

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENHUR TAHUYAN Y ADON, DEFENDANT-APPELLANT.

*G.R. No. 90295. February 05, 1993*

Ponente: NOCON, J.

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### NOCON, J.:

In the early morning of January 24, 1984, barangay Migcawayan of the municipality of Damulog, Bukidnon, was raided by around fifty (50) armed men. When the smoke cleared, seven (7) persons lay dead, four (4) persons were injured, houses were riddled by bullets, ten (10) carabaos, three (3) horses and an undetermined amount of personal belongings and valuables were taken away by the raiders. Accused-appellant Benhur Tahuyan was identified as one of the raiders. He was charged in court and consequently sentenced to reclusion perpetua.[1]

The trial court made the following findings of facts:

"[I]t appears that at or around 5:30 o'clock in the morning of January 24, 1984, accused Benhur Tahuyan y Adon and around fifty others, some of whom were Muslims and some, natives, attacked barangay Migcawayan, of the municipality of Damulog, Bukidnon. The group was armed with assorted firearms, which fired at random (sic) the houses in the said barangay. When witness Gregorio Bagares was awakened by the several gun shots coming near his house, he immediately ran away and sought refuge in the nearby banana plantation which has a distance of approximately 40 fathoms located opposite his house. While hiding in the banana plantation he saw five (5) persons firing several shots directed towards his house. Of the five persons, only three went inside his house, while the two remained outside, one of whom was accused, Benhur Tahuyan y Adon; that this witness did not recognize or know the three persons who went inside his house, nor did he know or recognize the companion of Benhur Tahuyan. After the three persons came out of his house, they brought with them sacks presumably with their loot inside them, after which one of them set Bagares' house on fire by lighting its roof and ran away. There were five other houses that were inhabited in the barangay, houses belonging to Ignacio Capanay, Carilo Martin, Quina Dalaygon, Rogelio Taghap and Hermie Galamiton that were fired by the band with their firearms. The attack further resulted in the alleged loss of the properties of the residents in the barangay and the death of seven inhabitants therein, namely Danny Ramos, Jocelyn Martin, Jerrylin Martin, Cerilo Martin, Josela Martin, Rosalina D. Capanay and Silvestre G. Judilla."[2]

Accused-appellant was charged with Robbery in Band with Multiple Murder and Physical Injuries with the Use of Unlicensed Firearms in the Regional Trial Court, 10th Judicial Region, Branch 9, Malaybalay, Bukidnon, in Criminal Case No. 4011.[3]

After trial, he was found guilty as charged and sentenced to a penalty of reclusion perpetua and ordered to pay P30,000.00 each to the heirs of the seven victims.[4]

On appeal before this Court, accused-appellant pleads his innocence and claims that:

"That accused is a duly elected Barangay Captain of Omonay, Damulog, Bukidnon, a place about thirty (30) kilometers away from Migcawayan, the place of the incident. (TSN Bacawag, pages 2 and 3, December 15, 1988 hearing).

"Accused-appellant denied the charge against him as they are all lies for from January 19, 1984 to February 4, 1984, he was in his house sick with flu. That on January 24, 1984, he cannot (sic) even get up. He was attended to by Project Manager Enrique Dagawasan of the Presidential Assistant on National Minorities. (TSN Bacawag, pages 3 and 4, December 15, 1988 hearing). That he has never gone to the place of the incident and came to know of the same and its distance only from fellow Barangay Captains whom he used to meet during their meetings. That he has not undergone Community Home Defense Force (CHDF for short) training for as Barangay Captain, they are automatically integrated into the force. (TSN Bacawag, pages 5, 6 and 7, December 15, 1988 hearing).

"He came to know government witness Bagares only during the trial when the latter testified. (TSN Bacawag, page 4, December 15, 1988 hearing). That Bagares is after his brother Prudencio Tahuyan, popularly known as Bing-as who was killed by the military and CHDF. (TSN Bacawag, page 5, December 15, 1988 hearing)."[5]

Appellant's main defense is alibi. He testified that Enrique Dagawasan, his parent-in-law[6] and a Presidential Assistant on National Minorities (PANAMIN) as Project Officer, nursed him to health on the date when the attack on Migcawayan took place as he was allegedly sick.

The issue before this Court is the credibility of the witnesses -- prosecution eyewitness Bagares who testified that one of the raiders who stood guard outside his house was the accused-appellant or defense witness Eugenio Dagawasan who testified that he treated the accused-appellant for flu on the very day of the raid on Migcawayan.

We reiterate the well-settled rule that:

"[T]he matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false. Appellate courts will not disturb the credence or lack of it, accorded by the trial court to the testimony of witnesses unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case. x x x."[7]

To support the judgment of conviction, the trial court relied mainly upon the testimony of Gregorio Bagares who positively identified accused-appellant as one of the raiders who stood guard outside his house with another unidentified companion while their three other companions entered his house to ransack the same. His testimony is as follows:

"XXXXXXXXXX

COURT:

Q

You said in your direct testimony that of the five persons three got inside your house and two were outside, now, was the accused among the three who went inside your house, or one of those outside your house?

A

He was outside, Your Honor.

Q

What was he doing at the time you saw him?

A

He was just watching or guarding outside.

Q

He did not do anything except to watch?

A

Yes, that was all he did.

Q

Why do you say that Benhur Tahuyan was watching?

A

Because he was outside the house.

Q

And that was your basis in (sic) telling the court that he was watching because he was outside the house?

A

Yes, Your Honor.

Q

What was his position when he was according to you watching your house?

A

He was just holding his rifle hi-fort (sic).

Q

Was he standing or sitting?

A

He was standing.

Q

Facing towards what direction?

A

He was facing towards outside (sic).

Q

So, his back was facing your house?

A

Yes, Sir.

Q

What about his companion, what was he doing?

A

The same.

Q

Was he also armed?

A

Yes, Sir.

Q

Do you know what arm was he armed (sic) at the time?

A

Benhur was armed with M-79 and his companion was armed with a garrand rifle.

Q

Where was that companion of Benhur Tahuyan facing at the time?

A

He was also facing towards the outskirts (sic)."[8]

"xxxxxxxxxx.

"COURT:

Q

Did you know their names already, (sic) these two people who were outside your house?

A

I know one.

Q

Who (sic) of the two?

A

Benhur Tahuyan.

Q

What about the other one?

A

I don't know him."[9]

"xxxxxxxxxx.

"ATTY. CARACOL: (ON CROSS-EXAMINATION)

Q

You have not seen Benhur Tahuyan before the incident?

A

I have already seen him.

Q

Where?

A

When we underwent a CHDF training and Barangay Administration.

Q

When was that?

A

I don't remember what month was that (sic) when we had our training.

Q

Do you still remember the participants of that seminar?

A

Yes, Sir.

Q

Who were they, if you can remember?

A

Our Barangay Captain of Migkawayan, Romeo Capin, Barangay Secretary, Corsina Maglasa, Kagawad Loreto Dualdo, Benjamin Monisit, Luis, Nando, Martin Montes, Simeon Godilla, Hilario Quimod and I as Barangay Treasurer and Benhur Tahuyan, being a Barangay Chairman of their place.

COURT:

Q

Of what barangay?

A

Omonay, Your Honor."<sup>[10]</sup>

We have time and again ruled that alibi is at best a weak defense and easy of fabrication. It cannot prevail over a positive identification made by a prosecution witness. For such a defense to prosper, it is not enough to prove that accused was somewhere else when the crime was committed but that he must also demonstrate that it was physically impossible for him to have been at the scene of the crime.<sup>[11]</sup>

Considering that accused-appellant has not shown that it was physically impossible for him to have been at the scene of the crime, Migkawayan, which is thirty-six (36) kilometers away from Omonay,<sup>[12]</sup> when he was allegedly sick, and considering that his corroborating witness was his "parent-in-law,"<sup>[13]</sup> the court a quo did not err in rejecting accused-appellant's alibi and its ruling that prosecution eyewitness Bagares' positive identification of the accused-appellant as one of the persons who raided Migkawayan was worthy of credence.

Accused-appellant's other defense that prosecution eyewitness Bagares was really "after his brother, Prudencio Tahuyan," is unbelievable considering that accused-appellant himself stated that his brother Prudencio was killed by the military and CHDF on August 10, 1983<sup>[14]</sup> while the raid took place more than five (5) months later, or on January 24, 1984. Thus, Bagares had no motive to testify falsely -- if he had any in the first place -- and his positive identification of accused-appellant as one of the raiders should be given full credence,<sup>[15]</sup> as it was so given credence by the trial court.

WHEREFORE, premises considered, the appeal is hereby DENIED with the MODIFICATION that the accused-appellant has to pay each victim's heirs the amount of P50,000.00 as indemnity. The rest of the trial court's June 29, 1989 decision is AFFIRMED.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos Jr., JJ., concur.

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[1] Decision, Criminal Case No. 4011, promulgated June 29, 1989, penned by Judge Alejo G. Rola, RTC, Malaybalay, Bukidnon, Branch 9, pp. 3, 4; Original Records, pp. 181-184.

[2] Original Records, pp. 181-182.

[3] Information filed March 6, 1986 by Assistant Provincial Fiscal Guillermo G. Ching, Original Records, pp. 52-55.

[4] Op cit., pp. 183-184.

[5] Appellant's Brief, p. 4; Rollo, p. 41.

[6] TSN, December 15, 1988, p. 4.

[7] Decision, People vs. Simbulan, G.R. No. 100754, October 13, 1992, pp. 5-6; citing People vs. Turla, 167 SCRA 278 and People vs. Bolosa, G.R. No. 80436, June 2, 1992.

[8] TSN, Criminal Case No. 4011, June 16, 1987, pp. 12-13.

[9] Ibid., p. 16.

[10] Ibid., pp. 18, 19.

[11] Decision, People vs. Martinado, G.R. No. 92020, October 19, 1992, p. 22 citing People vs. Ampo-an, 187 SCRA 173; People vs. Clores, 184 SCRA 638; People vs. Arceo, 187 SCRA 265 and other numerous cases.

[12] Op cit., December 15, 1988, p. 12.

[13] "The defense of alibi is weak if it is established mainly by the accused himself and his relatives and not by credible persons." (People vs. Solis, 195 SCRA 405, 415, citing People vs. Beringuel, 192 SCRA 561).

[14] TSN, Criminal Case No. 4011, December 15, 1988, p. 5.

[15] People vs. Sanchez, 199 SCRA 414, 420, citing People vs. Clavo, Jr., 165 SCRA 695.

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