

SECOND DIVISION

[G.R. No. 133246, July 31, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO DE LA TONGGA, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 73, Antipolo, Rizal, finding accused-appellant Antonio de la Tongga guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amount of P50,000.00, as indemnity, as well as the sum of P30,000.00 as actual damages plus the costs of suit.

The information against accused-appellant alleged -^[2]

That on or about the 7th day of January, 1990, in the Municipality of Cainta, Province of Rizal, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one, Pedro Bace y Clavillas on the vital part of his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty, whereupon trial on the merits proceeded.

The prosecution presented four witnesses, namely, Maxima Bace, Jesus Crisanto, Danilo Veneracion, and Macario Semera. On the other hand, the defense presented accused-appellant and his sister Lydia Dula as its witnesses.

The prosecution evidence shows that, on January 7, 1990, Jesus Crisanto, Danilo Veneracion and the victim Peter Bace went to the house of Paulino Reyes in Sapang Buli, Cainta, Rizal to attend a birthday party of one of the latter's children. Jesus Crisanto and Peter Bace arrived in Paulino's house at around 1 p.m. They were followed by Danilo Veneracion. While the group were having drinks outside the house, accused-appellant Antonio de la Tongga and two companions arrived. Crisanto offered them drinks. A few minutes after that, the group noticed that Peter Bace and accused-appellant were having an argument inside Paulino's house, about a meter away from where they were drinking. Crisanto testified that they could not understand why the two were having an altercation. The host tried to pacify them and was apparently able to do so because accused-appellant and the victim later shook hands.

Accused-appellant stayed for a short while and then left at past 2 p.m. Bace, Crisanto, and Veneracion stayed behind. Then between 3 p.m. and 4 p.m., they decided to go home but not before they had consumed several bottles of beer and a bottle of rum (Tanduay "lapad").^[3] Paulino Reyes accompanied them, suggesting that they take another route, because accused-appellant, a known tough guy ("*siga-siga*") in the neighborhood, might be waiting for them along the way. The group walked until they reached Villarica Subdivision where they boarded a tricycle going to St. Joseph Subdivision.

Crisanto sat on the right side of the tricycle, while the victim sat beside him. On the other hand, Veneracion took the seat inside the vehicle with Paulino Reyes sitting behind the driver.^[4] As the tricycle was about to stop at St. Joseph Subdivision, accused-appellant appeared and suddenly stabbed the victim while the latter was still inside the tricycle. At the time, Crisanto was less than a meter away and saw the incident, while Veneracion saw accused-appellant when the latter was running away. Reyes and Veneracion, followed by Crisanto, immediately alighted from the said vehicle. The three then returned to the vehicle and rushed the victim to the hospital, but he was dead on arrival.^[5]

Macario Semera, the tricycle driver, recalled that at around 4:45 p.m. on January 7, 1990, four men boarded his tricycle and asked to be taken to St. Joseph Subdivision. When they reached St. Joseph Subdivision, a commotion arose inside his vehicle. Suddenly, all his passengers ran away leaving one bloodied person slumped on the seat of the tricycle.^[6]

Dr. Alberto Reyes of the National Bureau of Investigation testified on the fact and cause of death of the victim. He said that the victim sustained one (1) stab wound on the chest just above the heart which caused his immediate death. He added that a bolo could have been the weapon used by the assailant when he attacked the victim who was seated at the time.^[7] The wound sustained by the victim was more described as follows:^[8]

Wound, stab, 4.0 cm. long, linear in shape, edges clean cut, oriented downwards and slightly laterally, with sharp infero-lateral and contused supero-medial extremities, directed backwards, downwards and laterally, involving the skin and underlying soft tissues, penetrating the pericardial sac and the right ventricle of the heart, with an approximate depth of 17.0 cm.

Finally, the widow, Maxima Bace, testified that she incurred more than P20,000.00 for the funeral and hospital expenses of her husband.^[9]

Accused-appellant denied he killed Peter Bace. He claimed that at past 1 p.m. on January 7, 1990, he was going to his sister's (Lydia Dula's) house in Sapang Buli, Cainta, Rizal to ask his nephew to accompany him to Bulacan when he noticed several men outside his sister's house drinking. As he tried to pass by the group, one of them stopped him and offered him a drink which he refused. Embarrassed, the man who offered him a drink got angry and pushed him. When accused-appellant's sister saw that her brother was having an altercation with the group, she took him away. Lydia added that she accompanied accused-appellant when he

boarded a jeep in Celilu Compound. Accused-appellant said he arrived home twenty minutes later and did not return to his sister's place anymore. He added that he was arrested in December 1993 when he was in Marikina.^[10]

On February 4, 1998, the lower court rendered its decision, finding accused-appellant Antonio de la Tongga guilty of murder qualified by evident premeditation. The dispositive portion of its decision reads:^[11]

WHEREFORE, premises considered, this Court holds accused Antonio dela Tongga GUILTY of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as the killing of his victim was made with the qualifying circumstance of evident premeditation. The killing was likewise with the presence of the generic aggravating circumstance of treachery as the stabbing was done in a sudden and unexpected manner while the deceased was sitting inside the sidecar of a tricycle, thus tended directly and specifically to ensure its execution without any risk to himself arising from the defense which the victim might make. There being no mitigating circumstance to even the same, he is hereby sentence to RECLUSION PERPETUA and to pay the heirs of his victim the sum of Fifty (P50,000.00) as indemnity, and the sum of Thirty Thousand Pesos (P30,000.00) as actual damages. Costs against him.

SO ORDERED.

Hence, this appeal. Accused-appellant argues that-

- I. THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED HAD BEEN PROVEN BEYOND REASONABLE DOUBT
- II. THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE EXISTENCE OF EVIDENT PREMEDITATION AS A QUALIFYING CIRCUMSTANCE
- III. THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE EXISTENCE OF TREACHERY AS A GENERIC AGGRAVATING CIRCUMSTANCE
- IV. THE TRIAL COURT GRAVELY ERRED IN AWARDING THE SUM OF THIRTY THOUSAND PESOS AS ACTUAL DAMAGES

First. Accused-appellant argues that the prosecution failed to establish the identity of the assailant, because it was not shown that Crisanto and Veneracion actually saw accused-appellant stab the victim. This is not true. Crisanto testified:^[12]

Q:....Who was that companion of yours that was stabbed?

A:....Peter Bace.

Q:....Who was the person who stabbed him?

A:....Antonio dela Tongga.

Q:....You said you were riding on a tricycle at the time Peter Bace was stabbed, where was Peter Bace?

A:....He was riding the tricycle.

Q:....What part of his body was he stabbed?

A:....On his chest.

Q:....In relation to the person who stabbed him, where was Peter Bace facing?

A:....He was in front of Peter Bace.

Q:....What about at the time that Peter Bace was stabbed, where were you at that time?

A:....I was with him.

. . . .

Q:....Before Peter Bace riding, who was his companion in the tricycle?

A:....Me, sir.

Q:....How many of you inside the tricycle together with Peter Bace before this Peter Bace riding?

A:....We were three inside the tricycle.

. . . .

Q:....You are telling this Hon. Court that Peter Bace was inside the tricycle was already stabbed?

A:....Yes, sir.

. . . .

Q:....Now, this Antonio dela Tonga as you said stabbed Peter Bace who was inside the tricycle, how far were you from Antonio dela Tongga?

A:....I was less than one meter from Antonio dela Tongga.

Q:....This Peter Bace who was stabbed by Antonio dela Tongga as you said, would you be able to identify him?

A:....Yes, sir.

Q:....Will you please look around this courtroom and tell the Hon. Court if this Antonio dela Tongga is present now?

INTERPRETER:

....Witness pointing to a person who identified himself as Antonio dela Tongga.

On cross-examination, Crisanto said:^[13]

Q:....You said that your companion Peter Bace was already stabbed and when he [was] stabbed you already to exit at the right side of the tricycle?

A:....Yes, sir.

Q:....You mean to say that you saw Peter Bace was being stabbed by the

accused while he was already going outside and the tricycle at the right side?

A:....Yes, sir.

Q:....How did you able to see?

A:....Because when I was able to alight from the tricycle, that was the time Peter Bace stabbed that is why I immediately alighted from the tricycle when I alighted from the tricycle, he has already a stab wound.

Q:....How far was then Peter Bace from the driver when he was hit by the accused?

A:....Around ½ meter.

. . . .

Q:....You said that you were seated at the right side of the victim, and you were also hit by the stabbing of the accused?

A:....No, sir.

Q:....You mean to say that the thrust of the accused by passed you and hit the victim Peter Bace?

A:....Yes, sir.

Q:....Were the thrust passed at your front or your back?

A:....In front of me.

. . . .

Q:....When the victim was being stabbed by the accused, was the victim still sitting at the right position of the tricycle?

A:....Yes, sir.

Q:....You mean to say that the victim was facing at the front side of the tricycle?

A:....Yes, sir.

. . . .

Q:....You said that the accused stabbed the victim, how far was the feet of the accused to the right side of the victim where you were sitting?

A:....One meter, sir.

Q:....After the accused stabbed the victim, what did the accused do?

A:....He run away.

Q:....And you rescued your companion Peter Bace when he stabbed by Antonio dela Tongga.

A:....Yes, sir.

Although Crisanto was a friend of the victim and took part in the incident between the accused-appellant and the victim, his testimony, as the trial court found, is reliable and credible. The general rule is that the findings of the trial court as to the