

## THIRD DIVISION

[ G.R. No. 178059, January 22, 2008 ]

**PEOPLE OF THE PHILIPPINES, Appellee, vs. CHRISTOPHER  
TABUELOG y CLAOR, Appellant.**

### ***DECISION***

**YNARES-SATIAGO, J.:**

Assailed in the instant petition for review on certiorari is the Decision of the Court of Appeals dated November 30, 2006 in CA-G.R. CR No. 01038<sup>[1]</sup> affirming the Decision of the Regional Trial Court of Laoag City, Branch 16 in Crim. Case No. 10408-16<sup>[2]</sup> finding appellant Christopher Tabuelog guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

On October 14, 2002, an Information<sup>[3]</sup> was filed charging appellant with murder committed as follows:

That on or about the 12<sup>th</sup> day of October, 2002, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously stabbed from behind Clinton Badinas on the left side of his body that resulted to his instantaneous death.

CONTRARY TO LAW.

Appellant pleaded not guilty when arraigned on October 25, 2002.<sup>[4]</sup>

During pre-trial conference, the parties agreed on the following stipulation of facts, to wit:

That the defense admits that whenever prosecution witnesses mentioned the name Christopher Tabuelog they would be referring to the accused who is charged and arraigned under the Information;

That on October 12, 2002 accused was a student of Abra Valley Colleges, Bangued, Abra;

That said accused joined a field trip in Calayab Beach, Laoag City;

That his group was at the Calayab Beach at 4:00 o'clock in the afternoon;

That the accused admits that he stabbed Clinton Badinas on or about that time on said place and as a consequence of the wound he sustained Clinton Badinas died.

The prosecution and defense agreed into the following issues:

Whether or not the stabbing of Clinton Badinas by the accused was attended by treachery and whether or not the accused acted in self defense in stabbing Clinton Badinas.<sup>[5]</sup>

Trial on the merits thereafter ensued.

The facts as found by the trial court are as follows:

The witnesses for the prosecution were Jay-arr Martinez, Dr. Rodrigo Catcatan of the Laoag City General Hospital and the mother of the deceased who testified on the civil aspect.

Jay-arr Martinez testified that:

On October 12, 2002, the students of Abra Valley College has a field trip to Fort Ilocandia, Brgy. 37, Calayab, Laoag City. He went with Great Ceasar Martinez, Banie Mosilet, Clinton Badinas and Tom Tejada in an owner-type jeep arriving at the place at 9:30 o'clock in the morning. As the jeep was parked near one of the cottages in the area, the victim was conversing with a (former) teacher inside a cottage about two (2) meters away, while Great Ceasar Martinez, Tom Tejada, Jay-Arr Martinez and Banie Mosilet were at the jeep. Suddenly, Roger Domingo came and shouted to Great Ceasar Martinez "You are fooling; I am from Bangued (Abra)!" The latter was allegedly mad and drunk at that instance. The victim came to pacify Roger Domingo by placing his arm over his shoulder and saying "pacencia ka ta nabartek." The victim eventually led Domingo away. At that juncture, the accused came behind the victim and Domingo, and when near, drew a knife. Using his left hand, he stabbed the left side of the body of the victim. Immediately, the accused ran towards the mini-bus (presumably their vehicle for the field trip) eighty (80) meters away, chased by the victim, Banie Mosilet and Great Ceasar Martinez. They were not able to catch the accused though because the victim pleaded to be rushed to the hospital. Using the jeep, the victim was brought to the Laoag City General Hospital where he was pronounced dead.

According to Dr. Rodrigo Catcatan the victim sustained the following wounds: Stab wound, 3-4 centimeters, level 6-7 Intercostal Space (ICS), left. The penetration could have damaged the heart and lungs of the victim, which caused his death and the assailant could have been southwest of the victim.

The defense, on the other hand, presented a different scenario. According to the accused, they were on a field trip together with the other Criminology students of the Abra Valley College at the Fort Ilocandia Beach Resort (Calayab Beach), Brgy. Calayab, Laoag City. After hearing a lecture on Police Photography, they had a drinking session inside one of the cottages, together with Roger Domingo, Adrian Benabese and others. The victim, Great Ceasar Martinez and Jay-Arr

Martinez likewise participated in the drinking session. About five together with Great Ceasar Martinez and Jay-Arr Martinez used in joining the field trip.

It was after the group finished drinking at about three to four o'clock in the afternoon that the accused heard Roger Domingo and Great Ceasar Martinez quarreling in front of the cottage. Next, he heard Great Ceasar shouted "Uncle Clinton, come here!" Clinton Badinas then appeared in front of the cottage coming from the back, and in the process picked up a bottle and broke it (by using) a post.

Afterwards, the victim chased Domingo around the jeep. The accused, seeing the circumstances unfolding, shouted for Roger to stop, to which the victim reacted by next facing the accused. At a distance of one to two (1-2) meters away from each other, the victim tried to stab the chest of the accused, reason for which the latter moved backwards in an attempt to evade the stabbing act. Unfortunately, he fell down to the ground as result. The victim allegedly continued going near the accused, stopping to stab him, to which the latter responded by wiggling and sliding back to avoid the attack. While doing so, the victim was continuously assaulting him with the broken bottle he was holding. The accused consequently threw a water pitcher hitting the breast of the victim, and likewise continued to wiggle backwards and attempted to hold a knife used in chopping ice. However, the victim still tried to stab him by going "on top of him" when accused was sitting on his buttocks and wiggled away with his two hands. The victim pushed him on his breast while holding the broken bottle and accused was leaning backward, supporting himself with his two hands. In that position, the accused was able to grasp the knife and swayed it upward with his right hand. The knife hit the area below the armpit of the victim. The accused then took this opportunity to run at the parked mini bus.<sup>[6]</sup>

The trial court found the version of the prosecution credible thus rejecting appellant's theory of self-defense. On May 6, 2005, the trial court rendered a Decision finding appellant guilty of murder, the dispositive portion of which reads:

WHEREFORE, premises considered, for failure of the accused to prove self-defense, complete or incomplete, and the fact that the prosecution was able to prove the qualifying aggravating circumstance of treachery beyond reasonable doubt in the killing of CLINTON BADINAS, the accused CHRISTOPHER TABUELOG is hereby found GUILTY of the crime of Murder under Article 248 of the Revised Penal Code and the penalty of Reclusion Perpetua with all its accessory penalties is imposed upon him.

He is also Ordered to pay the heirs of CLINTON BADINAS Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and One Hundred Thirteen Thousand Seven Hundred Seventy Six Pesos (P113,776.00) as actual damages being the amount agreed upon during the trial; and the Costs.

SO ORDERED.<sup>[7]</sup>

On appeal, the Court of Appeals affirmed *in toto* the Decision of the trial court.

Hence, this petition.

Appellant alleges that the justifying circumstance of self-defense was not properly considered in his favor; that assuming the killing was committed not in self-defense, still the courts below erred in appreciating the qualifying circumstance of treachery.

The petition is partly meritorious.

In invoking self-defense, whether complete or incomplete, the onus probandi is shifted to the accused to prove by clear and convincing evidence all the elements of justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.<sup>[8]</sup>

The accused, in cases of self-defense, must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence since he admits the commission of the alleged criminal act. One who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence, for even if the evidence of the prosecution were weak, it could not be disbelieved after the accused himself had admitted the killing. Self-defense, like alibi, is a defense which can easily be concocted. If the accused's evidence is of doubtful veracity, and it is not clear and convincing, the defense must necessarily fail.<sup>[9]</sup>

We agree with the findings of the trial court as affirmed by the Court of Appeals that the defense miserably failed to establish the elements of self-defense namely: a) unlawful aggression on the part of the victim; b) the reasonable necessity of the means employed to prevent or repel it; and c) lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb. It is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked.<sup>[10]</sup>

In the instant case, appellant failed to establish unlawful aggression on the part of the victim; moreover, his narration of the events was unbelievable. As correctly observed by the trial court, considering the alleged disadvantageous position of the appellant and the relentless assault from the victim, it is surprising that appellant remained unscathed. The presence of a pitcher and a knife conveniently within the reach of appellant was highly suspect and coincidental. As noted by the trial court, "the presence of a pitcher of water which the accused picked up to repel the attack of the deceased and the knife which the accused was able to grasp and swung it to the (victim) hitting him near the left armpit seems to suggest that pitchers and knives are scattered around Fort Ilocandia."<sup>[11]</sup> Moreover, if it were true that the victim was pursuing Roger Domingo with a broken bottle, then it is preposterous for the appellant to shout at and order Domingo, instead of the victim, to stop, thus putting Domingo's life at risk. Further, if Domingo stopped as narrated by appellant, then it is inconceivable that he was not harmed by his alleged pursuer.

The testimony of Roger Domingo who was presented as a defense witness did not help or strengthen the defense's theory. In fact, Domingo's testimony was full of inconsistencies and improbabilities that it deserves no credence at all. Prosecution witness Jay-arr Martinez, as well as the appellant, testified that the stabbing incident was precipitated by an argument between Great Cesar Martinez and Roger Domingo, to wit:

Testimony of Jay-arr Martinez:

q After Roger Domingo went near the passenger seat in front of the owner jeep, what happened again?

a I heard him uttered, you are fooling, I am from Bangued.

q And to whom did Roger Domingo addressed?

a Great Cesar Martinez, madam.

q At the time what did you observe with this Roger Domingo?

a He was mad.<sup>[12]</sup>

Testimony of appellant Christopher Tabuelog:

q While you were there inside the cottage, what happened?

a I heard somebody quarelling, sir.

q And do you recognized who are those persons quarelling?

a Yes, sir.

q And, who are they, Mr. Witness?

a Roger Romindo (Domingo) and Great Cesar Martinez, sir.

q Where were they quarelling in relation to you inside the cottage?

a Infront of the cottage where I stayed, sir.

q And what did you hear while they were quarelling?

a Roger Domingo prohibits Great Cesar Martinez to make the niece of Roger Domingo as his girlfriend, sir.

q While they were quarelling, what happened?

a I heard Great Cesar Martinez shouted, sir.

q What did you hear as he shouted?

a "Uncle Clinton, come here!"

q How far were you when you heard the shout of