

## THIRD DIVISION

[ G.R. No. 104629, November 13, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIUS KINOK ALIAS "YOS BLA-AN" AND TAPANTE SALIGAN ALIAS "TAPANTE BLA-AN", ACCUSED-APPELLANTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Appeal from the decision of the Regional Trial Court, Branch 19, Davao del Sur,<sup>[1]</sup> in Criminal Case No. 3(90), "People vs. Julius Kinok alias "Yos Bla-an" and Tapante Saligan alias "Tapante Bla-an," convicting both accused of murder and sentencing them to *reclusion perpetua* with accessory penalties.

The Amended Information dated February 26, 1990 filed against the accused reads:

"That on or about the 24<sup>th</sup> day of September, 1989 in the Municipality of Kiblawan, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring, confederating together, and mutually helping one another, and armed with a firearm, did, then and there willfully, unlawfully and feloniously, attack, assault and wound therewith William Aguipo, in the vital part of his body, inflicting upon him gunshot wound, with treachery and evident premeditation, said accused having inflicted said wound while William Aguipo is asleep, and as a result thereof, said William Aguipo died instantly.

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

Upon arraignment, the two accused pleaded NOT GUILTY. Thereafter, trial on the merits ensued.

The theory of the prosecution, as aptly stated by the Solicitor General in the appellee's brief, is reproduced hereunder:

"After taking supper at around 8:00 o'clock in the evening of September 23, 1989, Luz Aguipo, together with four of her five children, went upstairs in her house at Kimlawis, Kiblawan, Davao del Sur, while her husband, William Aguipo proceeded inside the store in the first floor and slept therein (pp. 4-6, tsn, May 30, 1990). At around 8:30 o'clock of the same evening, Luz heard two persons calling out to buy rice (p. 6, id). When William later called out to Luz whether she had change for P100.00, she answered that she had none (id.). She went down the house and saw accused Julius Kinok and Tapante Saligan. The duo were thus unable to buy the rice as the couple had no change (id.). The two accused then asked if the couple had corn grits (p.7, id.). They replied

that there was none available. Thereafter, the two accused requested William to accompany them to the store owned by Roger Miñoza (id.). William acceded (id.).

Between 8:30 and 9:00 o'clock in the same evening, William returned to their store and proceeded to sleep (p. 8, id.). Thereupon, Luz went back upstairs, listened to a radio program until sign-off, and thereafter slept at around midnight (id.).

At around 12:30 o'clock past midnight, Luz was awakened by a muffled gunburst. She immediately got up, looked over the window and saw the two accused both holding guns which were pointed at where her husband, William, was later found dead (pp. 8-9, id.). She was able to identify the two as the moon and stars were shining brightly and besides there was a pile of woods and bamboos ('bagacay') which were burning around eight (8) meters away from where the two accused were (p. 9, id.). Not long after, the two accused ran away (id.). Thereafter, Luz went back to lie down on her bed (p.10, id.). She could not go back to sleep because she was scared that the two would come back to strafe their house and kill them all (pp. 10, 16-17, id.).

While all these were going on, Ronel Mande, the 13-year old nephew of the couple, who was sleeping in the first floor with the other child, Rommel Aguipo (on the other side of the wall of split bamboos from where William was sleeping), was himself awakened by the noise coming from the horse and pigs (pp. 2-5, tsn, May 11, 1990). When he tried to look at the place where the horse and pigs were, he saw the two accused both holding firearms which were directed and poked at the walling of the store where William was sleeping (pp. 4-6, id.). He saw both accused clearly since the moon was shining brightly and the pile of woods he had previously set fire earlier in the evening was burning just around eight (8) meters away from where the accused were (id.). Upon noticing that both accused had pointed their guns toward the store where his uncle William was sleeping, he tried to look at the wooden railings (id.). As he was looking, he heard a muffled gunburst (id.). Thereupon, he ducked and lay down on the floor (id.). Feeling very much scared, he covered himself with a blanket (p. 7, id.).

About one and a half hours later, still being unable to sleep, Ronel noticed that his clothes were wet (pp. 8-12, id.). Thinking that the children upstairs had urinated, he went upstairs and woke his Aunt Luz complaining that he was wet with urine (id.). Luz check who of the children urinated, and finding no one, she lighted the lump to check why he was wet and, then discovered that it was blood (pp. 8, 13, id.; p. 10, tsn, May 30, 1990). She found out that the blood came from William whose wounds were oozing with blood (pp. 8-9, 13, tsn, May 11, 1990; pp. 10-11, tsn, May 30, 1990). She noticed that William had two wounds, one on the right side of the body and another on the left wrist (p. 11, tsn, May 30, 1990). She started crying, joined by Ronel (p. 9, tsn, May 11, 1990; p. 11, tsn, May 30, 1990). While Luz was crying, Ronel told her, ' Auntie, I saw the persons who shot him' (pp. 11-12, tsn, May 30, 1990). She warned him not to tell any one because the accused might

come back and retaliate against them (p. 16, tsn, May 11, 1990).

Luz, then, brought the dead body of her husband outside of the store and wrapped it with a mat (p. 12, tsn, May 30, 1990). Thereupon, she informed her parents-in-law (id.). At about 4:30 o'clock in the afternoon, they proceeded to the municipal hall of Kiblawan and subsequently to the Gregoria Matas District Hospital for an autopsy of the cadaver (id.). The examining physician, Dr. Reynaldo Villanueva, found, as revealed in his Outside Patient's Record Card, that:

'PRE:(1)entrance wound, L post lateral wrist 0.5 cm.  
diameter

(2)exit wound L ant-medial wrist 1 cm. diam.  
everted

(3)entrance wound R ant-level of 8<sup>th</sup> rib abdomen  
R upper quadrant just below the R costal  
margin 1.5 cm. inverted c no exit

Cause of Death: CPA 2° to gunshot wound'

(Outside Patient's Record Card, Exhibit `A', Records, p. 71;  
tsn, March 14, 1990, pp. 3, 5-6)

Luz had four policemen friends in Kiblawan who told her to reveal the identities of the culprits (pp. 27-28, tsn, May 30, 1990). She told them that she would do so at the proper time (p. 28, id.).

After the burial of her husband on October 9, 1989, she went to the Kiblawan Police Station and executed a sworn statement to support her complaint against the two accused (pp. 27-28, id.; p. 7, Sworn Statement, Exhibit `1', Records)."[3]

Neither of the two accused took the witness stand. In their defense, only Alfredo Canacan and Flaviana Solo testified.

Alfredo Canacan, a resident and barangay councilman of Kimlawis, testified that at about 5:00 o'clock in the morning of September 24, 1989, he fetched water from a well. While passing by the Aguipos' place, he heard some cries and being curious, he entered their house and there he saw the body of William Aguipe lying on the floor wrapped by a blanket wet with blood. He noticed that when Luz saw the forearm of her husband, she shouted, "giwak-giwak, gikitkit si William," which means, "William was eaten by the witch". When he told her that William might have been shot to death, she disagreed, saying she did not see any person nor hear any gunshot the night before.[4]

Flaviana Solo, barangay captain of Kimlawis, corroborated Alfredo Canacan's testimony[5] and further declared that she interrogated Ronel Mande. When she asked him about his uncle's condition, he answered that his uncle was trembling and he (Ronel) believed the incident was just a nightmare.[6]

After hearing, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered and in view of the foregoing, this court find the accused Julius Kinok alias Yos Bla-an and Tapante Saligan alias Tapante Bla-an guilty of the crime of murder as charged. They are hereby ordered to suffer imprisonment with a penalty of reclusion perpetua (Life sentence) each with the accessory penalties of the law. It appearing that there is no payment of the filing and docket fees, this Court cannot pronounce any civil liability, for jurisdiction over the same is acquired only from the moment of its payment.

SO ORDERED."<sup>[7]</sup>

In this appeal, appellants ascribe to the trial court ten interrelated errors which may be summed up as follows: **(1)** in finding that the evidence for the prosecution has established the identity of the killers; **(2)** in concluding that delay on the part of Luz Aguipo in naming the assailants did not weaken her testimony; **(3)** in holding that Ronel Mande, although the victim's nephew, is a credible witness; and **(4)** in convicting the appellants despite the fact that no ill motive on their part has been established by the prosecution.

Incidentally, during the pendency of this appeal, or on July 24, 1994, appellant Tapante Saligan died due to cardio respiratory arrest while confined at the National Bilibid Prison in Muntinlupa.<sup>[8]</sup> Hence, in a Resolution dated March 8, 1995, this Court dismissed the appeal with respect to him for being moot and academic.<sup>[9]</sup>

After a meticulous review of the entire records of this case, we find the appeal bereft of merit.

Ronel Mande, prosecution witness, positively identified appellants. His testimony in point is quoted as follows:

"DIRECT EXAMINATION

ATTY. CARPENTERO:

Q Now, while you were sleeping that evening, what unusual incident have you noticed if any?

A When I heard the sound coming from the horse and I noticed that the pigs were noisy, I was awakened and tried to look at the place where the horse and pigs were, I saw the two accused Yos Bla-an and Tapante Bla-an bringing firearms to the place where my uncle William Aguipo was sleeping.

X X X

Q How where you able to see this when it was in the evening?

A Because the moon was shining very bright and besides I was burning file of wood in front of the road.

COURT:

Q Why where you burning those woods?

A I burned in that place because there were so many garbage, your honor, so I have to burn them.

ATTY. CARPENTERO:

Q How far was that burning fire to the place where the accused where?

A About 8 meters.

x x x

Q Seeing the two holding firearms pointed to the place where your uncle William was sleeping, according to you, what did you do next?

A When I noticed that they were poking their firearms towards the store where my uncle was sleeping, I tried to look at the wooden railings and as I looked, I heard gun burst.

Q What kind of burst was that?

A A muffled burst.

Q Hearing the muffled burst at that time, what did you do?

A I ducked and laid down towards the floor?

Q Why did you drop towards the floor?

A Because I was afraid.

x x x

Q Now, after wrapping yourself with the blanket and knowing that Luz Aguipo was upstairs, what did you do next?

A I did nothing but to lie down covering myself with a blanket because I was very much afraid."<sup>[10]</sup>

Likewise, Luz Aguipo positively identified the appellants as the perpetrators of the crime, thus:

"DIRECT EXAMINATION

ATTY. CARPENTERO:

Q While you were sleeping, what unusual incident happened?

A After I went to sleep that was about 12:30 o'clock past midnight, I was surprised when I heard a gunshot, so I immediately rose up from the bed.

Q What kind of burst did you hear?

A A gun burst with a dull sound or in the local dialect "bungol nga boto".

Q Where did that gun burst emanate?

A From the downstairs of our house.

Q As you heard a gun burst, what did you do, if any?