

## SECOND DIVISION

[ G.R. No. 139970, June 06, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY DELA CRUZ Y QUIMPO, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

Before us is the appeal from the decision<sup>[1]</sup> dated July 7, 1999, of the Regional Trial Court of Kalibo, Aklan, Branch 2, in Criminal Case No. 5270, convicting accused-appellant JIMMY DELA CRUZ y QUIMPO of murder and sentencing him to *reclusion perpetua*.

The Information against him alleged:

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses JIMMY DELA CRUZ y QUIMPO of Barangay Mobo, Kalibo, Aklan of the crime of MURDER, committed as follows:

That on or about the 1st day of September, 1998 in the evening, in Barangay Tigayon, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, with treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one ARNULFO INOCENCIO, inflicting upon the latter physical injuries, to wit:

EXTERNAL EXAMINATION:

- (+) Stabbed Wound, (L) MCL, Level of 6th Intercostal Space, 3 cm in length.

INTERNAL EXAMINATION:

- (+) Stabbed Wound, Anterior Pericardium, 3 cm
- (+) Stabbed Wound/Perforation of Right Ventricle, 3 cm
- (+) Blood, 50 cc Pericardial Space

as per Post-Mortem Examination Finding and Certificate of Death, respectively, issued by Segundo L. Anayan, Jr., M.D., Medical Officer III of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, copies of which are hereto attached as Annexes "A" and "B", and made as an integral part hereof, and which injuries sustained by the victim have caused his instant death.

That by reason of the unlawful acts of the accused, the heirs of the victim have suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW.<sup>[2]</sup>

On December 1, 1998 appellant, assisted by counsel de oficio, entered a plea of not guilty to the offense charged.<sup>[3]</sup> During the plea-bargaining stage, appellant proposed to plead guilty to the lesser crime of homicide, claiming to have acted in self-defense. However, the family of the victim rejected such offer. After his arraignment, trial ensued.

The prosecution presented the following witnesses, namely: Dr. Segundo Anayan, Jr., Jovelyn Felizario, Glen Cipriano, and SPO4 Dioscoro Tolentino.

DR. SEGUNDO ANAYAN, JR., Medical Officer III of Dr. Rafael S. Tumbokon Memorial Hospital testified that he conducted an autopsy on the body of the victim, Arnulfo Inocencio. He found that the victim suffered a single stab wound located two ribs below the left nipple, which was fatal. He opined that the wound could have been inflicted by the assailant while facing the victim.<sup>[4]</sup> His post-mortem examination revealed:

EXTERNAL EXAMINATION:

- (+) Stabbed Wound, (L) MCL, Level of 6th Intercostal Space, 3 cm in length.

INTERNAL EXAMINATION:

- (+) Stabbed Wound, Anterior Pericardium, 3 cm
- (+) Stabbed Wound/Perforation of Right Ventricle, 3 cm
- (+) Blood, 50 cc Pericardial Space

CAUSE OF DEATH:

Hypovolemic Shock due to Perforation of Right Ventricle due to Stab Wound.<sup>[5]</sup>

JOVELYN I. FELIZARIO, first cousin of the victim Arnulfo Inocencio,<sup>[6]</sup> testified that in the evening of September 1, 1998, several visitors were in her house at Tigayon, Kalibo, Aklan since it was the birthday of her brother, Jonel. At around 11:00 that evening, Arnulfo Inocencio, appellant Jimmy dela Cruz, and brothers Glenn, Gilbert and Greg Cipriano were having a drinking session. Arnulfo played a guitar while appellant sang along. Afterwards, appellant requested Arnulfo to give the guitar to Gilbert. Arnulfo obliged and rose to hand the guitar to Gilbert. When Arnulfo returned to his seat, appellant suddenly drew his knife from his waist and stabbed Arnulfo. According to the witness, appellant then pointed at Arnulfo and said, "There, he is already dead." The witness added she was just two meters away from the victim and the appellant when the stabbing incident happened.

On cross-examination, Jovelyn Felizario said that she knew no reason for the attack, since no altercation between the two took place.<sup>[7]</sup>

GLEN M. CIPRIANO, another eyewitness to the stabbing, corroborated the testimony of Jovelyn Felizario. He testified that on September 1, 1998 at around 11:00 P.M., he was with the birthday celebrant Jonel Felizario, his two brothers Gilbert and Greg, appellant, and Arnulfo. They had a drinking spree at the house of Antonio Felizario at Brgy. Tigayon, Kalibo, Aklan. He was seated in one corner talking to Jovelyn Felizario. In front of them were appellant and Arnulfo who were standing beside each other. According to the witness, appellant suddenly stabbed Arnulfo with a knife hitting the latter on the left side of his breast. The witness said he was just two meters away. After stabbing Arnulfo, appellant said, "There he is dead." The stabbing was not preceded by any quarrel or altercation between Arnulfo and appellant, according to the witness. In fact, they were even singing and playing the guitar before the incident. Further, he testified that the victim was unarmed when he was assaulted by appellant.<sup>[8]</sup>

SPO4 DIOSCORO G. TOLENTINO, JR., desk officer of Kalibo PNP station, testified that past midnight, at around 12:45 A.M. of September 2, 1998, barangay captain Gil Isberto of Barangay Tigayon, Kalibo, Aklan, with appellant in tow, went to their station. Barangay captain Isberto informed him that appellant surrendered to him (Isberto) after the stabbing incident. Thereafter, SPO4 Tolentino made the appropriate entry in the police blotter and detained appellant. On the following day, SPO4 Tolentino conducted an investigation and after securing the necessary papers, filed the case with the Office of the Provincial Prosecutor.<sup>[9]</sup>

For the defense, witness Dr. Antonieta J. Templado and barangay captain Gil Isberto, and appellant himself testified.

Appellant JIMMY DELA CRUZ y QUIMPO admitted stabbing the victim but claimed that it was the victim who attacked him and that he merely acted in self-defense. He testified that at around 6:30 P.M. of September 1, 1998, he attended the birthday party of Jonel Felizario after having been invited by Jonel, the victim Arnulfo Inocencio, and one Jimmy Inocencio. The party was held at the residence of Jonel's father, Antonio Felizario, in Brgy. Tigayon, Kalibo, Aklan. After eating his dinner, he joined the other visitors who at that time were engaged in singing, playing a guitar, and drinking beer and "*tuba*" (toddy). Sometime between 10:00 P.M. and 11:00 P.M., he asked permission to go home from Arnulfo Inocencio. He did not ask permission from the owner of the house because the latter was already asleep and his son Jonel, the birthday celebrant, was in the kitchen. However, Arnulfo did not allow him to leave and asked him to stay a little longer as there was still much liquor to drink. Appellant insisted and informed Arnulfo that he had to go for he had promised his wife that he would be home by 10:00 P.M. He was about to leave when Arnulfo told him, "If you are going home, just bring this with you." When appellant turned around, he saw Arnulfo thrusting a knife towards him. He parried the thrust and the knife hit his left hand. When Arnulfo attempted to stab him a second time, appellant drew his own knife from his right waist and stabbed the victim. Thereafter, he immediately left the house and proceeded to his father's residence. He surrendered to barangay captain Gil Isberto of Tigayon, Kalibo, Aklan who turned over his person to the police. He said he was not able to surrender the

knife he used in stabbing Arnulfo because he threw it in the middle of the river.<sup>[10]</sup>

Appellant denied harboring any grudge against the victim although he admitted that his younger brother figured in a quarrel with Arnulfo sometime earlier.<sup>[11]</sup>

DR. ANTONIETA TEMPLADO, Medical Officer IV of Dr. Rafael S. Tumbokon Memorial Hospital, testified that on September 2, 1998, she treated appellant who suffered a one-inch long superficial incised wound at the back of his left hand. She opined, however, that the wound could have been self-inflicted and it could have been caused by a knife.<sup>[12]</sup>

GIL ISBERTO, barangay captain of Tigayon, Kalibo, Aklan testified that at around 12:00 midnight of September 1, 1998, appellant, appellant's father, brother-in-law, and Isberto's nephew went to his house. They informed him that appellant stabbed a certain Inocencio. Isberto noticed that appellant had a superficial wound about two inches long on his left wrist. He turned over appellant to the police.<sup>[13]</sup>

The prosecution presented rebuttal evidence through the testimony of Jonel Felizario.

Felizario testified that appellant's claim that he was in the kitchen when the latter asked permission to leave his birthday celebration is not true. Neither was appellant stabbed by Arnulfo Inocencio with a knife. He said that he was urinating outside of their house at the time of the stabbing incident and the victim was unarmed since no knife has been recovered at the scene of the crime.<sup>[14]</sup>

Rejecting appellant's claim of self-defense, the trial court convicted him of the crime or murder and sentenced him, thus:

WHEREFORE, the Court finds the accused JIMMY DELA CRUZ y QUIMPO GUILTY beyond reasonable doubt of MURDER and hereby imposes upon him the penalty of RECLUSION PERPETUA.

Further, the Court hereby orders the said accused to pay the legal heirs of the victim ARNULFO INOCENCIO the amount of P50,000.00 as indemnity for the death of the latter.

Furthermore, the Court hereby orders that the said accused's period of preventive imprisonment, be credited in full in the service of his sentence.

With COSTS against the accused.

SO ORDERED.<sup>[15]</sup>

Hence, this appeal, in which appellant contends that:

# I

THE COURT A QUO ERRED IN DISREGARDING THE CLAIM OF SELF-DEFENSE RAISED BY THE ACCUSED-APPELLANT DESPITE THE FACT THAT