

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SUSANO PATEO Y GARCIA ALIAS “SANOK” AND VICENTE BATUTO Y JAPAY, APPELLANTS.

*G.R. No. 156786. June 03, 2004*

Ponente: YNARES-SATIAGO, J.

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### YNARES-SATIAGO, J.:

Appellants Susano Pateo y Garcia alias “Sanok” and Vicente Batuto y Japay were charged with the crime of murder in an information<sup>[1]</sup> which reads:

That on or about the 01st day of October 2000, at Sitio Picas, Brgy. Caraycaray, Naval, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused, with malice aforethought, and with deliberate intent to take the life of ANTONIO SILVANO, conspiring with, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously and treacherously attack the former, first, from behind by co-accused Vicente Batuto who hid behind the flowering plants in front of the store of Susano Pateo alias Sanok, and thereafter, by Susano Pateo who went out of his store and strike (sic) the head of Antonio Silvano with the use of a lead pipe, and later, to (sic) the other parts of the victim’s body, and while accused Vicente Batuto and victim Antonio Silvano grappled for the possession of the short knife, co-accused Susano Pateo continuously hack (sic) said Antonio Silvano hitting him to (sic) the different parts of his body which caused his direct and immediate death thereafter.

Appellants pleaded “not guilty.” Trial on the merits thereafter ensued.

At around 6:30 in the evening of October 1, 2000, appellants Susano Pateo and Vicente Batuto were having a drinking binge together with Olimpio Narrido and Zosimo Paculan at the yard near Susano’s store located at Sitio Picas, Brgy. Caraycaray, Naval, Biliran. When they were inebriated, they began to talk loudly and became unruly. Their neighbor, Antonio Silvano, could not sleep due to the noise. He and his wife sent their daughter, Ana Marie, to ask the group twice to tone down their voices, but the request was ignored.

A short while later, Antonio went out of his house to buy candies from Susano’s store with Ana Marie in tow. He brought with him a knife hidden behind his waist. When he saw Antonio approaching, Susano handed a bolo to Vicente, who then hid behind some shrubs near the store.

After Antonio got his candies, Vicente suddenly emerged from his hiding place and hacked the former at the back of his head. Immediately thereafter, Vicente successively hacked Antonio on different parts of his body. Antonio fought for possession of the bolo from Vicente. He was able to draw his knife and stab Vicente on the abdomen, chest and left arm.

Seeing the tide shifting in Antonio’s favor, Susano ran out of his store and repeatedly struck Antonio on different parts of his body with a blunt instrument, forcing the latter to release his hold on Vicente and drop his knife. Antonio ran towards his mother’s house while Vicente pursued him. Vicente caught up with him and repeatedly hacked him on different parts of his body with the bolo.

After Antonio fell to the ground, Susano went back to his house. Vicente, however, who had a grudge against Antonio, tauntingly asked, "Are you still alive?" He then delivered the coup de grace and thrust his bolo into Antonio's body, which caused his death.

Dr. Salvacion Salas, Municipal Health Officer of Naval, Biliran, examined Antonio's cadaver and came up with the following findings:

- Hacking wound at the occipital region of the head which measures to 7 cm. width respectively, involving only the skin.
- Hacking wound at the frontal area of the head involving the skin exposing the bone. The wound measures L-9 cm. & W-2 cm. respectively. No brain tissues noted.
- Hacking wound at the left portion of the face involving at the upper left eyebrow passing thru the left ear involving the left portion of the neck. It involved the skin up to the bone of the skull but no brain tissues noted. The wound measures L-19 cm. & W-3 cm.
- Hacking wound at the right portion of the right ear through the right side of the forehead. It measures L-6.5 cm. & W-2 cm. Involving only the skin and Muscle.
- Lacerated wound at the back of the right ear measuring 3 cm. in length; and 1 cm. in width.
- Wound at the back portion of the head; just adjacent to the 1st wound, involving only the skin. It measures L-6 cm.; W-1 cm.
- Lacerated wound at the left cheek bone area with a Measurement L-2.5 cm; W-0.5 cm.
- Lacerated wound at the right face – measuring L-11 cm. & W-6.5 cm. respectively.
- Lacerated wound at the chin just below the lower lip Measuring 4 cm. in length; and 2 cm. wide.
- Lacerated wound at the left arm just below the right axilla measuring 2 cm. long; and 1 cm. wide.
- Stab wound at the left chest – 5 cm. from the left nipple. The wound measures 3 cm. long; 0.7 cm. wide; and 24 cm. deep directing downward penetrating the chest cavity.
- Stab wound at the abdomen just 3.5 cm. from umbilicus. The wound measures 2 cm. length; 0.5 cm. wide & 3.5 cm. deep involving the skin up to muscle.
- Lacerated wound at the back of the right thigh measuring to 3 cm. long; 2 cm. wide & 6 cm. deep.
- Lacerated wound at the back of the right leg just below the knee joint measuring to 5 cm. long; 1 cm. wide & 5 cm. deep involving the skin up to the muscle.
- Lacerated wound at the right hand measuring 1 cm. long & 4 cm. wide.

Cause of Death: Cardiac Respiratory Arrest due to Severe Internal & External hemorrhage secondary to Multiple Hacking and Stab wounds.[2]

Appellant Vicente interposed self-defense. He alleged that a drunk and armed Antonio went to Susano's store looking for him. When Antonio found him outside the store, he stabbed the latter with the knife. Vicente fought back with his bolo. In the ensuing struggle, Antonio fell and died of his wounds.

For his part, Susano denied striking Antonio with a lead pipe. He claimed that he just stayed in his store during the fight and took no part in the fighting.

The trial court gave credence to the prosecution's evidence and rendered a decision,[3] the dispositive portion of

which reads:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused SUSANO PATEO Y GARCIA alias “Sanok” and VICENTE BATUTO Y JAPAY GUILTY beyond reasonable doubt of the crime of Murder, hereby imposing upon them the penalty of Reclusion Perpetua and with all the necessary penalties provided by law.

Both accused shall solidarily pay the legal heirs an indemnity on the life of the deceased Antonio Silvano in the amount of P50,000.00. With costs.

SO ORDERED.

Hence, this appeal based on the following assignment of errors:

- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES ANA MARIE SILVANO, ERIC SILVANO, AND TERESA MALLÉN INSPITE OF THEIR GROSSLY INCONSISTENT AND CONTRADICTORY STATEMENTS.
- THE TRIAL COURT ERRED IN CONVICTING ACCUSED SUSANO PATEO OF THE CRIME CHARGED.
- THE TRIAL COURT ERRED IN NOT APPRECIATING INCOMPLETE SELF-DEFENSE IN FAVOR OF VICENTE BATUTO.[4]

In particular, appellants point out that Ana Marie failed to expressly mention that Susano struck her father with a lead pipe. Also, she could not have witnessed the incident as she testified that she went to sleep after she returned from the store. These are all contrary to Eric Silvano’s and Teresa Mallén’s testimonies. In addition, Ana Marie candidly admitted that she was coached by her lawyer as to what she will do during the trial.

Witnesses cannot be expected to give a flawless testimony all the time. Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in this case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant. Minor discrepancies do not damage the essential integrity of the evidence in its material whole nor reflect adversely on the witnesses’ credibility. We have previously held in fact that minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed.[5] In this case, all three prosecution witnesses identified appellants as the perpetrators of the crime. Not only were they identified, the witnesses also testified as to their roles and their specific deeds in the killing.

It has been held that a witness testifying about the same nerve-wracking event can hardly be expected to be correct in every detail and consistent with other witnesses in every respect, considering the inevitability of differences in perception, recollection, viewpoint or impressions, as well as in their physical, mental, emotional and psychological states at the time of the reception and recall of such impressions. After all, no two persons are alike in powers of observation and recall. Total recall or perfect symmetry is not required as long as witnesses concur on material points.[6]

As to allegations that Ana Marie’s lawyer coached her to cry, it should be noted that she was only nine years old when she testified. Even without the lawyer coaching her, she was the daughter of the victim and she personally witnessed how her father was killed. She would naturally cry if forced to remember how her father died. In any case, we deem this episode too immaterial to affect her credibility.

It is well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of

respect. Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility; thus, his findings will not be disturbed on appeal in the absence of any clear showing that he overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of appellants.[7] The circumstances pointed out by appellants are too trivial to affect the assessment and the eventual findings of the trial court that appellant committed the crime.

Moreover, when the accused invokes self-defense, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. Self-defense as a justifying circumstance is present when the following concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.[8] Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. It contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon. Of all the elements, unlawful aggression, i.e., the sudden unprovoked attack on the person defending himself, is indispensable.[9] A threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material aggression.[10]

In the case at bar, the trial court found that Vicente came out of his hiding place and hacked the unsuspecting Antonio on the head. Antonio could not have been the aggressor.

Moreover, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.[11] The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence.[12] In this case, Antonio sustained fifteen hack and stab wounds. These wounds more than belie Vicente's assertion that he was defending himself.

Besides, the trial court also found that when Antonio was already down, Vicente asked, "Are you still alive?" After taunting him, Vicente delivered the coup de grace by thrusting his bolo into his sprawled body. A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.[13]

As to Susano's denial that he participated in the killing, the trial court observed that "plainly, if Susano Pateo was not a participant, no witness would point to him." [14] In fact, their other two drinking companions were not pointed to as perpetrators and impleaded as accused. Moreover, the trial court found that the fifteen wounds sustained by Antonio were apparently caused by two instruments: a sharp and a blunt instrument.[15] The defense of denial, like alibi, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. Furthermore, all three of the prosecution witnesses pointed to him as one of the perpetrators and in fact narrated in detail his participation in the killing of Antonio.

The trial court correctly found that there was conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In the absence of direct proof of conspiracy, it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[16] In this case, Vicente admitted the killing. Susano's participation in the killing was proven by his acts of handing the bolo to Vicente and beating Antonio up with a blunt instrument.

The trial court also correctly held that treachery attended the killing of Antonio. There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution

thereof which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[17] As observed by the trial court, “consciously, Vicente Batuto hid in the ‘San Francisco’ plants and shrubs near the store to create an ambush on the presence of Antonio Silvano.”[18] The fact that he hid behind the plants showed his intention to surprise Antonio and ensure that he would be able to successfully deliver the first blow. We, therefore, affirm appellants’ conviction for the crime of murder.

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. The two penalties being both indivisible, and there being no mitigating nor aggravating circumstance in this case, the lesser of the two penalties, which is reclusion perpetua, should be imposed pursuant to the second paragraph of Article 63 of the Revised Penal Code.[19]

The trial court correctly awarded civil indemnity in the amount of P50,000.00[20] which is awarded without need of proof.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Naval, Biliran, Branch 16, in Criminal Case No. N-2093, finding appellants, Susano Pateo y Garcia @ “Sanok” and Vicente Batuto y Japay, guilty beyond reasonable doubt of the crime of murder, sentencing them to suffer the penalty of reclusion perpetua and ordering them, jointly and severally, to pay the heirs of the deceased Antonio Silvano, civil indemnity, in the amount of P50,000.00, is AFFIRMED in toto.

Costs de oficio.

### **SO ORDERED.**

Davide, Jr. C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

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[1] Records, p. 27.

[2] Exhibit “A”, Records, pp. 7-8.

[3] Penned by Judge Enrique C. Asis, Records, pp. 110-132.

[4] Rollo, p. 63.

[5] People v. Bustamante, G.R. Nos. 140724-26, 12 February 2003.

[6] People v. Aliben, G.R. No. 140404, 27 February 2003.

[7] Id.

[8] Id.

[9] People v. Rubiso, G.R. No. 128871, 18 March 2003.

[10] Id.

[11] People v. Aliben, supra.

[12] People v. Astudillo, G.R. No. 141518, 29 April 2003.

[13] People v. Carriaga, G.R. No. 135029, 12 September 2003.

[14] Decision, Records, p. 128.

[15] Id., p. 130.

[16] People v. Aliben, supra.

[17] People v. Bustamante, supra.

[18] Decision, Records, p. 131.

[19] People v. Hormina, G.R. No. 144383, 16 January 2004.

[20] People v. Berdin, G.R. No. 137598, 28 November 2003.

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