

FIRST DIVISION

[G.R. No. 152618, August 12, 2004]

JOHNNY REY TUBURAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

QUISUMBING, J.:

This petition for review assails the **Decision**^[1] dated February 28, 2002 of the Court of Appeals in CA-G.R. CR No. 24375, which affirmed with modification the Decision^[2] dated December 13, 1999 of the Regional Trial Court of Iloilo City, Branch 30, in Criminal Case No. 45575.

The trial court found petitioner Johnny Rey Tuburan (Johnny Rey) guilty beyond reasonable doubt of homicide and sentenced him to suffer the indeterminate penalty of eleven (11) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He was also ordered to pay the heirs of the victim the sum of P60,000 as indemnity; P20,000 as burial expenses and P1,615.45 in hospital expenses as actual damages; P540,000 representing the victim's expected income; and P100,000 as moral damages.

The conviction stemmed from the Information filed against Johnny Rey, as follows:

That on or about the 19th day of August 1995, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a knife, with deliberate intent and without any justifiable motive, with treachery, with evident premeditation and with a decided purpose to kill, did then and there wilfully, unlawfully and criminally stab, hit and wound Jose Siman with the said knife with which the said accused was provided at the time, thereby causing upon the latter stab wound on the left back portion of his body, which resulted in his death few moments thereafter.

CONTRARY TO LAW.^[3]

Upon arraignment, Johnny Rey pleaded not guilty and trial ensued thereafter.

The first witness for the prosecution was DR. TITO DOROMAL, a medico-legal officer of the Philippine National Police in Iloilo City.^[4] He testified that he performed the autopsy on the cadaver of Jose Siman and found that the entrance wound was located at the left back portion of the abdomen and then it went in, hitting the left kidney and left inguinal artery.^[5] He testified that the cause of death of the victim was hemorrhage secondary to stab wound.^[6]

The next witness, EDWIN JANAY, testified that on the night when the stabbing took place, he was with the victim on a drinking spree with Alfredo Begafria,^[7] Rodolfo Comoda, and Federico Sumagaysay; that when he and the victim went out to answer nature's call, he saw Johnny Rey Tuburan suddenly run and stab deceased Jose Siman with a knife and then dash towards the highway;^[8] that he was then about one (1) arm's length away from the victim; and that there were electric lights on the street.^[9]

The victim's wife, CELSA SIMAN, testified that her husband was employed as an electrician at the Amigo Terrace Hotel for the past eleven (11) years until his death on August 19, 1995, earning a monthly income of P4,500. She had likewise been working in the same hotel for the past twelve (12) years as housekeeping assistant supervisor. She also testified that she incurred hospital expenses amounting to P1,615.45 and burial costs in the total amount of P20,000.^[10]

The next witness for the prosecution, JESUS MERAS, a police officer, testified that on August 19, 1995 at around 7:30 in the evening, he saw Johnny Rey drinking whiskey in the store of Salvador Silva at *Barangay* Sambag, Jaro, Iloilo. The same night, when he went back to the store to buy another cigarette at around 8:00-8:30 p.m., Johnny Rey was no longer there.^[11] He said Johnny Rey had been his neighbor for three years and he knew him to be a troublemaker when drunk.^[12]

The sole witness for the defense was petitioner JOHNNY REY TUBURAN. He denied he stabbed Jose Siman at around 9:45 in the evening of August 19, 1995 in the Salakot Refreshment.^[13] He said he was not anywhere near the place. He claimed that Edwin Janay, the prosecution eyewitness, implicated him because Edwin was the first cousin of Alfredo Begafria who was stabbed by the brother of Johnny Rey, Julius Tuburan. Johnny Rey claimed that he reached home from the garage of the owner of the jeep he was renting around past 11:00 in the evening of August 19.^[14] He stated that at about 10:00 p.m. he was just entering the said garage of Jose Porras, at *Barangay* Tanza, Esperanza, Iloilo City. He claimed that he only learned that his brother Julius stabbed Alfredo Begafria and that Jose Siman was also stabbed, from the radio broadcast which he heard when he arrived at the house of Porras the next morning to get the jeep.^[15] He claimed that the house where he was staying in *Barangay* Sambag, Jaro, was about five kilometers away from the Salakot Refreshment where the incident happened.^[16]

A rebuttal witness, GERARD BEGAFRIA, testified that on the night when Jose Siman was killed, he saw Johnny Rey. He was running and carrying a long knife.^[17] He also testified that on October 30, 1997, the police asked him to identify Johnny Rey and when they found him, Johnny Rey jumped from the vehicle he was driving and fled. Later, the police caught up and arrested him.^[18]

On December 13, 1999, the trial court rendered a judgment finding Johnny Rey guilty of homicide, and not murder, as charged in the Information, because the prosecution failed to convince the trial court that Johnny Rey killed his victim with treachery and evident premeditation. The dispositive portion of said **judgment** reads:

CONSIDERING ALL THE FOREGOING, the Court believes that the accused Johnny Rey Tuburan is GUILTY beyond reasonable doubt of the crime of homicide and hereby sentences him to suffer an indeterminate penalty of ELEVEN (11) YEARS OF *PRISION MAYOR* AS MINIMUM to SEVENTEEN (17) YEARS AND FOUR (4) MONTHS OF *RECLUSION TEMPORAL* AS MAXIMUM.

The accused is further ordered to pay the heirs of Jose Siman, Celsa Siman and her two children, namely, Juliet Ann Siman and Liza Joy Siman the amount of P60,000.00 as indemnity for the death of Jose Siman; P20,000.00 (burial expenses) and P1,615.45 (hospital expenses) as actual damages; P540,000.00 representing his expected income for ten (10) years considering that he died at the age of 35 years old and P100,000.00 as moral damages.

SO ORDERED.^[19]

Johnny Rey seasonably filed his appeal alleging reasonable doubt and reiterated his defense of denial and alibi.

The Court of Appeals affirmed Johnny Rey's conviction with modification. It found that treachery attended the killing because the attack was sudden and from behind, leaving the victim with no opportunity to defend himself. The dispositive portion of its decision reads:

WHEREFORE, the appealed decision is hereby AFFIRMED with the following modifications:

1. The accused-appellant is hereby found guilty of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua*.
2. The award of P100,000 as moral damages in favor of the heirs of Siman is reduced to P50,000.00.

SO ORDERED.^[20]

Aggrieved, Johnny Rey now comes to this Court praying for a reversal of his conviction or, in the alternative, affirmation of the decision of the trial court finding him guilty of homicide, not murder.

Two issues are now before us for resolution: (1) Was Johnny Rey's guilt proven beyond reasonable doubt? and (2) Did the qualifying circumstance of treachery attend the killing to qualify it to murder?

Johnny Rey claims that eyewitness Edwin Janay did not see who actually stabbed Jose Siman because Edwin Janay testified on cross-examination that he first saw Johnny Rey running away and, thereafter, Jose Siman collapsing. Johnny Rey likewise claims that the finding of treachery by the Court of Appeals is not supported by the facts of the case. He cites *People v. Amamangpang*,^[21] where we held that treachery cannot be considered a qualifying circumstance where the eyewitness failed to see the initial attack.

For the appellee, the Office of the Solicitor General (OSG) argues that Johnny Rey

was positively and consistently identified by eyewitness Edwin Janay as the person who killed Jose Siman. The testimony of Janay was credible, according to the OSG, because the witness was only an arm's length away from the victim when the stabbing took place and the situs criminis was brightly illuminated by street lamps.

The OSG further contends that the Court of Appeals properly convicted Johnny Rey of murder. The OSG insists that treachery obtains when, as borne out by the records, Johnny Rey, coming from nowhere and without any word, suddenly stabbed the unsuspecting victim from behind, while the latter was urinating, leaving the victim in no position to defend himself.

After careful scrutiny of the evidence on record, on the issue of Johnny Rey's guilt, we are in agreement that in the absence of strong and convincing evidence, his defense of alibi cannot prevail over the positive identification of the assailant by an eyewitness who has no ill motive to testify falsely.^[22]

The defense contends that Johnny Rey should be acquitted because the sole eyewitness, Edwin Janay, did not see him actually stab Jose Siman. We note that when the stabbing took place, the witness testified he was only an arm's length away from the victim, and the scene of the crime was brightly illuminated by street lights. Under these circumstances, there could be no doubt as to the positive identification of the assailant by the eyewitness. The witness testified thus:

Q: How about this Jose Siman while you were urinating, what was he doing?

A: He was also urinating.

Q: This Jose Siman while urinating, how far was he from you while you were urinating?

A: He was about one (1) arm's length.

. . .

Q: While this Jose Siman was urinating, what happened next?

A: While Jose Siman was urinating, Johnny Rey Tuburan suddenly ran and stabbed Jose Siman.^[23]

. . .

Q: Were there also electric lights that night?

A: Yes, there were electric lights on the street.

Q: How would you be able to know that it was Johnny Tuburan who stabbed Jose Siman?

*A: Because I knew him and he was known in that place.
(Italics supplied.)*^[24]

The identification by the eyewitness that Johnny Rey is the assailant who stabbed the victim, Jose Siman, stands uncontroverted despite the self-serving denial by petitioner and his weak attempt to foist an alibi.

But did treachery attend the killing, thus qualifying the crime to murder? We are not fully convinced that it did. Our doubt constrains us to review this matter in detail.