

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ASTRO
ASTROLABIO ASIS ALIAS “MULOK/ TOTO,”
ACCUSED-APPELLANT.**

G.R. No. 191194. October 22, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the October 22, 2009 Decision[1] of the Court of Appeals (CA), in CA-G.R. CR-HC No. 00406-MIN, affirming with modification the April 18, 2006 Decision[2] of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19 (RTC), in Criminal Case No. 3089, convicting accused Astro Astrolabio Asis (Asis) of murder. The Information reads:

That on or about 7:20 o'clock in the evening of August 21, 2003, at Barangay Tibpuan, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with a knife, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and stab one BARANGAY CAPTAIN KANAPIA KINUDALAN with the use of the afore-mentioned weapon thereby inflicting multiple stab wounds upon the latter which directly caused his death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659.[3]

It appears that on August 21, 2003, between 3:30 and 5:00 o'clock in the afternoon, Asis and two companions had a drinking session at the videoke house of one Juliet Reyes. Thereafter, they left the place. About an hour later, Barangay Captain Kanapia Kinudalan (Kinudalan) of Tibpuan, Lebak, arrived alone in the same videoke house and ordered two bottles of beer.

At about 7:00 o'clock in the evening, Asis returned to the videoke house and joined the group of a certain Dominador Lara (Lara). The group occupied a table two meters away from Kinudalan's table. Afterwards, the group of Lara left leaving Asis behind. At about this time, Remilda Obamen (Obamen), a waitress of the videoke house, saw Asis approach Kinudalan and stab him on the chest four times with a knife. Obamen immediately reported the stabbing to her aunt Juliet Reyes, the owner of the videoke house, who was then at an adjacent store. Policemen led by SPO4 Vicente Oro (SPO4 Oro) responded to a report. At the scene, SPO4 Oro recovered a .45 caliber pistol tucked at the back of Kinudalan.

A search for Asis followed. That night, Asis was found at his brother-in-law's house. He willingly went with the police to the station and admitted the killing of Kinudalan giving no particular reason.[4]

Meanwhile, Kinudalan was brought to the Lebak Medicare Community Hospital but was declared dead on arrival. His body was examined by the Chief of Hospital, Dr. Primo Castillon, Jr., who made the following account:

x x x. He examined the dead body and found a [stab] wound at the left mid-clavicular lines between the third

and the fourth intercostal space penetrating with injury of the heart about 2 cm. in width; a [stab] wound at the epigastric area penetrating about 2 cm. in width; an incised wound at the left forearm about 1 cm. skin deep; and another incised wound at the left lateral neck, skin deep about 0.5 cm. in width. x x x.

He opined that Barangay Chairman Kanapia Kinudalan had hypovolemic shock secondary to multiple stab wounds which caused his instantaneous death. According to him, the victim had been dead for at least one (1) hour when brought to the hospital. He declared that the two (2) stab wounds that penetrated the heart of the victim were fatal and sufficient to cause his death.[5]

The following day, the knife used in the stabbing incident was recovered and turned over to SPO4 Oro. When Asis was confronted about the recovered knife, he admitted owning it and using it to stab Kinudalan.[6]

He explained that when Lara's group left, he noticed Kinudalan looking and beckoning to him to come over. He approached Kinudalan and asked him why he was calling, but got no response. He then noticed Kinudalan lowering his head and moving as if to get something from his waist. At that moment, he recalled having seen Kinudalan walking around with a .45 caliber pistol tucked in his waist. Thinking that Kinudalan was then armed and might draw his gun and shoot him, he immediately stabbed him.[7]

After trial, the RTC on April 18, 2006, rendered a decision finding Asis guilty beyond reasonable doubt of the crime of murder. Thus:

WHEREFORE, upon all the foregoing considerations, the Court finds accused, Astro Astrolabio Asis alias Mulok/ Toto, guilty beyond reasonable doubt of the crime of MURDER, as principal.

Accordingly, the Court hereby sentences the said accused:

- (a) to suffer the penalty of RECLUSION PERPETUA;
- (b) to indemnify the heirs of the deceased victim, Barangay Captain Kanapia Kinudalan:
 - the amount of P50,000.00, as civil indemnity;
 - the amount of P100,000.00, as temperate damages;
 - the amount of P50,000.00, by way of moral damages, with the further sum of P30,000.00, as exemplary damages; and
- (c) to pay the costs.

Being a detention prisoner, the accused, Astro Astrolabio Asis alias Mulok/ Toto, is entitled to full credit of the entire period of his preventive imprisonment, pursuant to Article 29 of the Revised Penal Code, as amended by R.A. 6127, provided that the said accused had agreed in writing to abide by the same rules and regulations imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.

IT IS SO ORDERED.[8]

On appeal, the CA affirmed with modification the RTC decision with respect to the award of damages. The dispositive portion of the CA decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Branch 19, Isula[n], Sultan Kudarat dated April 18, 2006 appealed from, finding the accused-appellant Astro Astrolabio Asis alias "Mulok/ Toto" guilty beyond reasonable doubt of the crime of Murder is AFFIRMED with the MODIFICATION that accused-appellant is directed to pay the heirs of Kanapia Kinudalan the following amounts: P25,000.00 as temperate damages, P25,000.00 as exemplary damages, P50,000.00 as moral damages and P50,000.00 as civil indemnity.

SO ORDERED.[9]

In this appeal, Asis, through the Public Attorney's Office, and the Office of the Solicitor General both manifested that they would no longer file their respective supplemental briefs, thus, reiterating the issues and arguments found in their respective briefs submitted before the appellate court.[10] In his brief before the CA, Asis presented this lone

ASSIGNED ERROR:

THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

In order to escape liability, Asis invokes self-defense. He explained that his act of stabbing Kinudalan was justified because the latter was known to be always armed with a .45 caliber pistol tucked in his waist. When he saw Kinudalan's hand moving towards his waist, Asis feared that he would be shot.[12]

The Court finds his claim of self-defense unavailing.

One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. By invoking self-defense, the burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.[13]

In this case, Asis miserably failed to discharge this burden. The purported unlawful aggression on the part of Kinudalan was more imagined than real. There was no showing that Kinudalan entertained some grudge or bad blood against him. More importantly, no inference that Kinudalan would shoot him could be made from his act of moving his hand toward his waist. Thus, there was no reason for Asis to stab Kinudalan. As can be gleaned from the medical report, Kinudalan was stabbed four times, two of which fatally pierced his heart. Clearly, the RTC and the CA cannot be faulted for rejecting Asis' plea of self-defense. The Court also agrees with both courts that the killing was qualified by treachery.

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution of which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make.[14]

The essence in treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend oneself, ensuring the attack without risk to the aggressor, and without the slightest provocation on the part of the victim. And this is exactly what happened in this case as testified by the witness, Obamen. According to her, Kinudalan was just seated at his own table when Asis got up, approached him and suddenly stabbed him four times. Obviously, even with a gun tucked in his waist, Kinudalan had no opportunity at all to defend himself. In fact, the gun that Asis was so afraid of was recovered from the body of Kinudalan still tucked in his waist.

WHEREFORE, the October 22, 2009 Decision of the Court of Appeals, in CA-G.R. CR-HC No. 00406-MIN, is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Brion,**] and Peralta, JJ., concur.

[*] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

[**] Designated as an additional member in lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated March 10, 2010.

[1] Rollo, pp. 2-11. Penned by Associate Justice Ruben C. Ayson with Associate Justices Rodrigo F. Lim and Leoncia Real-Dimagiba, concurring.

[2] Penned by Judge German M. Malcampo.

[3] CA rollo, p. 6.

[4] Rollo, pp. 4-5.

[5] CA Decision, id. at 5.

[6] Id.

[7] Id. at 6-7.

[8] CA rollo, pp. 26-27.

[9] Rollo, p. 11.

[10] Manifestations, rollo, pp. 22 and 25.

[11] Id. at 7.

[12] CA rollo, p. 41.

[13] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 643, citing *People v. Mara* G.R. No. 184050, May 8, 2009, 587 SCRA 839, 844-845.

[14] *People v. Lalongisip*, G.R. No. 188331, June 16, 2010.

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