

FIRST DIVISION

[G.R. No. 130506, February 28, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO R. JAKOALEM, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review of the decision of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, dated January 20, 1997, convicting accused-appellant Rolando Jakosalem of the crime of Murder, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim P50,000.00 as indemnity and to pay the costs.^[1]

On June 19, 1995, an information was filed against Rolando Jakosalem for the crime of Murder allegedly committed as follows:

That on or about the 10th day of December 1988, in the afternoon, at Poblacion, Municipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of superior strength, with intent to kill, by means of treachery, with the use of firearm, did then and there wilfully, unlawfully and criminally attack, assault and shoot ARTHUR TIBAYAN, inflict upon the latter mortal injuries which caused the instantaneous death of ARTHUR TIBAYAN, to the damage and prejudice of the legal heirs of ARTHUR TIBAYAN in such amount as may be allowed by law.

Contrary to and in violation of Article 248 of the Revised Penal Code.^[2]

Accused entered a plea of not guilty at his arraignment^[3] on July 28, 1995. After trial, the lower court rendered judgment on January 20, 1997 as follows:

WHEREFORE, the court finds the accused GUILTY beyond reasonable doubt as principal of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended. He is therefore sentenced to imprisonment of reclusion perpetua, to indemnify the heirs of his victim Arthur Tibayan the sum of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs.

The bail bond for his provisional liberty is hereby cancelled and he is ordered immediately confined in the Provincial Detention and Rehabilitation Center of Bukidnon.

SO ORDERED.^[4]

On December 10, 1988, at about 5:00 p.m., Noe Tuban was walking home from the post office of Maramag, Bukidnon when he saw a boy being beaten up by two policemen, whom he identified as accused and Nelson Cayetona.^[5] Accused blindfolded the boy with a handkerchief and shot him on the chest. As the boy was about to fall down, Nelson Cayetona also shot him.^[6] Then, accused told the onlookers that he will shoot them.^[7] Noe Tuban ran away and went home. He told his mother what had happened. Noe's mother just told him not to go out anymore.^[8]

The body of the victim, who turned out to be seventeen year-old Arthur Tibayan, was brought to the National Bureau of Investigation regional office in Cagayan de Oro City. Dr. Tammy Uy, the NBI Medico-Legal Officer who performed the autopsy, found three gunshot wounds of entrance, two gunshot wounds of exits, and one graze gunshot wound.^[9]

On the other hand, the forensic chemist, Bernabe Arenza, reported that based on his examination of the clothes worn by the victim at the time he was shot, the approximate distance of the gunman to the victim was between twenty to one hundred centimeters.^[10]

Meanwhile, the investigation conducted by the Maramag Police disclosed that Arthur Tibayan was shot by accused, a member of the force, because he allegedly stole a bicycle.^[11]

According to Leonarda Tibayan, the victim's mother, her family spent about P150,000.00 for the burial of her son. However, she failed to present the necessary receipts to substantiate the claim.^[12]

The trial court gave more weight to the testimonies of the prosecution witnesses, particularly that of the sole eyewitness, Noe Tuban, whose testimony was found to be credible and straightforward. He testified as follows:

A- I came out from the office because it was closed, and when I came out I saw a boy being boxed by a policeman.

Q- How many policemen who boxed that boy?

A- Two (2).

Q- Did you recognize these two policemen who boxed this Boy?

A- Yes Sir, Jakosalem and Cayetona.

Q- Now, you said these policemen Cayetona and Jakosalem boxed a Boy, was the Boy hit when they boxed him?

A- Yes Sir.

Q- What part of the body of the Boy was hit?
A- On this spot. (Witness pointing to his breast).

Q- Do you know how many times did these two policemen Cayetona and Jakosalem box this Boy?
A- Each of them boxed the Boy.

Q- And do you know the name of this Boy?
A- No Sir.

x x x

x x x

x x x

Q- Now, after these two policemen Jakosalem and Cayetona boxed the Boy, what happened next?
A- They blindfolded the Boy and shot him.

Q- Now, who blindfolded the Boy?
A- Jakosalem.

Q- Is he the same Jakosalem you just identified awhile ago?
A- Yes Sir.

Q- And what was that instrument used by Jakosalem in blindfolding the Boy?
A- Handkerchief.

Q- Now, when Jakosalem blindfolded the Boy, where was Cayetona?
A- He was on the side.

x x x

x x x

x x x

Q- After Jakosalem blindfolded the Boy, what happened next?
A- He shot the boy. (Witness pointing to accused Jakosalem).

Q- Who shot the Boy?
A- The first one who shot the Boy was Jakosalem.

Q- After Jakosalem shot the Boy, what happened next?
A- When the Boy was about to fall down, he was shot by Cayetona.

Q- When Jakosalem shot the Boy, was the Boy hit?
A- Yes Sir.

- Q- Where?
A- (Witness pointing to his breast about two [2] inches from the center).
- Q- How did you know that the Boy was hit right in that point you just pointed?
A- Because there was blood.

x x x

x x x

x x x

- Q- After Cayetona and Jakosalem shot the Boy, what happened next?
A- We were threatened by them that they will shoot us.
- Q- Who threatened you?
A- Jakosalem.^[13]

Upon receipt of the decision, accused filed a motion for reconsideration, but the same was denied by the trial court on March 12, 1997. Hence, this appeal based on the following assigned errors:

I

THAT THE HONORABLE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE SOLE EYEWITNESS, NOE TUBAN.

II

THAT THE HONORABLE COURT A QUO ERRED IN TAKING INTO CONSIDERATION THE ORDER IN PRELIMINARY INVESTIGATION.

III

THAT THE HONORABLE COURT A QUO ERRED IN ITS APPRECIATION OF THE ORDER IN THE PRELIMINARY INVESTIGATION.

IV

THAT THE HONORABLE COURT A QUO ERRED IN HOLDING THE DEFENSE WITNESSES LACKED CREDIBILITY.^[14]

Accused-appellant alleges that there are inconsistencies between the testimony of Noe Tuban and the physical evidence, particularly the autopsy report and forensic chemist's findings. He claims that the autopsy report *prima facie* places the scene of the crime at Lumbi, Musuan, Maramag, Bukidnon, and not Poblacion, Maramag, Bukidnon as testified by Tuban. The direction of the gunshot was, according to the forensic evidence, from the victim's back and not from the front, as testified also by eyewitness Tuban. Accused-appellant further claims that the eyewitness account that the victim was in long pants did not jibe with the photograph of the victim wearing short pants at the time of the shooting.^[15]