

EN BANC

[G.R. Nos. 127660 & 144011-12, September 17, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL TADEO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

To pump mercilessly more bullets into the head of an adversary than necessary to kill him is wretchedness; to snuff off the life of his victim only because the latter called him "barako" is sheer inanity.

On 4 November 1993, around 11:30 in the morning, accused-appellant Michael Tadeo was drinking with the deceased Mayolito Cabatu and several others in a party hosted by Nicomedes Cabacungan in Sto. Domingo, Quirino, Isabela, to celebrate the successful installation of a water pump that would supply potable water to their *barangay*. Around 4:00 o'clock in the afternoon, after five (5) hours of imbibing alcohol, Mayolito was so dead drunk that he excused himself and proceeded to the pavement adjacent to Nicomedes Cabacungan's house where he sat wobbly on the gutter. Ricky Cardona, one of the carousers, and Florencia Cabatu, Mayolito's mother, approached Mayolito and assisted him in going home. But, before they could leave, Mayolito shouted "barako," apparently to tease accused-appellant and titillate him into a "fight" who, true enough, took offense against the mocking remark.^[1]

Drunk and wobbly too, accused-appellant Michael Tadeo instantaneously grabbed a beer bottle and tried to whack Mayolito with it on the head. But Ricky Cardona and Florencia Cabatu quickly intervened to prevent accused-appellant from inflicting harm upon Mayolito. Accused-appellant briskly went home exclaiming, "*Aguray kadta a!*" which means "*Wait, I will come back!*" Then he hastily returned clutching a .38 cal. revolver and confronted Mayolito, Ricky and Florencia why they were intervening.^[2] Mayolito vainly tried to grapple with accused-appellant who lost no time in shooting Mayolito six (6) times, some bullets piercing his head. Accused-appellant then trained his gun on Florencia, but unfortunately, the pistol did not fire as it was already empty. So he approached her instead and whipped her on the face with the butt of his revolver.

Rogelio Cabatu, who had just arrived from his farm, scurried to rescue his brother Mayolito and mother Florencia, and with a bolo on hand, hacked accused-appellant on the head. With blood oozing from his head, accused-appellant retreated towards his house to reload his gun, and upon his return, immediately shot Florencia on her left buttock, while Rogelio sought cover in the house of Nicomedes Cabacungan. As Florencia limped to the detachment of the *barangay* civilian security force, accused-appellant darted away from the crime scene.

At around 5:00 o'clock in the afternoon, the *barangay kapitan* of Sto. Domingo, Quirino, Isabela, reported the crime to the police precinct. SPO3 Victoriano Ramos and other policemen responded and went to the house of Mayolito Cabatu where his body was brought after being fatally shot. From Mayolito's house the policemen left "to look for the suspect," and proceeded to the house of the *barangay kapitan* of Sto. Domingo^[3] where they met accused-appellant's father who assured them that Michael would surrender. In good faith he led them to his house where accused-appellant had gone after the shooting episodes.^[4] The father yielded a gun to the policemen which he said was the weapon used in the crime, while accused-appellant turned himself in.^[5]

Accused-appellant Michael Tadeo was accordingly charged with murder for the fatal shooting of Mayolito Cabatu (Crim. Case No. 23-498), frustrated murder for the injury sustained by Florencia Cabatu (Crim. Case No. 23-494), and violation of par. 2, Sec. 1, PD 1866, or qualified illegal possession of firearm, i.e., use of an unlicensed firearm in committing murder or homicide (Crim. Case No. 23-499). Accused-appellant pleaded not guilty to the charges and offered self-defense as his version of the incident. He claimed that Mayolito dared him into a fist-fight by uttering, "*Hoy, barako, let us fight!*" which he bravely accepted. As they fought, Mayolito suddenly pulled out a gun which accidentally went off when accused-appellant tried to wrest it from him. After accused-appellant successfully took possession of the gun, he fired several shots more, injuring Mayolito in different parts of his body. Accused-appellant however failed to explain how Florencia Cabatu sustained the gunshot wound in her left buttock as well as the surrender of the gun by his father inside their house.

After trial, the court a quo found the version of the defense to be incredible and convicted accused-appellant of the crimes charged and sentenced him to *reclusion perpetua* for murder; an indeterminate prison term of ten (10) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, ten (10) months and twenty (20) days of *reclusion temporal* as maximum, for frustrated murder; *reclusion perpetua* for qualified illegal possession of firearms; and, damages of P50,000.00 for the death of Mayolito Cabatu and P15,000.00 for the medical expenses of Florencia Cabatu.^[6]

In this appeal, accused-appellant does not challenge the finding of the trial court that he killed Mayolito Cabatu and injured his mother Florencia Cabatu, nor that he was the possessor of the .38 cal. revolver, but questions the appreciation of the qualifying circumstances of treachery and evident premeditation, and claims that he should instead be held guilty of homicide and frustrated homicide only. Further, he insists that the trial court erroneously disregarded the mitigating circumstance of voluntary surrender in imposing the proper penalties, including the absence of any evidence indicating that the gun he used was unlicensed.

On the other hand, the Solicitor General seeks the affirmance of the conviction for murder and frustrated murder of accused-appellant but agrees with him that his verdict in the qualified illegal possession of firearm is incorrect hence must be reversed and set aside.

The appeal is partly meritorious. Verily, the established facts of these cases disprove the circumstances of treachery and evident premeditation to qualify the crimes

charged in Crim. Case No. 23-498 and Crim. Case No. 23-494 as murder and frustrated murder, respectively.

In Crim. Case No. 23-498 and Crim. Case No. 23-494 accused-appellant Michael Tadeo and the deceased Mayolito Cabatu were both drunk and the fight was preceded by rising tempers. Invariably, accused-appellant was not in full possession of his faculties which would have been necessary for him to kill Mayolito Cabatu, or try to kill Florencia Cabatu with the attendant evident premeditation, i.e., the execution of the criminal act must come with sober thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.^[7] In turn, because of accused-appellant's mental and moral stupor at the time of the perpetration of the criminal acts, the prosecution could not have proved the requisites of this qualifying circumstance: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and, (c) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act and for his conscience to overcome his will.

In the same vein, having been inebriated and overtaken by anger immediately prior to the assault, accused-appellant cannot be accused of treachery. Under this state, he did not have the time nor the proper disposition to reflect on the means or mode of attack for it to be said that he deliberately and consciously pulled out his gun and fired at the deceased to insure the commission of the crime without risk to himself.

^[8] Furthermore, the heated exchanges between him and the deceased prior to the attack must have placed the latter on his guard, hence, we cannot rule that Mayolito Cabatu was caught completely by surprise when accused-appellant took up arms against him.

For there to be treachery by reason of the suddenness and unexpectedness of the attack, there must have been no warning of any sort to the deceased or offended party.^[9] Verily, the statement of accused-appellant to Mayolito Cabatu, viz, "*Aguray kadta a!*" meaning "*Wait, I will come back!*" which the deceased took seriously, as he did confront Michael Tadeo when he returned, shows convincingly that the victim was not unprepared nor stunned to see accused-appellant wielding a gun and firing at him. The element of a sudden unprovoked attack indicative of treachery was therefore missing.^[10]

Similarly, we reverse the finding of the trial court that the attack against Florencia Cabatu was sudden and unforeseen. It bears stressing that the crime against her happened when accused-appellant was highly intoxicated and seething with anger against his perceived tormentor, and immediately after he had gunned down Mayolito Cabatu, after the same gun was aimed at her but did not fire for being empty, and after accused-appellant returned to his house to reload his gun. Evidently, these contemporaneous and preceding events must have already placed the victim on heightened alert and sufficient forewarning that a reprisal was in the offing. This crime which has been erroneously labeled as "*frustrated murder*" lacks the twin elements of *aleviosa*: (a) that at the time of the attack, the victim was not in a position to defend himself; and, (b) that the offender consciously adopted the particular means, method or form of attack employed by him.

Furthermore, accused-appellant should only be convicted for attempted murder, not frustrated murder, in Crim. Case No. 23-494, committed against Florencia Cabatu.