

## EN BANC

[ G.R. No. 141087, March 31, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ABRAHAM AGSALOG @ PANTO AND JOVITO SIBLAS Y OBAÑA @ BITONG, APPELLANTS.**

### D E C I S I O N

#### **CARPIO MORALES, J.:**

On automatic review is the decision of the Regional Trial Court of Urdaneta City, Branch 46, finding appellants Abraham Agsalog and Jovito Siblas guilty beyond reasonable doubt of murder for killing Eduardo Marzan y Teñoso (the victim) and sentencing them to death.

The following facts are not disputed.

At about 2:00 p.m. of October 4, 1997, while the victim and his uncle Tony Opiña (Tony) were drinking at the Jessica Mae Videoke located at the San Quintin public market, San Quintin, Pangasinan, a misunderstanding arose between the victim and appellant Siblas who was occupying a table outside the videoke, adjacent to the stall of appellant Agsalog who was then inside.<sup>[1]</sup> The misunderstanding resulted in the victim slapping appellant Siblas. The escalation of the misunderstanding was prevented, however, when Tony pacified the two. The victim and Tony soon left the premises.

Also on the same day, October 4, 1997, at about 4:30 p.m., as the victim and his distant cousin-neighbor Edwin Opiña (Edwin) were conversing at the terrace of the latter's house in Calomboyan, San Quintin, appellants, on board a tricycle<sup>[2]</sup> driven by Francisco Aquino, Jr. (Aquino) arrived. Upon entering the gate of the house, appellants summoned the victim<sup>[3]</sup> who obliged. An exchange of words later ensued between the victim and appellants which resulted in appellant Agsalog stabbing the victim who died as a result thereof.

The postmortem examination conducted by Dr. Rosalina O. Victorio of the Office of the Municipal Health Officer showed that the victim sustained two stab wounds – one at the upper middle portion of his abdomen, and the other at the upper portion of his chest which penetrated the right auricle of his heart.<sup>[4]</sup> It also showed that the victim had abrasions on the forehead, left eyelid and left cheek<sup>[5]</sup> which Dr. Victorio surmised came about as a result of the victim's fall after the stabbing.<sup>[6]</sup> The doctor concluded that the cause of the victim's death was acute hemorrhage due to a stab wound on the right auricle of the heart.<sup>[7]</sup>

The records show that the day after the stabbing of the victim or on October 6, 1997, Ulyses Soto (Soto),<sup>[8]</sup> Edwin<sup>[9]</sup> and Aquino<sup>[10]</sup> gave their respective sworn

statements before the local police authorities on what they witnessed, the substance of which statements Soto and Edwin were later to echo at the witness stand.

Hence, appellants' indictment for murder under an Information<sup>[11]</sup> alleging:

x x x

That on or about the 4<sup>th</sup> day of October 1997, in the afternoon, at Brgy. Calomboyan, municipality of San Quintin, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bladed weapon (balisong), with treachery and evident premeditation, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab one EDUARDO MARZAN y TEÑOSO twice on his body which caused his immediate death, to the damage and prejudice of the heirs of said EDUARDO MARZAN y TEÑOSO.

x x x

From the account of prosecution witnesses including eyewitness Edwin, and another eyewitness Soto who was across the road where the stabbing occurred, the following are gathered:

After the victim heeded the call of appellants to talk with them outside the gate of the house, the three walked towards the gate, with the victim sandwiched by appellant Siblas who was at the victim's right side and appellant Agsalog who was at the victim's left side. As Edwin sensed that there was "something unusual,"<sup>[12]</sup> he followed the three, he trailing behind by about 3 meters.

While appellants and the victim were conversing as they walked, the victim placed his right<sup>[13]</sup> hand on the left shoulder of appellant Siblas and uttered "*Pasensiya kan pare.*"<sup>[14]</sup> At that instant appellant Agsalog took a step forward, "tapped" the hand of the victim as he faced him, uttered "*Di na kami met la [ka]babainen*"<sup>[15]</sup> and simultaneously drew an already open "balisong" and stabbed the victim at his belly and then at his chest while appellant Siblas, with both hands, held the right wrist and right elbow of the victim.

Realizing what had befallen the victim, Edwin picked up a stone upon which appellant Agsalog warned "You will be next if you do that,"<sup>[16]</sup> drawing the former to throw the stone away.

Appellant Agsalog invoked self defense. Appellant Siblas denied the existence of a conspiracy.

As related in their brief, appellants gave the following version, quoted verbatim:

[O]n or about 1:00 o'clock in the afternoon of October 4, 1997, Agsalog was in his stall with Siblas in front of the Jessica Mae Videoke. Agsalog heard loud noise coming from the Jessica Mae Videoke. When he went out of his stall, he saw Nola Matsumoto [owner of the videoke-bar] in-

between Siblas and [the victim] trying to prevent further troubles from erupting. After that incident, Tony Opiña stood up and told [the victim] **"Vulva of your mother, you just slapped people, let us go home."** After the lapse of 10 minutes, [the victim] with his brother, Jun Marzan returned to the Jessica Mae Videoke. Jun Marzan asked Nola who was at fault and she replied, **"your brother is at fault"**. Then the two (2) brothers left the place. But before leaving, [the victim] told Siblas that he would return, which he did after about 3 minutes. [The victim], on his return, shook his hands with Siblas, to settle their differences, and as a gesture of reconciliation, [the victim] invited both Siblas and Agsalog to their house for drinks as he is butchering a goat. Agsalog and Siblas accepted the invitation to go there after school hours. Then Agsalog and Siblas, after a few minutes, proceeded to the San Quintin National High School to resume their duties as teachers. At about 4:30 in the afternoon of the same day, Agsalog and Siblas riding in a tricycle driven by one Aquino arrived at the house of Ex-Brgy. Chairman Juan Opiña [father of Edwin Opiña] at Brgy. Calonboyan, San Quintin, Pangasinan. Agsalog saw [the victim] sitting alone at the terrace of the house of Opiña. Agsalog, then asked [the victim] **"Bok where is the pulutan? I will get the drinks."** [The victim] stood up and retorted **"Vulva of your mother, you could easily be baited."** Agsalog thought that [the victim] is only joking, so he said to [the victim], **"Bring the pulutan out and we will get the drinks."** [The victim] instead replied, **"Vulva of you mother, you look like pulutan."** Agsalog said, **"Bok, you do not even respect us"**. Then [the victim] came down from the terrace and tried to grab Agsalog which the latter ward off. Both Agsalog and Siblas went out of the yard towards the tricycle to leave but [the victim] followed them. Then, [the victim] pushed Siblas and Agsalog, saying, **"Vulva of your mother, are you going to fight me?"** At this stage, [the victim] was drawing a balisong from his waist and when he was about to thrust his balisong into Agsalog's body, Agsalog also drew a knife and swung his arm, hitting [the victim's] body once. But still [the victim] grabbed Agsalog by the shoulder but Agsalog pushed him with his left arm. [The victim], then turned and went into the yard of Opiña . Agsalog saw Edwin Opiña came out of the house and picked some stones, going near them, Agsalog told Edwin, **"Don't go near-Don't go near** (warning to us). x x x (Emphasis and italics in the original; underscoring supplied)

Brushing aside appellants' version, the trial court, by Decision of October 7, 1999, found them guilty beyond reasonable doubt of murder, the dispositive portion of which is quoted verbatim:

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is hereby rendered against Abraham Agsalog and Jovito Siblas of the crime of aggravated Murder and the Court sentences AGSALOG and SIBLAS to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to pay the heirs of the victim, jointly and solidarily, the amount of P200,000.00 as actual damages; P75,000.00 as moral damages and P30,000.00 as exemplary damages and attorney's fees in the amount of P10,000.00 and all accessory penalties of the law.

The Branch Clerk of Court is hereby ordered to prepare the mittimus and

to transmit the entire records of this case to the Hon. Supreme Court of the Philippines for automatic review fifteen days from date of promulgation.

The Jail Warden, BJMP, is hereby ordered to transmit the living body of accused Agsalog and Siblas to the National Bilibid Prisons, Muntinlupa City, fifteen (15) days from receipt of this Decision.<sup>[17]</sup> (Underscoring supplied)

Hence, this automatic review, appellants ascribing to the trial court the following assignment of errors:

#### I

GRANTING WITHOUT ADMITTING THAT THE PROSECUTION'S CASE IS CREDIBLE, THE LOWER COURT GRAVELY ERRED IN CONCLUDING THAT ACCUSED-APPELLANTS CONSPIRED IN KILLING THE VICTIM AS WELL AS IN APPRECIATING AGAINST THEM THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

#### II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE AUTOPSY REPORT AND SWORN STATEMENT OF ANOTHER ALLEGED EYEWITNESS WHICH, IF CONSIDERED, WOULD HAVE BEEN FAVORABLE TO ACCUSED-APPELLANTS.

#### III

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING IN FAVOR OF ACCUSED-APPELLANTS THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.<sup>[18]</sup>

Appellant Agsalog having admitted stabbing the victim, the third assignment of error shall first be considered.

For the justifying circumstance of self-defense to be appreciated, the following circumstances must concur.

1. Unlawful aggression
2. Reasonable necessity of the means employed to prevent or repel it.
3. Lack of sufficient provocation on the part of the person defending himself.<sup>[19]</sup>

Unlawful aggression is present when peril to one's life, limb or right is either actual or imminent.<sup>[20]</sup>

Appellant Agsalog claims that as reflected in their above-quoted version in their brief, there was unlawful aggression on the part of the victim – that as appellants “were out of the yard towards the tricycle to leave,” the victim followed and pushed them, challenged them to a fight, after saying “vulva of your mother,” and thereafter

drew a balisong which he was "about to thrust" at him (appellant Agsalog). Appellant Siblas' following testimony, quoted verbatim, does not corroborate such claim of aggression on the victim's part, however, he (appellant Siblas) having merely witnessed the victim holding the shoulder of appellant Agsalog which the latter ward off, followed by the two pushing each other.

ATTY. SANSANO, JR (counsel for both appellants):

x x x

Q When your co-accused Abraham Agsalog entered the yard, what happened next?

A Eduardo Marzan met him. (Siblas answering)

Q What [did] Abraham Agsalog do when he went there?

A He told us, "Vulva of your mother. You could easily be baited."

Q What prompted Marzan said those words?

A I do not know why he said that, sir.

Q What did Abraham Agsalog answer, if any?

A "How come, Bok."

Q What was the reply of Marzan, if any, to what Agsalog said?

A "When it comes to cocktails ("pulutan") you are so fast."

Q What did Agsalog answer, if any?

A "How come, Bok, you get it and we eat now."

Q After the reply of Agsalog, what did Marzan do?

A "Vulva of your mother," he said.

Q What did you do with that Marzan told you and Agsalog?

A After a while, Agsalog made an invitation.

Q What was that invitation?

A He said, "If that is the thing, let's go home."

Q What did Marzan do when you were invited by Agsalog to go home?

A When Agsalog turn, Marzan held the right shoulder of Agsalog.

Q What [did] Marzan do when he held that shoulder of Agsalog?

A "When I am talking to you, do not turn your back."

Q What did Agsalog do?

A Agsalog ward off his hand, sir.

Q When Agsalog ward off the hand of Marzan, what did Marzan do?

A He continued to hold, sir.