

## EN BANC

**[ G. R. No. 143817, October 27, 2003 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEJANDRO  
BAJAR, APPELLANT.**

### DECISION

#### PER CURIAM:

For the killing of his father-in-law, Aquilio Tiwanak, appellant Alejandro Bajar was found guilty beyond reasonable doubt of the crime of murder and sentenced to suffer the penalty of death in the 17 July 2000 Decision<sup>[1]</sup> of the Regional Trial Court of Misamis Oriental, Branch 18, in Criminal Case No. 99-942.

Alejandro was charged under an amended information whose accusatory portion reads as follows:

That on or about the 16th day of August 1999, at about 8:00 o'clock in the evening, at sitio Mohon, Barangay Mambayaan, Municipality of Balingasag, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, then armed with a sharp bolo, with intent to kill, and with evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously stab one 85 year old Aquilio Tiwanak, accused's father-in-law, hitting him on the different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of Aquilio Tiwanak in such amounts as may be allowed by law.

The aggravating circumstances of dwelling, taking advantage of superior strength, disregard of the respect due the victim on account of his age, habitual intoxication and relationship attended the commission of the crime.

CONTRARY to Article 248 of the Revised Penal Code, in relation [to] Article 14, paragraphs 3 and 15, and Article 15 of the Revised Penal Code.<sup>[2]</sup>

Upon his arraignment on 8 February 2000, Alejandro pleaded not guilty, and trial thereafter ensued. The prosecution presented as witnesses Alejandro's wife, Lolita Bajar, and their two children, Ana Bajar Rabor and Alma Luna Bajar, to testify on the events surrounding the commission of the crime.

On 16 August 1999, Ana Bajar Rabor, a resident of Wao, Bukidnon, visited her parents in their house in Sitio Mohon, Mambayaan, Balingasag, Misamis Oriental.<sup>[3]</sup> At around 3:00 p.m. of that day, her father Alejandro arrived home already very drunk. At 5:00 p.m., Ana's mother, Lolita Bajar, suggested that since her father was

very drunk, she should sleep at the house of her maternal grandfather, the victim Aquilio,<sup>[4]</sup> just one hundred meters away from the house of Lolita.<sup>[5]</sup>

That night, at around 8:00 p.m., Ana was listening to the radio while lying on the floor of the bedroom in his grandfather's house. With her were her 1-year-old daughter, Maybe Ann; her 11-year-old sister, Alma Bajar; and her 2-year-old niece, May Joy Labandia.<sup>[6]</sup> She was lying on the side of a wall that separated the bedroom from the sala. This wall was made of bamboo splits with holes or gaps in between such that she could clearly see her grandfather lying on his bed in the sala.<sup>[7]</sup> A gas lamp lit up the bedroom, while another hung on the wall near the foot of the bed of her grandfather.<sup>[8]</sup>

The scenario was broken by the voice of Alejandro, who was still obviously very drunk, inquiring whether his wife was in the house. While speaking his demand, he pushed the main door to gain entry into the house, but he was not able to enter. Aquilio answered that his wife was in their (Alejandro's) house. Alejandro accused Aquilio of lying and of hiding his daughter. Aquilio told Alejandro to go home.<sup>[9]</sup> Silence thereafter ensued.

Suddenly, Ana heard a sound and saw that Alejandro was able to enter the house through the kitchen door. He was carrying a bolo and approaching her grandfather. She saw her father hack her grandfather, who was lying on the bed. She got up, ran towards the sala, and saw her father still hacking his grandfather. She yelled for her father to stop. While he was being stabbed and attacked, Aquilio stood up to embrace his son-in-law. Ana shouted for help as she held down the hand which her father used to wield the bolo.<sup>[10]</sup> Alma witnessed these two last scenes. She saw her sister Ana trying to stay the hand of their father which held the bolo, and Aquilio embracing Alejandro while being hacked by the latter.<sup>[11]</sup>

Lolita, having heard the cries of her daughter, came to her father's house. There, she saw Aquilio embracing Alejandro. She then instructed Ana to hold on to Alejandro while she looked for a piece of wood with which to hit him. With the piece of wood she found, she struck Alejandro's head three times. Alejandro fainted. By this time, Aquilio slowly sank down to the floor<sup>[12]</sup> and drew his last breath.<sup>[13]</sup> Lolita forthwith went outside to seek the help of neighbors. Ana's uncle, Tating Aganap, arrived and later brought two policemen, who handcuffed Alejandro.<sup>[14]</sup>

Lolita also testified that she spent P30,000 for her father Aquilio's burial expenses. She felt sad about the demise of her father and described how her sorrow could not be quantified by monetary consideration. To prove the age of her father,<sup>[15]</sup> Lolita presented the latter's Identification Card from the Veterans Federation of the Philippines,<sup>[16]</sup> which indicated that he was born on 12 May 1914.<sup>[17]</sup> Aquilio was then 85 years old.

The prosecution's last witness was Dr. Angelita Enopia, the Health Officer of Balingasag, Misamis Oriental. She confirmed the findings she made on the postmortem examination she conducted on the cadaver of Aquilio<sup>[18]</sup> and on the death certificate she issued.<sup>[19]</sup> She claimed that Aquilio suffered three big wounds: one on the maxillary area on the right cheek which was slanting towards the mouth,

one on the anterior chest left side downwards to the armpit, and one straight to the scapular area at the back. She opined that the injuries were probably caused by a sharp object such as a bolo or a knife.<sup>[20]</sup>

The defense presented Alejandro as its lone witness. Alejandro testified that on the date and time in question, he left his two daughters, Ana and Alma, and his two grandchildren, Mary Joy and Ann-Ann, at his house. He proceeded to his father-in-law's house to look for his wife. Upon arrival, he greeted Aquilio with respect: *"Pa, good evening."* The latter replied that Lolita was not there and invited him (Alejandro) to go up and see for himself. Alejandro went up, and not finding his wife, said: *"She is not here Pa."* Aquilio angrily retorted: *"Everytime you are drunk you come here to ask me."* Aquilio then suddenly clubbed Alejandro on the head with a 2 x 3 coco lumber he saw near the door.<sup>[21]</sup>

Alejandro then touched his head, and saw blood on his hand. He felt dizzy. Seeing that Aquilio was about to attack him again, he drew out his hunting knife and defended himself by moving his hand from the right to left. He felt he hit something before he lost consciousness. He regained consciousness at the Northern Mindanao Medical Center and discovered that a policeman brought him there for the treatment of his head wound.<sup>[22]</sup> He was found to have sustained "sutured wound 4 cm. left temporo-occipital area; lacerated wound 3 cm. left alteral neck area and confluent abrasion 3 pts. 1 x 1 cm. 2 x 1 cm. and 1 x 1 cm., left knee," with seven days healing period.<sup>[23]</sup>

Alejandro was later brought to the Balingasag Municipal Jail, where he was visited by his two children and wife. On their respective visits, they informed him that Aquilio was already dead. He cried when he learned the news, and begged for his wife's forgiveness.<sup>[24]</sup>

In its decision of 17 July 2000, the trial court found Alejandro guilty beyond reasonable doubt of the crime charged against him, with treachery as the qualifying circumstance. It concluded that his uncorroborated and unsubstantiated self-defense theory was self-serving and could not stand over the positive, categorical, spontaneous, and straightforward declarations of his daughters and wife on how Aquilio was killed. It was convinced that "no wife in her right mind would testify in a heinous crime against her husband, and no daughter in her right mind would testify in a heinous crime against her father, unless the crime charged is true."<sup>[25]</sup> Considering the presence of the generic aggravating circumstances of dwelling, disregard of the respect due to the victim by reason of his age, relationship, and habitual intoxication, the trial court sentenced Alejandro to suffer the penalty of death and to pay the heirs of the victim P30,000 as burial expenses; P50,000 as death indemnity; and P25,000 as exemplary damages.

The case is now before us on automatic review.<sup>[26]</sup>

In his Brief, Alejandro claims that all the elements of self-defense are present in this case and that he is, therefore, entitled to an acquittal. There was lack of sufficient provocation on his part, as he respectfully greeted Aquilio and mildly asked him about the whereabouts of his wife. Hence, he was surprised when Aquilio very angrily answered him and suddenly clubbed him on the head with a piece of wood,

causing wounds on his head. It was when he saw that Aquilio was about to club him again that he took out his hunting knife, which was the only weapon available to him to parry the imminent blows by Aquilio. There was, therefore, reasonable necessity of the means he employed to prevent or repel the unlawful aggression.

Alejandro assails the appreciation of treachery as a qualifying circumstance in that the alleged eyewitness Ana could not have seen how the attack commenced. Ana admitted that she was not with Aquilio or beside him when he (Alejandro) allegedly entered the house through the kitchen door and stabbed the unsuspecting Aquilio. In fact, she claimed that she was lying on the bedroom floor, with her feet toward the door, about a meter from the wall which divided her room from the sala where her grandfather lay. Even if the wall had gaps, she was still four to five meters from her grandfather's bed.<sup>[27]</sup> Further, her testimony on cross-examination was unclear about whether she witnessed the approach of Alejandro, or whether she only saw how Alejandro, later on, thrust his hunting knife to parry Aquilio's attack. Treachery was, therefore, not proved because there was no direct evidence that the commencement of the alleged attack on Aquilio was sudden and unexpected. In addition, even if treachery was present, it was not specifically alleged in the information as qualifying the killing of the victim into the crime of murder. Hence, it could only be appreciated as a generic aggravating circumstance.

Alejandro also maintains that, other than the fact that Aquilio was then 85 years old, no specific fact or circumstance was proved showing disregard of age. In the same vein, there was no clear proof that his alleged intoxication was habitual or intentional.

The Office of the Solicitor General (OSG) counters with these propositions: (1) the uncorroborated plea of self-defense was inconsistent with the established evidence on record; and (2) the qualifying circumstance of treachery and the aggravating circumstances of intoxication, dwelling, disrespect of the victim on account of his age, and relationship were properly appreciated. The OSG argues that treachery was properly, validly, and sufficiently alleged in the information. Citing *People v. Aquino*,<sup>[28]</sup> it claims that the words "aggravating/qualifying," "qualifying," "qualified by," "aggravating or aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the information. Besides, Alejandro failed to raise during the trial this alleged defect in the information. Such was a clear indication that the information properly forewarned him that treachery attended Aquilio's killing. The OSG then prays for the affirmance *in toto* of the questioned decision of the trial court.

We affirm Alejandro's conviction.

Settled is the rule that when the credibility of witnesses is in issue, appellate courts generally defer to the findings of the trial court, considering that the latter is in a better position to decide the question after having heard the witnesses and observed their deportment and manner of testifying during the trial. There are some exceptions to this rule, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which, if considered, would affect the result of the case. Not one of these exceptions is present in this case.<sup>[29]</sup>

We affirm, therefore, the trial court's imprimatur of credence to the testimonies of prosecution witnesses Lolita, Ana and Alma (all surnamed Bajar), who corroborated each other's testimonies on material points. Ana clearly saw through the gaps in the bamboo walls and by going to the sala how her father stealthily entered her grandfather's house, surreptitiously approached his sleeping grandfather, and surprised the latter to wakefulness by his bolo hackings. Lolita heard and then responded to Ana's shouts for help. Seeing how Ana was trying to prevent her father from further attacking her grandfather, Lolita helped her by clubbing her husband's head with a piece of coconut lumber. Ana and Alma corroborated their mother's account on this matter.

Thus, we agree with the trial court's observation that Alejandro's uncorroborated self-defense theory could not stand against the positive, categorical, spontaneous, and straightforward declarations of his daughters and wife. A plea of self-defense cannot be justifiably appreciated, especially when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.<sup>[30]</sup>

By invoking self-defense, Alejandro had the burden of proving the existence of the following essential requisites: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the accused. This he miserably failed to do. In fact, the records clearly establish that he was the aggressor. Without unlawful aggression on the part of the victim, there can be no viable self-defense.<sup>[31]</sup>

Besides, Alejandro's version of their family tragedy invites only misgiving. His allegation that Aquilio suddenly clubbed him with a piece of coco lumber he saw on the side of the door is not only doubtful. It was also refuted as fictitious by the prosecution witnesses' testimony that it was Lolita who looked for a piece of wood to thwart him from what seemed a continuous attack on Aquilio. His alleged use of the hunting knife was likewise disproved by the prosecution witnesses who testified to having seen him use a bob to attack the defenseless Aquilio.

Since an unsubstantiated self-defense is similar in many respects to a bare denial, we can say that as between categorical testimonies that ring of truth on one hand, and an unsubstantiated self-defense on the other, the former is generally held to prevail.<sup>[32]</sup> The veracity of this legal principle is enhanced in this case by the fact that the wife and children of Alejandro were the ones who testified against him.

We shall now discuss the trial court's appreciation of the different aggravating circumstances.

For treachery to be appreciated, the offender must have employed means, methods, or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make.<sup>[33]</sup> Two elements must concur: (1) the means of execution employed gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.<sup>[34]</sup>

Treachery was proved by Ana's testimony. She narrated that there was an ensuing