

## FIRST DIVISION

[ G.R. No. 144933, July 03, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY ANTONIO Y DIOLATA, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Mandaue City, Branch 28, in Criminal Case No. DU-6619 convicting accused-appellant of the crime of murder; sentencing him to suffer the penalty of *reclusion perpetua*; and ordering him to pay the heirs of the deceased the amounts of P50,000.00 as civil indemnity and P20,000.00 as moral damages, plus the costs of suit.

The information against accused-appellant reads:

That on or about the 11th day of October, 1998, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, with deliberate intent to kill and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Jomar Cardoso Ephan with a sharp bladed weapon, thereby inflicting upon the latter mortal wound at his vital portion namely:

“Stab wound (L) Lumbar Level of L1 & L2 with grade IV  
Spleenic injury & grade II Renal (L) injury.”

Which caused his death soon thereafter.

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

Upon arraignment on November 16, 1998, accused-appellant pleaded not guilty.<sup>[3]</sup> Trial thereafter ensued.

The facts as presented by the prosecution show that at 1:00 in the early morning of October 11, 1998, the victim, Jomar Ephan, was engaged in a drinking session with Reynaldo Ephan and Roselito Dacillo in front of a store in Barangay Pakna-an, Mandaue City. Accused-appellant arrived and bought cigarettes. Then, he ordered Jomar, Reynaldo and Roselito to count the cigarettes he bought, but the three told accused-appellant to let the storekeeper do the counting. Rebuked, accused-appellant left the store. He returned minutes later and suddenly stabbed the victim at the back, after which he immediately fled. The victim was rushed by his companions to the hospital but died the following day.<sup>[4]</sup>

Meanwhile, Eduardo Juban, a Barangay Tanod, was awakened by one of his neighbors and was told that there was trouble at a nearby store. When Eduardo

went out, he saw accused-appellant being chased by a crowd who were shouting, "thief." The group mauled accused-appellant when they caught up with him. Eduardo, however, pacified the mob and brought accused-appellant to the barangay hall. Eduardo later learned from the group that accused-appellant had stabbed somebody.<sup>[5]</sup>

The examination conducted by Dr. Reynaldo Baclig revealed that the victim sustained a stab wound near the spinal column, three inches above the waist line, and died from spleen and renal injury and massive blood loss.<sup>[6]</sup>

On the other hand, the defense tried to prove that: at around 1:00 a.m. of October 11, 1998, accused-appellant was in the house of his friend, Fernando Gelig, at Pakna-an, Mandaue City. While they were drinking liquor, accused-appellant went out and bought cigarettes from a store across the street. As a token of friendship, accused-appellant offered the cigarettes to the people in front of the store, but nobody accepted his offer. Accused-appellant went back to the house of his friend. After a short while, he went back to the same store to buy "*pulutan*." For no reason at all, somebody struck him with a stool hitting him on the left eyebrow. Accused-appellant fell on the ground but the group of the deceased, who were then in front of the store, ganged up on him. The deceased attempted to hit accused-appellant but because the former was very drunk, he missed and fell on his belly. It was at this point when accused-appellant got hold of a knife he saw under the table and stabbed the deceased at the back. Thereafter, accused-appellant immediately fled but the crowd chased and mauled him. Fortunately, a Barangay Tanod came and stopped the mob.<sup>[7]</sup>

On July 12, 2000, the trial court promulgated the assailed judgment of conviction. The dispositive portion thereof reads:

WHEREFORE, in view of all the foregoing premises, the Court hereby finds the accused Jerry Antonio y Diolata GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, as amended, and hereby imposes upon him the penalty of Reclusion Perpetua with all the accessory penalties provided for by law. Let him be given full credit for the preventive imprisonment he has served. Likewise, the accused is ordered to indemnify the heirs of Jomar Ephan the sum of P50,000.00 as civil indemnity ex delicto and the sum of P20,000.00 as moral damages. The Court hereby orders too that the accused should pay the cost of this suit.

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

Hence, this appeal based on the following grounds:

I.

FOR FAILURE OF THE PROSECUTION TO ADDUCE EVIDENCE THAT THE ACCUSED WAS THE UNLAWFUL AGGRESSOR, HE SHOULD BE CONVICTED FOR A LESSER OFFENSE AS CHARGED (*sic*).

II.

THE TRIAL COURT FAILED TO APPRECIATE THE PRESENCE OF A MITIGATING CIRCUMSTANCE OF ILLNESS OF THE OFFENDER AS WOULD DIMINISH THE EXERCISE OF THE WILL-POWER OF THE OFFENDER WITHOUT HOWEVER DEPRIVING HIM OF CONSCIOUSNESS OF HIS ACTS.

[9]

Faced with the conflicting versions of the prosecution and the defense, the trial court's choice of which version to believe is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth. The trial court is thus in the best position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[10]

A thorough review of the records of the case at bar shows that the trial court did not miss any such material circumstance nor did it commit any palpable error in upholding the facts as established by the prosecution. The positive and direct narration of the prosecution witnesses that accused-appellant suddenly stabbed the victim at the back, and that no altercation preceded the attack, deserves full faith and credence. These witnesses were not shown to have been impelled by ill-motive to falsely testify against accused-appellant.[11] Moreover, being friends and relatives of the deceased, they would naturally be interested in having the real culprit punished.[12]

The trial court did not likewise err in rejecting accused-appellant's self-defense theory. Where an accused invokes self-defense, he thereby admits authorship of the crime. The burden of proof is thus shifted on him to prove all the elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused.[13]

In the case at bar, even if we sustain the version of accused-appellant that the initial act of aggression came from the group of the deceased, still we cannot uphold his plea of self-defense. As testified by accused-appellant himself, the deceased who was at that time very drunk tried to hit him but missed and fell on the ground. At that point, unlawful aggression ceased and it was no longer necessary for him to stab the deceased. It was accused-appellant, therefore, who became the aggressor when he, despite the condition of the deceased, proceeded to stab the latter at the back. His act can no longer be interpreted as an act of self-preservation but a perverse desire to kill.[14] Hence, he cannot successfully claim the benefit of self-defense. Furthermore, if it were true that the companions of the deceased ganged up on him, his attack should have been directed against them and not against the deceased who was already defenseless and lying on the ground. Pertinent portion of accused-appellant's testimony reads:

X X X  
X

X X  
X X X