

FIRST DIVISION

[G.R. No. 134534, August 29, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
RAFAEL TRAPANE, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

On August 16, 1993, at 11:30 p.m., Barangay Captain Constantino Rebanal and Barangay Tanod Angel Almazan, both of Talongog, Oas, Albay, went to the Fernando's Hideaway beerhouse. Almazan ordered drinks and was joined at the table by one of the lady entertainers. Rebanal stayed outside on the porch of the beer house where he talked with Loreto Sotto and Pedio Rex. At 1:00 a.m., one of the lady entertainers at the table of a group of policemen inside the beerhouse went outside and approached Rebanal. She told him that she and the other ladies were getting intimidated by the policemen, who were drunk and displaying their firearms. Later, one of the policemen in the group, PO2 Arnulfo Valencia, stepped out on the porch. Rebanal introduced himself and politely told him that the lady entertainers were getting apprehensive over the public display of their firearms. Valencia retorted that Rebanal had no business meddling with their affairs since he was only a barangay captain. Then, Valencia hit Rebanal on the chest and kicked him in the lower abdomen. Since Valencia was tipsy, he fell off the porch. He tried to get up but fell down again.

At that moment, Rebanal looked inside the beerhouse and saw a man in a vest, later identified as accused-appellant SPO1 Rafael Trapane, approach Almazan while the latter was paying for his bill at the cashier's counter. Accused-appellant drew a gun from his waist and shot Almazan on the back. Although badly wounded, Almazan managed to run towards the road but fell down. Rebanal, on the other hand, ran towards the police station of Oas, Albay, which was 60 meters away from the beerhouse, to seek assistance.

When the police arrived at the scene, they found Almazan lying prostrate on the road. He was rushed to the Emergency Hospital of Ligao, Albay but unfortunately, he died upon reaching the hospital.^[1]

Dr. Emma Fuentabella-Rebato, Municipal Health Officer of Oas, Albay, who conducted the post-mortem examination on Almazan, found that he suffered two gunshot wounds. She opined that the assailant was most probably positioned behind the victim since the point of entry of the gunshot wound was at the back of the body. She placed the cause of death as acute hypovolemic shock due to severe hemorrhage resulting in severe loss of blood.^[2]

The defense, on the other hand, sought to establish that on the night of the shooting, accused-appellant went to Fernando's Hideaway beerhouse with PO2 Arnulfo Valencia and SPO3 Rodrigo Ramos to conduct a surveillance on certain

armed men sighted in the beerhouse, pursuant to an agent's report. The police officers wore civilian clothes, and when they arrived at the beerhouse they ordered beer and engaged the company of lady entertainers. After some time, team leader SPO3 Ramos decided to return to camp, but instructed SPO1 Trapane and PO2 Valencia that they should leave one at a time. PO2 Valencia was to go out first, followed by SPO1 Trapane.^[3]

When PO2 Valencia got out of the beerhouse, three men suddenly attacked him. Valencia allegedly fell to the ground, while the three unidentified men tried to get his service pistol. He tried to prevent them from wresting the pistol from him by rolling on the ground until he reached the other side of the road. One of the aggressors tried to stab him with a knife. Suddenly two gunshots rang out, followed by another.^[4]

It turned out that the shots came from accused-appellant SPO1 Trapane who affirmed that he fired warning shots because he saw PO2 Valencia being mauled by three unidentified men. However, no one seemed to heed the warning shots. When he saw one of the aggressors trying to stab Valencia, accused-appellant decided to shoot the aggressor on the lower portion of the body. After that, the aggressors fled.^[5]

Defense witness Rosemarie Dionson corroborated the testimonies of accused-appellant, SPO3 Rodrigo Ramos and PO2 Arnulfo Valencia. She stated that she saw PO2 Valencia being mauled by three men, two of whom she identified as Rebanal and Almazan. She also saw that Almazan was holding a knife. She got scared and ran back into the beerhouse.^[6]

SPO1 Trapane, SPO3 Ramos and PO3 Valencia were charged with the murder of Angel Almazan.^[7] After preliminary investigation, Judge Aurora Binamira-Parcia of the Municipal Circuit Trial of Ligao-Oas, recommended the indictment of accused-appellant SPO1 Rafael Trapane only.^[8] On November 26, 1993, an information was filed with the Regional Trial Court of Ligao, Albay, Branch 12 against SPO1 Rafael Trapane, to wit:

That on or about 1:30 o'clock in the morning of August 17, 1993, at Brgy. Iraya Norte, Municipality of Oas, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, wilfully, unlawfully and feloniously and with treachery attack and shoot ANGEL ALMAZAN Y SIAL to death, to the damage and prejudice of his legal heirs.

ALL ACTS CONTRARY TO LAW.^[9]

On May 21, 1998, the accused-appellant was convicted of murder in a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the prosecution having proven the guilt of the accused, Rafael B. Trapane, beyond reasonable doubt, this court finds him GUILTY as charged for the crime of MURDER. Accordingly, he is hereby sentenced, to suffer the penalty of RECLUSION PERPETUA, and to suffer the accessory penalties provided for by law. Further, to indemnify the heirs of the deceased in the amount of EIGHTY THOUSAND

PESOS (P80,000.00) as actual damages and FIFTY THOUSAND PESOS (P50,000.00) as moral and exemplary damages and to pay the costs.

SO ORDERED.^[10]

Hence, the instant appeal, based on the following errors:

I

THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PRESENCE OF JUSTIFYING CIRCUMSTANCE OF VALID SELF-DEFENSE OR IN NOT CONSIDERING IN FAVOR OF THE ACCUSED THE JUSTIFYING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE (DEFENSE OF A STRANGER).

II

ASSUMING THAT THE ACCUSED IS GUILTY OF KILLING THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME AS CHARGED, INSTEAD OF THE CRIME OF CONSUMMATED HOMICIDE ONLY, CONSIDERING THE CLEAR ABSENCE OF THE MODIFYING CIRCUMSTANCE OF TREACHERY IN THE COMMISSION THEREOF.^[11]

Accused-appellant argues that in shooting Almazan, he merely acted in defense of a stranger. Further, he claims that, if at all, he can only be convicted of homicide since there was no treachery in the killing of the victim.

The justifying circumstance of self-defense or defense of stranger, like alibi, is a defense which can easily be fabricated.^[12] Hence, it is inherently weak, and in order that it may be successfully invoked, accused-appellant must prove the following elements: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending was not induced by revenge, resentment, or other evil motive.^[13] Moreover, he cannot rely on the weakness of the prosecution but on the strength of his own evidence, for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself admitted the killing.^[14]

Hence, while it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime but only in his or another's defense.^[15] *Ei incumbit probatio qui dicit, non que negat* – he who asserts, not he who denies, must prove.^[16]

Defense, whether of one's self, a relative or a stranger, as a justifying or mitigating circumstance requires as a condition sine qua non the element of unlawful aggression on the part of the victim.^[17] Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof. The person defending himself must have been attacked with actual physical force or with actual use of weapon.^[18]