

## SECOND DIVISION

[ G.R. No. 225644, March 01, 2017 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDWIN TUARDON Y ROSALIA, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

This is an appeal from the October 29, 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 00053, which affirmed with modification, the March 30, 2004 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental (RTC), finding accused-appellant Edwin Tuardon y Rosalia (*Tuardon*) guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 99-2257 and of Frustrated Murder in Criminal Case No. 99-2258.

#### *The Antecedents*

On May 28, 1999, Tuardon and his co-accused Ronnel Dima-ala y Dimapiles (*Dima-ala*) were charged before the RTC with murder committed against PO1 Jerry Dagunan (*Dagunan*) and frustrated murder committed against Edwin T. Flores (*Flores*). The Informations read:

#### **Criminal Case No. 99-2257**

That on or about the 17<sup>th</sup> day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one PO1 JERRY DAGUNAN, thereby inflicting injuries upon the body of the latter which caused his death.

CONTRARY TO LAW.<sup>[3]</sup>

#### **Criminal Case No. 99-2258**

That on or about the 17<sup>th</sup> day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one EDWIN FLORES y TORTOCION, thereby inflicting injuries upon the body of the latter which would have caused his death; thus, the accused

performed all the acts of execution which would have produced the crime of murder as a consequence but, nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said Edwin Flores y Tortocion which prevented his death.

CONTRARY TO LAW.<sup>[4]</sup>

On February 21, 2000, Tuardon and Dima-ala were arraigned and both pleaded "not guilty" to the charges. Thereafter, the trial ensued.

#### *Evidence for the Prosecution*

The prosecution presented Flores, Eddie Medel (*Medel*), SPO2 Rafael Gemoto II (*SPO2 Gemoto*), PO3 Vicente Gemoto, P/Inspector Ramonit A. Javier, Jocelia Dagunan, Dr. Isagani Ayala (*Dr. Ayala*), and Dr. Ruel Trecho (*Dr. Trecho*), as its witnesses.<sup>[5]</sup> Their combined testimonies tended to establish the following:

On January 17, 1999, at around 8:00 o'clock in the evening, during the celebration of the Sinulog Festival of Kabankalan City, Negros Occidental, victims Flores and Dagunan, a police officer of Kabankalan City, were in Medel's kiosk situated at the middle of Kabankalan City Public Plaza. While Flores and Dagunan were drinking and eating, Teody Roca (*Teody*), Arman Roca (*Arman*), Dima-ala, and Tuardon, a rebel-returnee, arrived at the kiosk. A few moments later, an altercation ensued between Dagunan and Teody with the former drawing his gun and the latter, pulling out a knife. The confrontation was interrupted after Medel pacified them. Thereafter, Teody, Arman, Dima-ala, and Tuardon immediately left the place, while Flores and Dagunan stayed. After a while, Flores left to urinate. While urinating at a wall, Flores saw Dima-ala handing a black pistol to Tuardon. He went back to the kiosk where he saw Dagunan still eating.<sup>[6]</sup>

At about 9:30 o'clock in the evening, Dagunan asked Flores to accompany him to the comfort room in the public plaza. While Flores was following Dagunan to the comfort room, Tuardon suddenly rushed in between them. When Dagunan was standing at the main door of the comfort room and in the act of urinating, he was shot by Tuardon, who was situated at the right side and immediately behind the former. Dagunan was hit at the base of his head causing him to fall to the ground. Upon witnessing what transpired, Flores said "Oh." Tuardon, upon noticing Flores, shot him in the chest, which caused him to fall to the ground. Then, Tuardon hurriedly left the place.

Not long thereafter, Tuardon was arrested by SPO2 Gemoto. Both victims were brought to the Gumersindo Garcia Memorial Hospital in Kabankalan City where Dagunan was pronounced dead. Flores, meanwhile, was transferred to Bacolod Provincial Hospital where he was confined and treated.<sup>[7]</sup>

Dr. Ayala, in a medico-legal report with the sketch attached thereto, revealed that Dagunan was shot at the base of his head through and through causing brain tissue damage, the point of entry being his left-back side, and the point of exit being the right side. Dr. Trecho, on the other hand, issued a medical certificate stating that Flores sustained a gunshot wound with 1 cm. 2<sup>nd</sup> intercostal space 2.I.C.S. AAL

through and through level of T6 left area scapular line.<sup>[8]</sup>

### *Evidence for the Defense*

The defense presented Tuardon himself, his cousin Raul Rosalia (*Rosalia*), and Teody, as its witnesses. It claimed that Tuardon acted in self-defense. Thus:

On January 17, 1999, at about 5:30 o'clock in the afternoon, Tuardon and his son were at the Kabankalan Public Plaza watching the highlight of the Sinulog Festival. From time to time, Tuardon would join Teody and his companions, including Dima-ala and one Benjie Javier (*Javier*) in their drinking session at the kiosk of Bikek Gargaritano. At around 7:00 o'clock in the evening, he noticed a commotion at the kiosk of Medel. At a distance of about twelve (12) to fifteen (15) meters, he saw Teody being held by Dagunan and noticed that Javier was able to pacify them. Thereafter, he did not mind them anymore.<sup>[9]</sup>

Later, Tuardon again joined the group to drink but shortly excused himself to look for his son. While looking for his son, he encountered Rosalia who invited him to go home with him. As they were walking towards the terminal at past 9:00 o'clock in the evening, they passed by a comfort room. Tuardon excused himself to use the comfort room and told Rosalia to just wait for him outside. As he was turning around after urinating, he hit one of the legs of Dagunan, who had just entered the comfort room. They stared at each other and Dagunan asked him if he knew Teody to which he answered "no." Dagunan got angry with his reply and called him stupid. Tuardon got angry and told Dagunan that he was the stupid one. At this juncture, Dagunan drew his gun on his right side, but Tuardon was able to stop him with his left hand. At this juncture, Dagunan turned around, and Tuardon drew his own gun and shot Dagunan once. Tuardon then went out and tucked his gun. Thereafter, Flores came rushing towards him so Tuardon drew his gun again and shot him. After shooting Flores, he found himself shocked that he had shot someone.<sup>[10]</sup>

Dima-ala, in his defense, took the witness stand, together with Abelardo Basinilio, Jr., and Engr. Rogelio Diaz, as his witnesses. He denied the charges against him and invoked alibi as his defense. He claimed that he did not hand the gun to Tuardon.

### *The RTC Ruling*

In its March 30, 2004 Decision, the RTC found Tuardon guilty beyond reasonable doubt of murder in Criminal Case No. 99-2257, and frustrated murder in Criminal Case No. 99-2258. Dima-ala, on the other hand, was acquitted in the two cases on reasonable doubt. The trial court was of the view that the prosecution failed to present sufficient evidence of his participation in the commission of the crime either as principal by direct participation or as conspirator.

The RTC dismissed Tuardon's claim of self-defense noting that his version of how the events transpired was inconsistent with the medical findings as to the injury sustained by Dagunan. It further observed that Tuardon's testimony was unclear and inconsistent on how he defended himself.

In convicting Tuardon of murder and frustrated murder, the RTC appreciated the presence of the aggravating circumstance of treachery. It stated that treachery

attended the killing of Dagunan as he was shot at the base of his head, suddenly and unexpectedly, while he was in the act of urinating. As to Flores, the trial court noted that he was shot at the chest while unarmed and unprepared. Thus, Dagunan and Flores were not given any opportunity to defend themselves. The dispositive portion of the decision reads:

WHEREFORE, in Criminal Case No. 99-2257, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code as charged in the Information and in Criminal Case No. 99-2258, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Frustrated Murder under Article 248 of the Revised Penal Code, in relation to Article 50 thereof, as charged in the Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased victim PO1 Jerry Dagunan the amount of Fifty Thousand Pesos (P50,000.00) for the crime of murder and an indeterminate penalty of 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, to pay the victim Edwin Flores the amount of Thirty Thousand Pesos (P30,000.00) by way of indemnity for the crime of Frustrated Murder and to pay the costs.

Based on reasonable doubt, accused Ronnel Dima-ala is ACQUITTED.

It is ordered that accused Edwin Tuardon be immediately remitted to the National Penitentiary.

It is further ordered that accused Ronnel Dima-ala be immediately released from detention unless charged of other offense.

SO ORDERED.<sup>[11]</sup>

Aggrieved, Tuardon elevated an appeal before the CA.

#### *The CA Ruling*

In its assailed October 29, 2015 Decision, the CA affirmed, with modification, the March 30, 2004 RTC decision. It concurred with the RTC that treachery attended the killing of Dagunan and that Flores was rendered defenseless because of Tuardon's sudden attack. It opined that the injury sustained by Flores could have caused his death had it not been for the timely medical intervention. Thus, the CA concluded that the RTC did not err in convicting Tuardon for murder and frustrated murder. It did not give credence to his claim of self-defense because he failed to establish its elements. The appellate court pointed out that no unlawful aggression was initiated by Dagunan, as it noted that he was then just urinating.<sup>[12]</sup>

The CA, nevertheless, modified the RTC judgment with respect to the monetary awards.<sup>[13]</sup> The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. Accordingly, the assailed Decision dated 30 March 2004 of the Regional Trial Court, Branch 61, 6<sup>th</sup> Judicial Region, Kabankalan City, Negros

Occidental, in Criminal Case Nos. 99-2257 and 99-2258 is hereby AFFIRMED with MODIFICATIONS as follows:

For the murder of PO1 Jerry Dagunan:

1. The award of civil indemnity is increased to Php 75,000.00;
2. Moral damages in the amount of Php 75,000.00;
3. Exemplary damages in the amount of Php 30,000.00; and
4. Temperate damages in the amount of Php 25,000.00.

For the frustrated murder of Edwin Flores:

1. Civil indemnity is increased to Php 40,000.00;
2. Moral damages in the amount of Php 40,000.00;
3. Temperate damages in the amount of Php 25,000.00; and
4. Exemplary damages in the amount of Php 20,000.00.

Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.<sup>[14]</sup>

Hence, this appeal.

In its Resolution,<sup>[15]</sup> dated September 14, 2016, the Court required both parties to file their respective supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.<sup>[16]</sup>

#### *The Position of the Accused*

Tuardon insists that he acted in self-defense. He contends that Dagunan was the unlawful aggressor as he attempted to draw his gun after their heated exchange. According to him, shooting Dagunan was the only means available for him to repel his aggression. Tuardon further claims that assuming that he is liable for Dagunan's death and for the injury sustained by Flores, he cannot be convicted of murder and frustrated murder as the qualifying circumstances of treachery and evident premeditation were not present. He claims that when Dagunan insulted him, Dagunan had every reason to expect a reprisal from him, putting himself on guard for any attack. With respect to the shooting of Flores, Tuardon asserts that when Flores rushed towards him after witnessing what had transpired, he already exposed himself to any possible harm that could befall upon him. Thus, he was forewarned of the impending danger upon himself.<sup>[17]</sup>

#### **The Court's Ruling**

*Tuardon did not act in self-defense*