

## FIRST DIVISION

**[ G.R. No. 122664, February 05, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GEORGE BAYOD Y DALURAN, ACCUSED-APPELLANT.**

### DECISION

**PARDO, J.:**

The case before the Court is an appeal from a decision of the Regional Trial Court, Branch 01, Manila convicting accused George Bayod y Daluran of murder and frustrated homicide, for the killing of Eduardo del Rosario y Diaz and the near fatal killing of Arnold Tamo y Martinez.

The fallo of the decision reads:

"WHEREFORE, this court finds the accused George Bayod y Daluran GUILTY beyond reasonable doubt of the crimes of murder and frustrated homicide and, as a consequence thereof, sentences him, as follows:

"(1) In Criminal Case No. 92-112209, to suffer the penalty of reclusion perpetua together with all the accessory penalties provided by law.

"Further, he shall indemnify Amelia del Rosarion in the total amount of P67,535.00 as actual and compensatory damages and P15,000.00 as and for attorney's fees; and the legal heirs of the deceased in the amount of P50,000.00 as damages for death and P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency; and

"(2) In Criminal Case No. 92-112210, to suffer the indeterminate prison term of six (6) years of prision correccional maximum as minimum to ten (10) years of prision mayor medium as maximum.

"Cost against the accused in both cases.

"SO ORDERED."<sup>[1]</sup>

By two separate Information filed on November 4, 1992, with the Regional Trial Court, Manila, Assistant City Prosecutor Arturo A. Cabides of Manila charged accused with murder and frustrated murder, as follows:

Criminal Case No. 92-112209

### "INFORMATION

"The undersigned accuses GEORGE BAYOD Y DALURAN of the crime of MURDER, committed as follows:

"That on or about November 1, 1992, in the city of Manila, Philippines, the said accused, conspiring and confederating with others, whose names, identities and present whereabouts are still unknown and helping each other, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and use personal violence upon the person of one EDUARDO DEL ROSARIO Y DIAZ, by then and there hacking and mauling the latter several times on the different parts of his body with a bolo, thereby inflicting upon him mortal stab wounds which were the direct cause of his death.

"CONTRARY TO LAW.

"ARTURO A. CABIDES

Assistant City Prosecutor"<sup>[2]</sup>

Criminal Case No. 92-112210

"INFORMATION

"The undersigned accuses GEORGE BAYOD Y DALURAN of the crime Frustrated Murder, committed as follows:

"That on or about November 1, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others, whose names, identities and present whereabouts are still unknown and helping each other, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one ARNOLD TAMO Y MARTINEZ, by then and there hacking and mauling the latter with a bolo on the different parts of his body, thereby inflicting upon him physical injuries which are necessary mortal (*sic*), thus performing all the acts of execution which would have produced the crime of murder as a consequence but which nevertheless, did not produce it by reason or cause independent of the will of the said accused, that is, the timely and able medical assistance rendered to the said ARNOLD TAMO Y MARTINEZ, which prevented his death.

"CONTRARY TO LAW.

"ARTURO A. CABIDES

"Asst. City Prosecutor"<sup>[3]</sup>

Upon arraignment on November 27, 1992, accused entered a plea of not guilty in both cases.<sup>[4]</sup> He filed a petition for bail; however, after due hearing, on April 7, 1993, the trial court denied the petition.<sup>[5]</sup> Joint trial of the cases ensued.

On November 1, 1992, around 2:30 in the afternoon, Eduardo del Rosario, Arnold Tamo, Oliver Alano, Luis Diaz and a certain Timoteo were in front of Eduardo's house

located at No. 1122 Antipolo St., Sampaloc, Manila. Earlier that morning, they sold fish at the España market. Eduardo's companions accompanied him home, and assisted him because he was a paralytic.<sup>[6]</sup>

The doorbell at the gate of the house was not functioning, so the group registered their presence by knocking at the gate and shouting "Hoy, Tao," which words were echoed by someone from accused's group which was having a drinking session in a neighboring house. After a short exchange of words between the two groups, accused and his two (2) companions went out of their house and challenged Eduardo's companions to a fistfight. When accused's group was about to be overpowered, they went back to accused's house and each of them got a weapon. Accused hacked Arnold Tamo with a bolo on the head and stabbed him at the left side of his body. Then accused went after Luis Diaz and Timoteo who ran away from the scene.<sup>[7]</sup>

Thereafter, accused attacked Eduardo with a bolo hitting the latter on the left chin. Accused's companions, who had armed themselves with wooden clubs, struck Eduardo on the head and face.<sup>[8]</sup>

Accused then threatened Oliver Alano with a bolo. However, Oliver pleaded that he be spared, and accused relented. Subsequently, one of accused's companions struck Eduardo with a wooden club and then turned to Oliver and hit his arms.<sup>[9]</sup>

Both Eduardo and Arnold Tamo were brought to the UST Hospital and at around 6:45 in the evening, Eduardo expired.<sup>[10]</sup>

During the trial, the prosecution presented Amelia del Rosario, the common-law wife of Eduardo. She testified that she saw the entire incident from the second floor balcony of their house facing Antipolo Street, which was three meters up from the ground floor. She saw George Bayod hack her husband Eduardo with a bolo. She knew George Bayod because they were neighbors.

She hurriedly went down and sought help from a passing police mobile patrol car. Policemen rushed Eduardo and Arnold unconscious to the UST Hospital, for treatment.<sup>[11]</sup>

Aside from Amelia, Arnold Tamo, one of the victims who survived the attack, testified that accused George Bayod attacked them. He positively identified accused Bayod as the one who hacked him on the head and then stabbed him at the left abdomen.<sup>[12]</sup>

Oliver Alano was another witness for the prosecution. He testified that one of the companions of accused Bayod struck Eduardo del Rosario with a piece of wood when the latter was down.<sup>[13]</sup>

The medical reports of Dr. Sergio Alteza, Medico Legal Officer, UST Hospital showed that Eduardo del Rosario sustained the following injuries:

"INJURIES: Unconscious, stretcher-borne

"1. Depressed fracture - 3 cm, left frontal area, head

- "2. Periorbital contusion with hematoma, left
- "3. Massive contusion with hematoma, 10 x 15 cm. face, left
- "4. Stab wound, 3 cm x 1 cm, left submandibular area
- "5. Multiple contuso-abrasions, Rt. Forearm, Rt. Elbow and Rt. Knee
- "6. Massive intracranial hemorrhage.<sup>[14]</sup>

And Arnold Tamo the following:

"Injuries:

- "1. Stab wound, 12 cm x 3 cm., mid-parietal area, head
- "2. Stab wound, 7 cm. x 1 cm., abdomen"<sup>[15]</sup>

According to accused Bayod, on November 1, 1992, he was at his house at No. 1124 Antipolo St., Sampaloc, Manila.

About lunchtime, he was cooking and entertaining his visitors, who were applying as security guards. After lunch, he heard a loud voice coming from outside his house. Someone was uttering "*putang ina ninyo.*" He went to their gate outside and saw around seven (7) to eight (8) persons in front of the house of Eduardo del Rosario, talking to each other. He went inside his house and again heard someone say "*putang ina ninyo, patay kayong lahat.*" At this juncture, accused Bayod and two of his visitors went out of the gate of his house. He saw a commotion happening outside.<sup>[16]</sup>

He saw his two visitors, his cousin and brother-in-law, in front of the house of Eduardo del Rosario with four other men engaged in a fight and that the group of del Rosario were all armed with lead pipes and knives. They hit accused on the forehead with a lead pipe after which he went inside his house and got his bolo. When he went out, he was met by three men holding steel pipes and fan knives. He recognized one of them as Arnold Tamo. They were waiting for him to strike. Someone struck him on his left shoulder with a steel pipe. He then retreated and felt weak but the men continued to pursue him and when they were about to attack, he swung his bolo and hit Arnold Tamo on the left side of the body.<sup>[17]</sup>

The commotion and the fight lasted more than five minutes. The group of del Rosario retreated and accused chased Arnold Tamo and his companions. When he returned to the scene of the commotion, he noticed a man sprawled face down on the road and recognized him to be del Rosario. However, he did not approach him for there were people coming and so he ran towards his house.<sup>[18]</sup>

Senissa Castissima, wife of the accused, and Felicidad Garcia testified that there was no conspiracy among the accused and his friends. They did not see the commotion that led to the death of Eduardo del Rosario and the serious injury sustained by Arnold Tamo.

On August 18, 1995, the trial court rendered a decision convicting accused and sentencing him as set forth in the opening paragraph of this decision.

Hence, this appeal.<sup>[19]</sup>

The accused-appellant raises the following issues:

1. Whether the trial court erred in not absolving him of the crime charged considering the testimony of prosecution witness Oliver Alano;
2. Whether the trial court erred in holding that there was conspiracy among the accused and the other unidentified malefactors;
3. Whether the trial court erred in considering the attendance of the aggravating circumstance of treachery;
4. Whether the trial court erred in concluding that the accused hacked the deceased on the chin contrary to the findings of the medico legal expert; and
5. Whether the trial court erred in depending on the testimony of Amelia del Rosario, who was not an eyewitness.<sup>[20]</sup>

We shall scrutinize the testimonies of both the prosecution and defense witnesses. The first assigned error deals with the testimony of prosecution witness Oliver Alano.<sup>[21]</sup> We quote the testimony to better understand its import.

"Q. Before that, how about the two companions of George Bayod, where were they when Bayod was trying to run after Luis, Arnold and Timoteo?

"A. Among the companions of George Bayod, there was one left behind.

"Q. Why, was only one left? How about the other one?

"A. I did not notice him anymore ma'am.

"Q. And then, what happened?

"A. The one who was left behind picked up a piece of wood and struck Mr. Eduardo del Rosario on the head.

"Q. How many times?

"A. Once when Mr. Del Rosario was still standing and twice when he was already on the ground.<sup>[22]</sup>

Clearly, witness Oliver Alano did not absolve the accused of the crime. Witness Oliver Alano simply stated that "it was the one who was left behind that struck the deceased with a piece of wood." He declared that accused-appellant George Bayod hacked the deceased with a piece of wood. Hence, Oliver Alano did not absolve accused-appellant of the crime charged.

In the second assigned error, accused-appellant argues that there was no conspiracy