

EN BANC**[G.R. No. 137001, December 05, 2001]****THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CAYETANO MOSENDE Y MORATA, ACCUSED-APPELLANT.****D E C I S I O N****VITUG, J.:**

On the evening of 22 March 1998, Leticia Zabala Sapupo was alone with her two sleeping children at her residence in Wawa III, Rosario, Cavite. Her husband, a *barangay tanod*, had left the house to conduct a night patrol in the neighborhood. She would, now and then, look through the window opening to see if he was already back. At about 10:00 p.m., peeping out, she saw Cayetano "*Tano*" Mosende, leaning on the fence, just arms away from where she stood. He was wearing the same clothes when she saw him drinking at the store earlier that afternoon. The vicinity was sufficiently illuminated from neighboring houses and a nearby construction site. Mosende was unaware of being watched because she by then had the lights in the house turned off. "*Tano*" was known in the neighborhood of closely-knit urban dwellers as being a habitual drunkard and troublemaker when inebriated. Leticia saw Mosende walk towards the mango tree where Enrique Sefriuto, popularly called by neighbors as "Andrew," was lying face up on a nearby bench. Moments later, Andrew stood up and walked some distance away to urinate. Mosende also rose, entered the yard and positioned himself behind Andrew while the latter was relieving himself. When Andrew faced "*Tano*," the latter, without warning, stabbed the unsuspecting victim twice at the left portion of the abdomen. The wounded Andrew yelled, "*Inay, may tama ako, sinaksak ako ni `Tano!*"

Leticia Sapupo was a few meters away from the two men. Recovering from the shock, Leticia sprung to call for help. She recounted that immediately after stabbing Andrew, "*Tano*" ran towards his house, which was just two arms length from the residence of the victim. Relatives immediately brought him to the Grace Hospital in Rosario, Cavite, but the young man had expired upon arrival at the hospital grounds. He was only twenty-nine years old. Barangay officials arrested Mosende.

Jenny Sefriuto, the mother of the deceased, was in her house in Boracay, Wawa III, Rosario, Cavite, with her two sons and a daughter when she heard Andrew shout, "*Inay, sinaksak po ako ni `Tano!*" Jenny rushed out and saw her bloodied son. Jenny said that Andrew and Mosende must have had some kind of misunderstanding because, days prior to the incident, Mosende had come to their house to ask forgiveness from her son. Jenny Sefriuto, however, had no idea of the nature of their misunderstanding.

Joseph Sefriuto, a brother of the victim, was inside the house when he heard his brother yell that he was stabbed by Mosende. When Joseph opened the door, he was completely aghast. He beheld the wounded Enrique who kept pointing at the nearby

house of Mosende.

Henry de la Cruz, the victim's brother-in-law, assisted Joseph Sefriuto in bringing Andrew to the hospital. Although quite weakened, Andrew was still alive when he was brought by tricycle to the hospital. Enroute to the hospital, he began to utter that it was "*Tano*" who had stabbed him.

On 17 June 1998, an Information was filed against Cayetano Mosende charging him with the killing of Enrique (Andrew) Sefriuto.

"That on or about the 22nd day of March 1998, at Sitio Boracay, Barangay Wawa III, Municipality of Rosario, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, being then armed with a fan knife (*balisong*), and with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab the person of Enrique (Andrew) Sefriuto, inflicting upon the said victim stab wounds on the left thigh, thereby causing his subsequent death, to the damage and prejudice of the legal heirs of said victim."^[1]

The accused, Cayetano Mosende y Morata, denied any involvement in the crime. He testified that on the evening of 22 March 1998, he went to the house of his sister in Little Baguio, Wawa III, so that he and his brother-in-law could go out fishing. When he arrived, his brother-in-law begged off. With the unexpected change in plans, the accused decided to stay for a while. It was already 11:00 in the evening when he made his homeward trek. At midnight, he was taken aback when a barangay came to take him to the municipal hall to account for the death of Enrique Sefriuto.

Parenthetically, when the trial court asked the accused about the apparent incongruence between his testimony and the earlier defense theory of self-defense, previously manifested by counsel, no explanation was proffered.

On 07 December 1998, the Regional Trial Court of Cavite, giving credence to the case for the prosecution, convicted the accused of the crime charged and sentenced him to suffer the extreme penalty of death -

"WHEREFORE, in view of all the foregoing considerations, this court hereby finds the accused Cayetano Mosende y Morata guilty beyond reasonable doubt of the crime of Murder, as charged in the Information, qualified by treachery and aggravated by evident premeditation and intoxication, and accordingly hereby sentences him to suffer the supreme penalty of death, and is hereby ordered to pay the heirs of the victim Enrique (Andrew) Sefriuto the amount of P50,000.00 as death indemnity."^[2]

In this automatic review of his case, appellant ascribes error to the trial court in giving more weight to the testimony of the prosecution witnesses than that of his own.

Regrettably, the records of the case fail to indicate anything of substance that can warrant a reversal of the judgment of conviction. Appellant, however, is correct in seeking a modification of his death sentence.

Neither the defense of denial nor the tender of *alibi* can prevail over the strong evidence presented by the prosecution. Surely, his acquittal cannot be made to rest solely on a self-serving testimony. Appellant claims to have been in the house of his sister in Wawa III on the night in question but the residence of appellant's sister is not that distant away from the place of the incident. In order that *alibi* can prosper an accused must be able to show that it would not have been possible for him to be physically present at the place of the crime or its vicinity at the time of its commission.^[3] The defense has miserably failed to make its point in this respect.

Furthermore, the defense theory would be no match against the unwavering identification made by eyewitness^[4] Leticia Sapupo who, in her testimony, was positive and unyielding when she pointed to appellant as being the person who killed Enrique Sefriuto -

"Q. Can you tell us what was that unusual incident?

"A. When I peeped through the window, I saw this '*Tano*' leaning on the fence or wall of our neighbor, I was just one arm length away from him, sir.

"Q. Do you know the complete name of this '*Tano*'?"

"A. Cayetano Mosende, sir.

"Q. What was he doing at that time?

"A. He was just leaning there, sir, but I saw on the part of his body (witness pointing to her left waist), that he had a knife with him which was still folded, sir.

"Q. After you saw him with the knife, what happened next when you saw him holding the knife?

"A. After a while I saw him walking towards the mango tree, sir.

"Q. Considering that it is already 10:30 in the evening, how were you able to see him?

"A. The place was lighted because there was a light in our neighbor's place that illuminated the place and at the other side of the fence there were people doing some construction work at the subdivision, and the spotlight of the place was focused on the other side, sir.

"Q. Then, what happened next after that?

"A. After a while, I saw this Andrew lying face up on the bench near the fence, sir.

"Q. At that time you saw this Andrew lying on the bench, where was '*Tano*,' then?

"A. He was still there seated along the mango tree, sir.

"Q. How far was this mango tree from where this Andrew was lying?

"A. Maybe about four arms length away, sir.

"Q. After that, what happened?

"A. Then I saw this Andrew stand up and he went outside of their kitchen, sir.

"Q. After that, what happened next?

"A. He was urinating sir.

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"Q. While this Andrew was urinating, what happened next?

"A. I saw Cayetano stand up, sir.

"Q. After he stood up, what happened?

"A. He was going towards the fence then he went inside [the fence], sir.

"Q. Inside of where?

"A. Inside the fence, sir.

"Q. Whose place?

"A. Andrew's house, sir.

"Q. After this `*Tano*' entered the gate, what happened?

"A. When `*Tano*' faced Andrew, `*Tano*' stabbed Andrew, sir.

"Q. How many times?

"A. Two times, sir.

"Q. After this `*Tano*' stabbed Andrew, what happened next?

"A. I heard Andrew shout, `*Inay, may tama ako, sinaksak ako ni Tano!*'

"Q. If this `*Tano*' or Cayetano Mosende is in court, will you be able to point to him?

"A. He is there, sir. (Witness pointed to the accused who identified himself as Cayetano Mosende).

"Q. After `*Tano*' stabbed this Andrew, what happened next?