

## SECOND DIVISION

[ G.R. No. 143085, March 10, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO BORBON  
Y BOTER, APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 95-145714, convicting appellant Ricardo Borbon of murder, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay damages to the victim as follows: P150,000.00 as actual damages, P250,000.00 as moral damages, and P50,000.00 with interest at 6% per annum by way of indemnity for the loss of the victim's life.

An Information against the appellant was filed on October 12, 1995, which reads as follows:

That on or about June 17, 1995, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditations, attack, assault and use personal violence upon one GREGORIO SUCK by then and there stabbing him with a kitchen knife and hitting his abdomen, thereby inflicting upon him mortal stab wound which was the direct and immediate cause of his death thereafter.<sup>[2]</sup>

Upon arraignment, the appellant entered a plea of not guilty. Trial of the case ensued.

#### The Evidence for the Prosecution<sup>[3]</sup>

Between 11:00 p.m. and 12:00 midnight of June 16, 1995, Jaime Tabilangan was in front of the house of a certain Aling Pet Pingol in San Lorenzo St., Tondo, Manila. He was seated at a bench and was conversing with the appellant and Christina David, the appellant's niece. The appellant was seated beside Jaime. The appellant reeked of liquor and appeared to be drunk.

Amado Vicmudo, Jr. had just come from watching a basketball game. He was on his way home, accompanied by Gregorio Suck and Richard Tabilangan. The group stopped in front of Aling Pet's house. Christina left upon the arrival of Gregorio, Amado and Richard. Amado then sat beside Jaime on the bench, while Gregorio and Richard remained standing. The group began talking about the basketball game that Amado had just seen. The appellant, who was seated beside Jaime, did not take part in the conversation.

Suddenly, the appellant frisked Jaime's waist and uttered that he "wanted to kill." Jaime became frightened and immediately went to his house, which was just adjacent to Aling Pet's house. Richard, Jaime's brother, likewise went home. Jaime drank about two glasses of water, which took about three to five minutes, as soon as he reached his house.

Meanwhile, Amado and Gregorio continued their conversation while the appellant remained seated at the bench. Minutes later, the appellant stood up and went inside the house of Aling Pet. Amado and Gregorio remained outside, still conversing with each other. About a minute later, the appellant, carrying two knives, emerged from the house. Immediately and without warning, he stabbed Gregorio at the right side of the belly with one of the knives. Amado was shocked at what transpired, but managed to run away towards his house, which was not far away.

Jaime returned and saw Gregorio and the appellant. He asked Gregorio what happened. Gregorio replied not to come near him as he was stabbed by the appellant. The appellant, still holding a knife, turned his attention to Jaime and uttered, "O, ikaw!" The appellant then fled, while Gregorio tried to pursue him. Weakened by his injury, Gregorio fell down on his right knee. With the appellant gone, Jaime assisted Gregorio. Amado, likewise, returned and assisted Gregorio. Jaime and Amado brought Gregorio to the house of the Allan Suck, Gregorio's brother, not far from the place of the incident.

When Allan heard the commotion outside of his house, he went out and saw Jaime and Amado carrying his brother, Gregorio. Allan noticed that Gregorio was bleeding from a stab wound in the stomach. Jaime and Amado informed Allan that Gregorio had been stabbed by the appellant. Allan then asked his brother, Gregorio, what happened. Gregorio replied "*Allan, nasaksak ako ni Edgardo Borbon*" (Allan, I was stabbed by Edgardo Borbon). Allan, Amado and Jaime then hailed a taxi to bring the victim to a hospital. Inside the taxi, Gregorio said nothing more, as he was already weak and bleeding profusely. The group arrived at the Metropolitan Hospital in Tondo, Manila, where Gregorio was immediately operated. After the operation, Gregorio was placed in the Intensive Care Unit (ICU) where he went on comatose.

Gregorio died on June 19, 1995.<sup>[4]</sup> Dr. Manuel O. Lagonera, Medico-Legal Officer of the PNP, conducted an autopsy on the cadaver of the victim which yielded the following findings:

#### EXTERNAL FINDINGS:

1. Abrasion, outer angle of the mouth, right, measuring 1.5 x 0.8 cms.
2. Exploratory laparotomy incision, mid-abdomen, measuring 27 cms.
3. Drainage incisions, right upper quadrant, abdomen.
4. Stab wound, right upper quadrant, abdomen, 42 inches from heel, 8 cms. from anterior midline, measuring 3 x 0.6 cms., directed slightly upwards, backwards towards midline, piercing the right lobe of the liver, right kidney, transecting blood vessels of the mesentery and omentum of the transverse colon and head of the pancreas.

Depth of the wound — 13 cms.

#### INTERNAL FINDINGS:

1. Injured tissues and organs were surgically repaired. Right nephrectomy was performed.
2. Patchy and confluent consolidations were noted on both lungs.

#### CAUSE OF DEATH:

STAB WOUND, RIGHT SUB-COSTAL REGION.<sup>[5]</sup>

According to Dr. Lagonera, the immediate cause of death was pneumonia bilateral secondary to stab wound in the right sub-costal region.

#### The Evidence For The Defense

The appellant denied the charge against him. He testified that he was a resident of Plaridel, Bulacan since 1991, and lived with his mother. He worked in a rice mill.

The appellant testified that he was once ganged upon by Gregorio and Allan. Allan threw a bottle and hit the appellant on the head, and the wound left a scar. The appellant filed a case against the two, but the same was withdrawn when the matter was settled amicably.

The appellant denied that he went to Manila on June 17, 1995. He maintained that he did not know anything about the death of Gregorio Suck. He averred that he traveled to Manila only about once a month, to give his daughter her allowance for her studies. The travel time from Plaridel, Bulacan to Manila, would take about an hour to an hour and a half, depending on the volume of traffic.

On April 5, 2000, the trial court rendered a decision convicting the appellant of murder, the dispositive portion of which reads as follows:

WHEREFORE, the Accused, Edgardo Borbon y Boter, is hereby convicted of murder under Article 248 of the Revised Penal Code, attended by the mitigating circumstance of intoxication, and sentenced to suffer reclusion perpetua with all the accessory penalties provided by law, and to pay the costs.

On the civil liability of the accused, he is further sentenced to pay the private complainant, Rosary Roxas Suck, actual and moral damages in the respective sums of P150,000.00 and P250,000.00, plus indemnity for the loss of the victim's life in the sum of P50,000.00 with interest thereon at the legal rate of 6% per annum from today until paid.

SO ORDERED.<sup>[6]</sup>

Appealing to this Court, the appellant raises the following errors:

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT IN THE CASE AT BAR.<sup>[7]</sup>

Anent the first assigned error, the appellant points out that the testimonies of the prosecution witnesses were inconsistent. First, although Jaime testified that the appellant said he wanted to kill and frisked Jaime in the presence of other people, this was not mentioned in the testimony of Amado, who was also present at the time. Second, Allan Suck testified that when he saw his brother, Gregorio, bleeding, he went out of the house to help the latter. This was, however, not mentioned in the respective testimonies of Amado and Jaime. Third, Jaime testified that when he was frisked by the appellant, he went home at around 11:00 p.m., but on cross-examination stated that when he went out of the house and saw Gregorio already stabbed, it was already past 12:00 midnight. The appellant stresses that the above inconsistencies in the testimonies of the prosecution witnesses cast a doubt on his guilt.

The appellant's contention is bereft of merit.

The matters pointed to by the appellant are merely minor and trivial, and do not pertain to the actual act constitutive of the offense charged. They do not affect the substance of their declaration, nor the veracity or weight of the witnesses' testimonies. Such minor inconsistencies even have the effect of enhancing the credibility of the witnesses, as they remove any suspicion that the testimonies of the witnesses were coached or rehearsed.<sup>[8]</sup> In *People v. Albarido*,<sup>[9]</sup> it was declared:

Indeed, the fact that the statements of the two prosecution witnesses differ on some minor details, does not in any way affect their credibility. This is in accord with ordinary human experience that persons who witness an event perceive the same from their respective points of reference. Therefore, almost always, they have different accounts of how it happened. Certainly, we cannot expect the testimonies of witnesses to a crime to be consistent in all aspects because different persons have different impressions and recollections of the same incident. ...

The fact is that Amado categorically identified the appellant as the one who stabbed the victim. He described the manner how the stabbing occurred, thus:

Q: After the companions of Edgardo Borbon left Edgardo Borbon, what happened?

A: I and Borbon were seated on the wooden bench while Gregorio standing (*sic*) in front of me.

Q: While you were on (*sic*) that position, what happened?

A: I noticed Edgardo Borbon stood up.

Q: What happened after Edgardo Borbon stood up?

A: He entered the house of Aling Pet.

Q: After Edgardo Borbon entered the house of Aling Pet what happened? next? (*sic*)

A: While he was inside the house, Gregorio and I conversed with

each other and when Edgardo Borbon came out of the house, he stabbed Greg.

Q: After Edgardo Borbon entered the house of Aling Pet what happened? next? (*sic*)

A: While he was inside the house, Gregorio and I conversed with each other and when Edgardo Borbon came out of the house, he stabbed Greg.

Q: Did you see Edgardo Borbon when he emerged from that house of Aling Pet?

A: My back was turned to the house of Aling Pet, so I did not see Edgardo Borbon when he came out from the house, I saw him only when he stabbed Greg.

Q: What particular [part] of the body of Greh (*sic*) was hit when he was stabbed?

A: Witness pointing to the right side of his stomach.

Q: What was the position of the victim Gregorio Suck when he was stabbed by the accused, Edgardo Borbon?

A: After he was stabbed, he moved backward and at the same time, he was holding the right side of his stomach. (*sic*).

Q: How many times Gregorio Suck was (*sic*) stabbed by Edgardo Borbon?

A: Once, sir.

Q: Where did Edgardo Borbon proceed after he was stabbed (*sic*) by the victim? once? (*sic*)

A: He simply moved backward and he was about to draw his other knife, it was at that point that I ran away.<sup>[10]</sup>

The appellant put up the twin defenses of alibi and denial, asserting that at the time the victim was stabbed, he was in Plaridel, Bulacan. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.<sup>[11]</sup> In this case, the appellant himself admitted that the travel from Plaridel, Bulacan to Tondo, Manila, would take only about an hour to an hour and a half. This negates the physical impossibility of him travelling from Plaridel, Bulacan to Tondo, Manila, at the time the stabbing incident took place. The defense presented only the appellant as its lone witness and never presented other witnesses to, at the very least, corroborate the theory of alibi.

It is well settled that a bare and unsubstantiated denial, being merely self-serving, is itself hardly given credence.<sup>[12]</sup> Alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove.<sup>[13]</sup> Furthermore, alibi and denial cannot prevail over the positive and unequivocal identification by an eyewitness.<sup>[14]</sup> Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the twin