between the accused-appellant and the victim. His testimony that it was only on that fateful night that he first saw the victim finds support in the testimony of the victim's mother, Dolores De La Cruz, that the victim had just transferred to Inabaan Sur from Isabela to stay with Adorada for a brief vacation when he was killed.[19] All surrounding circumstances considered, it appears that the shooting resulted from the accused-appellant's mistaken belief, brought about by his sister's cry of "Agtatakaw!", that the victim was a trespasser and a robber. While the shooting was sudden and unexpected and gave the victim no opportunity whatever to undertake any form of defense or evasion, this does not necessarily justify a finding of treachery, absent any evidence that this mode of assault was consciously and deliberately adopted to insure execution of the crime without risk to the accused-appellant.[20]

Accordingly, accused-appellant is entitled to the benefit of the doubt as to whether he acted with alevosia when he attacked the victim.[21] The crime at bar should only be considered homicide.[22] Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. There being no mitigating nor aggravating circumstance which attended the killing, the penalty that should be imposed on accused-appellant is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the accused-appellant's sentence should be within the range of prision mayor, as the minimum, and reclusion temporal in its medium period, as the maximum.

IN VIEW WHEREOF, the appealed Decision is MODIFIED, and the accused-appellant is found GUILTY OF HOMICIDE and sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

In all other respects, the questioned Decision is AFFIRMED.

Costs against the accused-appellant.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] In Criminal Case No. A-1903. Penned by Executive Judge Leo M. Rapatalo.

[2] Decision, pp. 18-19; Rollo, pp. 38-39.

[3] Rollo, p. 5.

[4] Decision, pp. 4-5; Rollo, pp. 24-25; TSN, Adorada L. Dulay, September 5, 1989, pp. 3-9; October 17, 1989, pp. 2-6; November 10, 1989, pp. 8-10.

[5] Id.

[6] TSN, Dr. Jose Aspiras, Jr., August 2, 1989, pp. 6, 12-15.

[7] Decision, p. 6; Rollo, p. 26.

[8] TSN, Pfc. Alfredo Santiago, February 27, 1990, pp. 2-14.

[9] Supra, note 6.

[10] TSN, Adorada L. Dulay, October 17, 1989, pp. 8-11.

[11] TSN, Rogelio Tavas, March 1, 1993, pp. 2-8; May 6, 1993, pp. 4-24.

[12] TSN, Betty Colcol, January 14, 1992, pp. 2-9.

[13] Supra note 6, pp. 7-9.

[14] Decision, pp. 13-16; Rollo, pp. 84-87.

[15] People v. Alba, 256 SCRA 505 [1996]; People v. Ganzagan, Jr., 247 SCRA 220 [1995]; People v. Salcedo, 172 SCRA 78 [1989] citing People v. Vicente, 141 SCRA 347 [1986], U. S. v. Bisandre, 40 Phil. 78 [1919] and U. S. v. Sellano, 10 Phil. 498 [1908].

[16] People v. Sumalpong, 284 SCRA 464 [1998].

[17] People v. Ombrog, 268 SCRA 93 [1997]; People v. Ganzagan, Jr., 247 SCRA 220 [1995].

[18] People v. Real, 242 SCRA 671 [1995] citing People v. Aguiluz, 207 SCRA 187 [1992]; People v. Nitcha, 240 SCRA 283 [1995].

[19] TSN, Rogelio Tavas, March 1, 1993, p. 8; TSN, Dolores De La Cruz, December 11, 1989, p. 4.

[20] People v. De Leon, 262 SCRA 445 [1996]; People v. Magsombol, 252 SCRA 187 [1996]; People v. Supremo, 244 SCRA 548 [1995] citing People v. Ramirez, 203 SCRA 25 [1991].

[21] People v. Ocsimar, 253 SCRA 689 [1996].

[22] Article 249, Revised Penal Code; People v. Manlulu, 231 SCRA 701 [1994].

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