

## THIRD DIVISION

[ G.R. No. 140513, November 18, 2003 ]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BIENVENIDO DE LA CRUZ Y MAHUSAY, APPELLANT.**

### D E C I S I O N

**CORONA, J.:**

On appeal is the decision,<sup>[1]</sup> dated August 23, 1999, of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Case No. 8381-97, convicting herein appellant Bienvenido de la Cruz y Mahusay of murder and sentencing him to *reclusion perpetua* and to indemnify the heirs of the victim in the sum of P50,000.

The information charging appellant of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659, read:

That on or about the 25<sup>th</sup> day of December, 1996, in the afternoon, at the road of sitio Narolang, barangay Laligan, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and evident premeditation, armed with a bolo, did then and there wilfully, unlawfully and criminally attack, assault and stab ALFREDO TIMGAS, hitting and inflicting upon his person the following wounds, to wit:

- stabbed (sic) wound

which caused the instantaneous death of ALFREDO TIMGAS to the damage and prejudice of the legal heirs of ALFREDO TIMGAS in such amount as may be allowed by law.<sup>[2]</sup>

Arraigned on April 22, 1997, appellant, assisted by counsel, pleaded not guilty. Thereafter, trial on the merits ensued.

The facts, as found by the trial court, follow.

A cockfight was held in the afternoon of December 25, 1996 in Sitio Narolang, Barangay Laligan, Valencia, Bukidnon. One of the gamecocks belonged to Alfredo Timgas and its gaff was installed by his brother-in-law, herein appellant Bienvenido de la Cruz.<sup>[3]</sup> Unknown to Alfredo, however, Bienvenido placed his bet on the gamecock of his opponent. When Alfredo's gamecock won, he was told to collect the bet from Bienvenido. Feeling betrayed, Alfredo confronted his double-dealing brother-in-law and a fistfight ensued between them. The timely intervention of cooler heads pacified and prevented them from inflicting serious injuries on each other.<sup>[4]</sup>

Alfredo later decided to play billiards near a basketball court. On the other hand, Bienvenido went home but returned shortly thereafter with a bolo and headed towards where Alfredo was. A friend warned Alfredo of danger as Bienvenido was by then only about ten meters away. Alfredo tried to run away but, to his misfortune, he tripped on grass called *mani-mani*. Bienvenido caught up with him and stabbed him near the right armpit, penetrating his stomach. Bienvenido then fled, leaving his bolo impaled in the victim's torso.<sup>[5]</sup>

In his defense, Bienvenido claimed that he was requested by the victim's brother, Agustin, to install the gaff on the gamecock. After Alfredo won the cockfight, he invited Bienvenido to a drink but the latter refused. Alfredo got mad and started punching him. Alfredo stopped only after Bienvenido fell to the ground. At that instance, a certain Oning Dagayday approached him and advised him to leave immediately as Alfredo's brothers might get even with him.<sup>[6]</sup> He noticed that Oning was holding a bloodied bolo and saw Alfredo grasping his blood-soaked armpit. He then hurried to the house of barangay councilor Ignacio de la Cruz who accompanied him to the barangay captain to seek protection. From there, they proceeded to the police station to surrender.<sup>[7]</sup>

On August 23, 1999, the trial court rendered a decision, the dispositive portion of which read:

WHEREFORE, judgment is hereby rendered, finding accused Bienvenido de la Cruz GUILTY beyond reasonable doubt of the offense of murder as qualified by treachery punishable under Republic Act No. 7659. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim Alfredo Timgas the sum of P50,000.00

SO ORDERED.<sup>[8]</sup>

In this appeal, Bienvenido de la Cruz raises the following assignments of error:

#### I

THE TRIAL COURT ERRED IN NOT APPRECIATING THE ACCUSED-APPELLANT'S SINCERITY AND GOOD FAITH IN SURRENDERING HIMSELF TO KAGAWAD IGNACIO DE LA CRUZ AND THE POLICE AUTHORITIES WHICH ONLY SHOWS THAT HE IS REALLY INNOCENT OF THE CRIME CHARGED.

#### II

EVEN ASSUMING THAT HE IS INDEED GUILTY OF THE CRIME CHARGED, ACCUSED-APPELLANT'S ACT OF UNCONDITIONALLY SURRENDERING HIMSELF TO THE POLICE AUTHORITIES ENTITLES HIM TO THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER UNDER ARTICLE 13(7) OF THE REVISED PENAL CODE, AS AMENDED, WHICH THE COURT A QUO ERRONEOUSLY FAILED TO APPRECIATE.

#### III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE KILLING OF  
THE HEREIN VICTIM WAS ATTENDED WITH TREACHERY.<sup>[9]</sup>

Appellant contends that: (a) the trial court overlooked the fact that he surrendered voluntarily to the authorities, hence, this mitigating circumstance should have been appreciated in his favor; (b) the fact that he did not escape clearly indicated his innocence for, had it been otherwise, he would not have been confident enough to surrender and (c) assuming that he was guilty of killing the victim, treachery was erroneously appreciated by the trial court since prosecution witnesses Agustin Timgas and Ricky Aldion testified that the victim was forewarned of the impending attack and, in fact, had the chance to flee.

We affirm appellant's conviction for killing Alfredo Timgas. His bare denial cannot prevail over the positive identification and eyewitness account of the crime by Agustin Timgas, elder brother of the victim, during the trial.<sup>[10]</sup> Agustin testified on the subsequent events that transpired after Alfredo and Bienvenido had been pacified:

Q You said Bienvenido de la Cruz got a bolo, did you see the bolo?

A Yes, I saw.

Q Now did he carry the bolo?

A The bolo was inserted on its scabbard and which was tied around his waist.

Q What did Bienvenido de la Cruz do next after having a bolo?

A He ran towards the basketball court.

Q And at the basketball court, what did he do?

A He unsheathed his bolo and thrust (sic) the bolo towards Alfredo who ran away.

Q When Alfredo ran away, what happened to him?

A Bienvenido de la Cruz chased him and because Alfredo's feet was (sic) trapped in grass called "mani-mani" he fell down and when he was about to rise up Bienvenido thrust (sic) his bolo to the body of Alfredo.

Q Was Alfredo hit?

A Yes, Sir.

Q Where was he hit?

A Here. (witness pointing to his right armpit)

Q You said that it exited here, where?

A The point of the bolo exited here. (witness pointing to the left side of his stomach)

Q Will you please demonstrate to the Honorable Court what was the actual position of Alfredo Timgas when he was stabbed by Bienvenido de la Cruz?

A When he was about to rise up on this position. (witness