

EN BANC

[G.R. No. 149811, June 08, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO TUVERA
Y NERI, APPELLANT,**

DECISION

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Balaoan, La Union, Branch 34, in Criminal Case No. 2440 convicting appellant Rodolfo Tuvera y Neri of murder, imposing upon him the penalty of "*reclusion perpetua* to death" and ordering him to indemnify the heirs of the victim Orlando Tabafunda y Orfiano in the amount of P50,000.00.

Rodolfo Tuvera was charged of murder in an Information, the accusatory portion of which reads:

That on or about the 1st day of March 1995 at about 3:00 o'clock in the afternoon in Barangay Nagsabaran Sur, Municipality of Balaoan, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a short firearm Orlando Tabafunda y Orfiano thereby inflicting multiple gunshot wounds on said victim which cause[d] his death, to the damage and prejudice of the heirs of the same victim.

CONTRARY TO LAW.^[2]

The appellant, with the assistance of counsel, pleaded not guilty to the crime charged.^[3]

The Case for the Prosecution

At 3:00 p.m. on March 1, 1995, Pedro Pajarit, a farmer, left his house at Barangay Oya-oy, Bacnotan, La Union, and proceeded to Barangay Nagsabaran, Bacnotan, La Union to visit his friend Ricardo Obaña. Pajarit found Obaña in front of the Day Care Center with Cornelio Ablao, Carlito Obaña, Orlando Tabafunda and Arturo Gumangan. They decided to have a drinking spree and seated themselves in a round table, with Pajarit facing the east. Obaña bought San Miguel gin and half a gallon of the local wine "*basi*." Pajarit noticed the appellant seated nearby, and invited him to join the group. The appellant obliged and drank wine. He offered a drink to Tabafunda but the latter refused. Momentarily, the appellant left and went to their house, which was only about fifty (50) meters away. He returned shortly, and seated himself near where Pajarit, Tabafunda and their friends were drinking.

Meanwhile, Tabafunda left the table and walked towards the direction of the north, only about four to five meters, to urinate. Tabafunda was on the northwestern side of Pajarit. The appellant, who was now armed with a handgun, stood up, followed Tabafunda. Gumangan could only watch as the appellant shot Tabafunda from behind. Pajarit turned towards where the gunshot came from and saw the appellant lowering his hand holding a firearm.^[4] Pajarit, likewise, saw Tabafunda running away. The appellant, still holding his gun, followed Tabafunda but left when the latter fell to the ground, face down, blood oozing from the left side of his back below his shoulder.^[5]

The matter was reported to Barangay Captain Pepito Onido, who reported the incident to the Bacnotan police station. Municipal Health Officer Felicidad Ledda performed an autopsy on the cadaver of the victim and signed a post-mortem examination report containing the following findings:

1. Gunshot wound, multiple (#9), upper back, L MCL in cluster approximately about 1-1.5 cms. apart, with a wound entrance measuring approximately 0.7 cm., with an average depth of about 2 cms.

The other 2, with a wound entrance measuring about 1.5 cms. with a depth of 1.5 cms. directed to the front and slightly downwards, injuring the left lower lobe, lung.

2. Hemothorax, L, massive.

Note: 3 slugs were recovered inside L thoracic cavity.

Conclusion: The cause of death is hemorrhage sec. to multiple GSW.^[6]

The Case for the Appellant

The appellant testified that Pajarit, Tabafunda and himself, along with several other companions, were having a drinking spree. They invited Tabafunda to join them, but he refused. Momentarily, Tabafunda stood up and urinated nearby. Tabafunda then called the appellant and told the latter that he wanted to say something. When the appellant approached Tabafunda, the latter faced him, put his right hand on his shoulder and, with his left hand, poked a gun at the appellant. The appellant then held Tabafunda's right hand which held the gun, and grappled for the possession of the weapon. Tabafunda then punched him on the face. The appellant managed to wrest the gun away, and when Tabafunda turned his back, the gun accidentally fired once. The appellant did not know if someone was hit, but he heard Tabafunda cry in pain and saw him run away. The appellant then threw away the gun. When he saw that Tabafunda's companions had stood up, he became afraid that he would be attacked. The appellant fled from the place, towards the direction where Tabafunda had earlier run.

The appellant also recounted that he surrendered to the police authorities on March 3, 1995 in the company of Barangay Captain Pepito Onido. He claimed that he had no misunderstanding with Tabafunda and with those with whom he was drinking; hence, he had no motive to kill the victim.

After trial, the court rendered judgment convicting the appellant of murder qualified by treachery. The decretal portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring the accused RODOLFO TUVERA y NERI guilty beyond reasonable doubt of the crime of MURDER as defined and penalized in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, Sec. 6, and thereby sentences said accused to suffer the penalty of *RECLUSION PERPETUA* TO DEATH, and indemnify the heirs of the victim in the amount of P50,000.00.

SO ORDERED.^[7]

The Present Appeal

The accused, now the appellant, assails the decision of the trial court contending that:

I

THE LOWER COURT ERRED IN FINDING THAT THERE WAS TREACHERY IN THE COMMISSION OF THE CRIME.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER.^[8]

The appellant contends that the prosecution failed to prove that he shot the victim and that even if he did so, the prosecution failed to prove the qualifying circumstance of treachery. He asserts that, as gleaned from the testimony of Pajarit and Gumangan, they did not actually see the appellant shoot the victim. He avers that the victim started the fight by poking his gun at him after he refused the victim's invitation to drink because the latter was insulted by his rejection. The bare fact that the gunshot wound was at the back of the victim is not conclusive proof of treachery. He avers that the victim was shot at the back because immediately after he (the appellant) wrested possession of the gun, the victim suddenly turned his back towards him and the gun suddenly fired.

For its part, the Office of the Solicitor General (OSG) asserts that the prosecution was able to prove treachery, thus:

First, prosecution witness Arturo Gumangan was firm in his assertion that appellant shot the victim at the back while the latter was urinating (TSN, September 17, 1997, pp. 8-9).

Second, the aforementioned attack from behind the victim is supported by the Post Mortem Examination Report issued by Dr. Felicidad Ledda who found that the victim's cause of death was due to a gunshot wound at the back (Exh. "F").

Third, the attack on the victim was without the slightest provocation on his part.

Fourth, to insure the execution of the act complained of, appellant launched the attack from behind and even appellant's companions were caught off-guard [**People v. Carpio, 282 SCRA 23 (1997)**]. What is decisive in the mode of attack from behind made it impossible for the victim to defend himself or to retaliate [**People v. Jose, 324 SCRA 197 (2000)**].^[9]

The Court's Ruling

The contentions of the appellant have no merit.

The prosecution adduced proof beyond reasonable doubt that the appellant shot the victim while the latter was urinating. Arturo Gumangan testified that he saw the appellant follow the victim and shoot the latter from behind, at a distance of about seven (7) meters. Even as the victim fled from the place where he was shot, the appellant followed him and left only after the victim had fallen to the ground, on the verge of death. The testimony of Gumangan reads:

Q And while you were drinking as you said, do you recall if there was an unusual thing that happened?

A There was, Sir.

Q What was that?

A The thing that happened to Orlando Tabafunda.

Q What do you mean that happened to Orlando Tabafunda?

A He was shot, Sir.

Q Where exactly, at what place was Orlando shot?

A On the north side, Sir.

Q How far was he in the table around you, where Orlando Tabafunda was shot?

A From here up to the western wall of the courtroom, a distance of about seven (7) meters, more or less.

Q Where did Orlando Tabafunda go when you said that he was shot seven (7) meters from the table?

A He went to urinate, Sir.

Q In relation of (sic) the table, where was Orlando Tabafunda shot?

A Northwest, Sir.

Q And you said that Orlando Tabafunda went to urinate, what did he do to you when he went to urinate, what actually did he do?

A I saw him actually urinated.

Q In relation to the table, where did you position yourself?

A On the eastern part of the table, Sir.

Q When you said east somewhere north, to what direction were you facing?

A I was facing northwest, Sir.

Q And you said that Orlando Tabafunda was urinating, to what direction was he facing at the time?

A Northwest, Sir.

Q How about the accused Rodolfo Tuvera, in relation to the place where Orlando Tabafunda was urinating, where was he?

A He was then sitting here. (Witness pointing to the south of the table)

Q What did Rodolfo Tuvera do, if any, when Orlando Tabafunda went to urinate?

A There was, Sir.

Q Could you tell the Court what he did?

A He shot Orlando Tabafunda, Sir.

Q Alright, where was Rodolfo Tuvera in relation to Orlando who was then urinating when you said Rodolfo Tuvera shot Orlando?

A Behind Orlando Tabafunda, Sir.

Q And when Rodolfo Tuvera went behind Orlando, did you see him?

A Yes, Sir.

Q And could you demonstrate to the Court how Rodolfo Tuvera positioned himself at the back of Orlando Tabafunda when he shot him?

A Yes, Sir.

COURT INTERPRETER:

Like this, witness standing right to the west raises his right hand extend forward in front parallel to the ground.

FISCAL TECAN:

Q How many times did Rodolfo Tuvera shoot Orlando Tabafunda?

A Once only, Sir.