

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO TUGBO, JR., ACCUSED-APPELLANT.

G.R. No. 75894. April 22, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

In the Regional Trial Court of Masbate, Santiago Tugbo, Jr. was indicted for murder,[1] committed according to the information, as follows:[2]

"That on or about February 27, 1982, in the morning * * *, at Barangay del Rosario, Municipality of San Fernando, * * * Masbate, * * *, with deliberate intent to kill, evident premeditation and treachery, (he) did then and there willfully, unlawfully and feloniously attack, assault and stab with a sharp pointed instrument (batangas knife) one Dante Bauso, hitting the latter on the different parts of the body, thereby inflicting wounds which caused * * * (the latter's) death shortly thereafter."

Tugbo entered a plea of not guilty upon arraignment, and trial ensued. On August 12, 1985, the Trial Court promulgated its decision, finding Tugbo guilty of the crime charged beyond reasonable doubt, and sentencing him to reclusion perpetua, to indemnify the heirs of Dante Bauso in the sum of P30,000.00 and to pay them moral damages in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency, together with all the accessory penalties provided for by law, and to pay the costs.[3]

The Trial Court found from the evidence — chiefly, the testimony of Jerry Bauso, an eye-witness, and that of Barangay Captain Maximo Canale, and Narciso Espares — that the victim, Dante Bauso, was at a dance in del Rosario, San Fernando, Masbate, when he was stabbed to death. On that occasion, according to the Court, at about 3:00 o'clock in the morning, Dante's nephew, Jerry Bauso, was punched in the face by a certain Rolando Broñola, the companion of accused-appellant, Santiago "Potoy" Tugbo, Jr. Dante Bauso thereupon ran towards Broñola and Tugbo, to prevent, as testified to by Jerry Bauso, any further attack on him. However, Tugbo suddenly stabbed Dante with a six-inch "Batangas knife." The place was thrown into an uproar; there was confusion and panic; people scampered from the dance hall.

At that time, Maximo Canale, the barangay captain, and Narciso Espares were right outside the dancing area. Canale immediately ordered lamps to be brought and rushed inside, together with his barangay tanods and Espares. They came upon the lifeless body of Dante Bauso, sprawled on the ground; and standing over him was Tugbo, clutching a blood-stained "Batangas knife." Canale told Tugbo to close the knife and asked him who the assailant was. Tugbo said, "Naparahan ko lang ini, kapitan" (translated by the Court as, "Captain, it is just an accident that Bauso was stabbed"), after which he left the dance hall.

The autopsy performed by the Municipal Health Officer revealed two (2) wounds on the victim: one, a necessarily fatal stab wound which penetrated the base of the heart, perforating the arch of the aorta, resulting in massive hemorrhage; and two, an incised wound, one inch deep, across the posterior surface of the distal end of the right elbow.

Tugbo, on the other hand, disclaims any complicity in the killing. He says that when the stabbing took place he was ten (10) meters away from the victim; that it was he in fact who drew Dante Bauso's attention to the boxing by Broñola of Jerry Bauso; and the only thing he told Barangay Captain Canale was that he did not know who the assailant was. He says, too, that the acts and words imputed to him were fabrications, designed to frame him for the killing, and that he could never have slain the victim since they were blood relatives.

To substantiate his claim, Tugbo presented Remy Verano — who declared on the witness stand that it was actually Broñola whom she saw stab the victim twice; and Miguel Altarejos, a barangay tanod — who deposed that as he was entering the dancing hall ahead of the barangay captain (Canale), he met Broñola running away from the dance area, carrying a "Batangas knife."

In this appeal, Tugbo simply makes the general assertion that the evidence fails to establish his guilt beyond reasonable doubt, and his proofs should have been accorded superior credit.

Unaccountably, Rolando Broñola, whose act of punching Jerry Bauso immediately and directly gave rise to the slaying of Dante Bauso, was never called to the witness box either by the prosecution or the defense. It is inutile to speculate on the reason for this omission. It seems unreasonable to assume, however, that he would willingly and openly confess to having been Dante Bauso's killer, or to also have stabbed him, in coordination with Tugbo, or that he would give evidence fully and freely against his companion, Tugbo. There is thus no eyewitness testimony to the actual stabbing except that proceeding from (1) prosecution witness Jerry Bauso, whose sworn declarations are corroborated in material parts by those of Barangay Captain Canale and Tanod Espares; and (2) defense witness Remy Verano, whose testimony finds corroboration in that of another witness, barangay tanod Miguel Altarejos.

The Trial Court was thus called upon to assess and weigh the conflicting proofs of the prosecution and the defense. This it did, and reached the conclusion that the evidence does establish Tugbo's authorship of the crime of murder imputed to him.

This Court sees no serious error in the Trial Court's determination, made after that appraisal of the entirety of the evidence, that all things considered, the evidence on record suffices to prove Tugbo's guilt of the killing of Dante Bauso beyond reasonable doubt. Time and again, it has been ruled that the findings of the Trial Court on questions of fact are accorded the highest respect on appeal, if not regarded as conclusive, absent the usual exceptions to this policy. The reason is the opportunity available to the trial court — but not the appellate court — to observe the witnesses on the stand and to assess their credibility, not only by the nature of their testimony but also by their demeanor under questioning.[4]

The Court sees no reason whatever to pronounce erroneous the reasons given by the Trial Court in reaching its ultimate conclusion that it was Tugbo who had killed Dante Bauso.

" * * * Accused Santiago Tugbo, Jr. was definitely identified as the assailant of the deceased, Dante Bauso. The evidence discloses that Jerry Bauso is familiar with the accused as he had known him before the incident on February 27, 1982. Besides, they both studied in the same school when they were in high school and accused admitted that they knew each other well, Jerry Bauso being his nephew. When the accused stabbed the victim, Jerry Bauso was only one and half (1 1/2) meters away from Dante Bauso, thus he could not be mistaken of accused's identity. For these reasons, the court entertains no doubt as to the veracity of Jerry Bauso's testimony on the identity of Santiago Tugbo, Jr. as the assailant. Accused was candid to state that he has no ill-feeling or anger with Jerry Bauso. Consequently, the absence of any grudge between them or any improper motive to falsely testify against the accused tends to sustain the conclusion that Jerry Bauso's testimony is worthy of full faith and credit.

* * * * *

The evidence further shows that when the victim was lying dead inside the dance hall, Santiago Tugbo, Jr. was seen by the other witnesses for the prosecution beside the deceased holding a bloodstained batangas knife which was still open. Accused even told the barangay captain in the person of Maximo Canale that 'he only mistook him, he is Bauso indeed.' * * * ."

There is, too, the additional circumstance, specified in the appellee's brief, that the appellant had threatened to implicate the witness, Espares, as the assailant should the latter testify against him.[5]

However, as the Solicitor General points out, the Trial Court's finding that the killing was attended by the qualifying circumstance of alevosia does not seem quite correct.

Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself.[6] There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.[7]

It does not always follow that if the attack was sudden and unexpected, it should be deemed attended with treachery.[8] The attack in this case was frontal; this indicates that the deceased was not totally without opportunity to defend himself. Moreover, all surrounding circumstances considered, it is more probable that the appellant misunderstood Dante Bauso's reason for running towards him and Broñola, as an attempt to retaliate for the wrong done to Jerry Bauso, and the stabbing was the result of a rash and impetuous impulse of the moment arising from such a misinterpretation, rather than from a deliberated act of the will. It is thus not possible to appreciate treachery against the appellant.

Absent, therefore said qualifying circumstance of treachery, the killing should be regarded merely as homicide, as defined under Article 249 of the Revised Penal Code. And absent, too, any other modifying circumstances, the penalty prescribed by law is the medium period of reclusion temporal or fourteen (14) years eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Applying the provisions of the Indeterminate Sentence Law, the penalty that should properly be imposed on the appellant is eight (8) years and one (1) day of prision mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

Finally, following now established policy, the indemnity to be paid by the appellant to his victim's heirs should be as it is hereby, increased to P50,000.00.

WHEREFORE, the judgment of the Court a quo is AFFIRMED, except as regards the nature of the offense, and the appellant's penal and civil liability therefor, as above stated. Accordingly, for the crime of homicide, of which the appellant is declared guilty beyond reasonable doubt, he is SENTENCED to the indeterminate penalty of imprisonment from eight (8) years and one day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and to pay the heirs of Dante Bauso civil indemnity in the sum of fifty thousand pesos (P50,000.00).

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Criminal Case No. 3863, assigned to Branch 46

[2] Original Record, p. 34

[3] Rollo, p. 320

[4] Peo. v. Francisco, 182 SCRA 305 (1990); SEE also, Peo. v. Trigo, 174 SCRA 97; Peo. v. Kintuan, 156 SCRA 1905; Peo. v. Besa, 183 SCRA 533 (1990); Peo. v. Baduya, 182 SCRA 57 (1990); Peo. v. Aldeguez, 184 SCRA 1 (1990); Peo. v. Abonada, 169 SCRA 531 (1989); Peo. v. Espinosa, 180 SCRA 392 (1989); Peo. v. Simene, 184 SCRA 99; Peo. v. Caldito, 182 SCRA 66; Pelaez v. C.A., 185 SCRA 97 (1990); Peo. v. Sales, 44 SCRA 489; Peo. v. Dorado, 30 SCRA 53; Peo. v. Amoncio, 122 SCRA 686 (1983); Peo. v. Barros, 122 SCRA 34; Peo. v. Clores, 184 SCRA 639 (1990)

[5] Rollo, pp. 62-A-63

[6] Peo. v. Vicente, 141 SCRA 347; Peo. v. Salcedo, 172 SCRA 78; Peo. v. Raquipo, G.R. No. 90766, Aug. 13, 1990

[7] Par. 16, ART. 14, Revised Penal Code

[8] Peo. v. Sabanal, 172 SCRA 430

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