

## THIRD DIVISION

[ G.R. No. 139530, February 27, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PEPE BAUTISTA Y SABADO, APPELLANT.**

### DECISION

**CARPIO MORALES, J.:**

On appeal is the January 26, 1999 Decision<sup>[1]</sup> of the Regional Trial Court of Nueva Vizcaya, Branch 30, finding appellant Pepe Bautista y Sabado guilty of murder in Criminal Case No. 613 and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information<sup>[2]</sup> filed on April 13, 1993 charged appellant as follows:

That on or about February 3, 1993, at Barangay Balance, Municipality of Dupax del Norte, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and qualified by treachery and evident premeditation, did then and there wil[ly]fully, unlawfully and feloniously, assault, attack and wound, with the use of a bolo, one Rodolfo Bacoling, causing injuries to said Rodolfo Bacoling which resulted to his death, and all to the damage and prejudice of the heirs of the said victim.

Contrary to law with the aggravating circumstance of nighttime sought by the accused to afford impunity in the commission of the offense.

From the testimonial evidence of the prosecution, the following have been established:

On the night of February 3, 1993 at the Dupax del Norte, Nueva Vizcaya house of one Fausto Polon, appellant, Rodolfo Bacoling (the deceased), James Buyagan, Felix Pallay, Lino Menzie and Renato Hilario had a drinking spree.<sup>[3]</sup>

Of the six, Pallay, Menzie and Hilario went home ahead, followed by Buyagan, leaving behind the deceased, who was armed with a bolo,<sup>[4]</sup> conversing with appellant.

Around 9 p.m., Polon's neighbor, Lorenzo Dumase, who was in his house, heard neighbors' dogs barking. Apprehensive that somebody might be stealing his carabao, he opened the window of his house upon which he saw, about 10 meters away, appellant running after the deceased.

Around midnight, Hilario, who lived near Polon's house, was awakened as appellant and his brother Danilo knocked at his door. On letting the brothers in, he was told by

appellant, who showed his blood-stained shirt, that he killed the deceased. Danilo even brought out the blood-stained bolo. He (Hilario) thus advised the two to go home, but they requested to be allowed to sleep at his house to which he acceded.

At 5 a.m. of the following day, February 4, 1993, appellant and Danilo left Hilario's house, leaving the bolo behind.<sup>[5]</sup> Hilario thus wrapped the bolo and turned it over to the police authorities.<sup>[6]</sup>

At about 6 a.m. also on February 4, 1993, while Buyagan was cooking breakfast in his house, appellant arrived and confessed to him that he killed the deceased, drawing Buyagan to report the matter to the police.<sup>[7]</sup>

On February 5, 1993, an autopsy was performed on the deceased by Dr. Mary Ruth C. Reyes, Municipal Health Officer of Dupax del Norte, Nueva Vizcaya. The autopsy report<sup>[8]</sup> dated February 9, 1993 indicated the cause of death of the deceased to be hemorrhagic shock due to head and neck injuries secondary to multiple hacking wounds -incised wounds in the head, face, neck and fingers, and abrasion at the back.

As the sole witness on his behalf, appellant interposed self-defense. He gave the following tale:

During their drinking spree, the deceased "narrated many things about [appellant's] cousin" Lito Vicente, including the hacking by the latter of the deceased's uncle.<sup>[9]</sup> Appellant reacted by saying that he did not think that he had the "same attitude" as that of his cousin.

After their four companions had left ahead, appellant started to head for home too, but the deceased followed him and badmouthed him, telling him not to run. As he looked back, he saw the deceased unsheathe his bolo from its scabbard and raise it. He thus embraced him, grabbed the bolo, and asked why he wanted to hack him. The deceased, however, picked up a stone and hurled it at him, albeit he was not hit. He then ran, and as he again looked back, the deceased told him not to run as he was going to kill him. The deceased eventually caught up with him, so he confronted him and struck him with his (the deceased's) own bolo.<sup>[10]</sup>

Finding for the prosecution, the trial court rendered the decision<sup>[11]</sup> subject of the present appeal convicting appellant of murder and disposing as follows:

WHEREFORE, premises considered, finding the accused, Pepe Bautista y Sabado, GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

He is likewise ordered to pay the heirs of the victim the amounts of Thirty Two Thousand, Three Hundred Ninety Seven Pesos (P 32,397.00) as actual expenses and Fifty Thousand Pesos (P 50,000.00) as mandatory death indemnity.

In his Brief,<sup>[12]</sup> appellant assigns to the trial court the following errors:

I.

THE HONORABLE COURT A QUO ERRED IN FINDING THE CRIME COMMITTED AS MURDER AND NOT SIMPLE HOMICIDE.

II.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE COMMISSION OF THE CRIME WAS ATTENDED WITH THE MITIGATING CIRCUMSTANCES OF: A) DRUNKENNESS; B) PROVOCATION; C) THERE WAS UNLAWFUL AGGRESSION ON THE PART OF THE DECEASED; D) AND IN NOT APPLYING THE INDETERMINATE SENTENCE LAW IN IMPOSING THE PENALTY.

III.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE CRIME COMMITTED IS ONE OF SIMPLY HOMICIDE AND NOT MURDER.  
(Underscoring supplied)

In finding that appellant was guilty as charged, the trial court found that treachery qualified the killing.

The circumstance of treachery attended the commission of the offense by the accused thereby qualifying the killing of Rodolfo Bacoling to Murder for how else could the Court understand the chase instituted by the accused on the victim fleeing or running away from him and the wounds struck by him from behind the victim.

The helpless position of the victim when he was killed because he was then being chased from behind by the accused was not accidental but intentionally taken advantaged of by the accused as is evident from his resolution to really kill the victim when he determinedly bridged the distance between him and the victim and in that position of the victim with his back fronting the accused, the latter hacked the victim.<sup>[13]</sup>

Circumstances qualifying a killing to murder, such as treachery, must be proven as indubitably as the crime itself.<sup>[14]</sup>

For treachery to be appreciated, two essential elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate or conscious adoption of the means of execution. **What is decisive is that the execution of the attack makes it impossible for the victim to defend himself or retaliate.**<sup>[15]</sup>

The records indicate that the deceased was aware of the impending danger. By the account of Dumase, he saw appellant running after and chasing the deceased. Appellant caught up with him, however.

*People v. Flores*,<sup>[16]</sup> the facts of which are similar to those of the case at bar, teaches that: