

SECOND DIVISION

[G.R. No. 116739, July 31, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO TORTOSA Y BACLAO, ACCUSED-APPELLANT.**

DECISION

BUENA, J.:

On November 13, 1992, at around 6:00 o'clock in the evening, Eufresino Bacloa sustained multiple wounds and was brought to Pantao District Hospital, Pantao, Libon, Albay. The resident physician of the said hospital, upon seeing him very pale and bleeding profusely, decided to transfer him to Albay Provincial Hospital. However, after about another ten minutes, he died.^[1] At around 6:35 p.m., the autopsy was conducted at Pantao District Hospital which revealed that the deceased suffered six (6) wounds, three (3) of which were fatal, to wit:

1. incised wound, face, 10 x 2 cm, right side
2. incised wound, 14 x 3 cm., occipital area to base of anterior neck, right, 4 cm. depth
3. incised wound, 19 x 4 cm., base of posterior neck to preauricular area, right, 4 cm. depth
4. incised wound, 8 x 1 cm., occipital area
5. incised wound, 14 x 3 cm., shoulder, right
6. incised wound, 15 x 3 cm., shoulder, left (records, exhibit A, p. 16)

The next day, Jopet Fernandez, barangay captain of Barangay Pantao, personally appeared and reported to the police that Eufresino Bacloa, a barangay resident of Pantao, was allegedly hacked several times by Ricardo Tortosa; that the victim was immediately rushed to the emergency hospital at Pantao, Libon, Albay and was later transferred to the Provincial Hospital of Legazpi City; that before arriving at the hospital the victim died; and, that Ricardo Tortosa fled after the incident.^[2] On November 15, 1992, at around 3 o'clock in the afternoon, Ricardo Tortosa surrendered to the police station of Libon, Albay, admitting thereat that he hacked his cousin.^[3] For this, Ricardo Tortosa was charged with murder, thus-

"That on or about 6:00 o'clock in the evening of November 13, 1992, at Barangay Pantao, Municipality of Libon, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bolo with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and hack one EUFRESINO BACLAO from behine (sic) while the latter was completely unaware, hitting him at the different parts of his body resulting to his death, to the damage and prejudice of the legal heirs of said Eufresino(sic) Bacloa.

ACTS CONTRARY TO LAW."^[4]

Upon arraignment, the accused duly assisted by counsel, entered a plea of not guilty to the crime charged.

Cesar Medina, a barangay *kagawad* of Pantao, Libon Albay, narrated that at around eight o'clock in the morning of that day, accused went to the barangay hall complaining against the victim for allegedly imputing to him the use of poison in the barangay. Thereafter, Medina sent for the victim who arrived around nine o'clock in the morning. When the victim was apprised of the complaint, he asked for forgiveness saying that since they are related he will not do such a thing against the accused.^[5]

Later that day, at around 6:00 in the evening, Elena San Jose and her sister-in-law Nina San Jose were at the sari-sari store of Norlito Surwez to individually buy cigarette and kerosene. Norlito Surwez, at that time, was in the kitchen cooking. At the table outside the store, they saw the victim with Norlito's brother, Jimmy, having a drinking spree. Not long after, Jimmy left, leaving the victim drinking alone. While the victim was seated, the accused arrived from across the road and, using a bolo about 14 inches long, immediately hacked the victim which landed on the right side of his neck. The second blow landed on his back causing him to slump on the ground face down. This horrifying incident unfolded before them 2 to 3 meters away, causing them to scream and run away. Meanwhile, the thud and screams prompted Norlito Surwez to go out of his house. Thereat, he saw the victim sprawled on the ground, facedown, being hacked by the accused. Immediately after the accused left, the victim was brought to the hospital where he expired.

The trial court appreciated the aggravating circumstance of treachery qualifying the killing to murder after finding that the attack on the victim was spontaneously done, in a surprise manner without any risk on the life or limb of the accused, or any defense or resistance that may be put up by the victim. The aggravating circumstance of evident premeditation was likewise appreciated upon recognizing that there was no settlement on the issue threshed out at the barangay level in the morning of that fateful day such that the accused harbored ill-feelings against the victim, thereby planned to kill the victim that same morning, and clung to his determination to kill the victim later that day. Likewise, the court appreciated abuse of superior strength noting the physical defect of the victim, a polio victim, causing him to drag his right foot. According to the trial court, the aggravating circumstance of taking advantage of superior strength offsets the mitigating circumstance of voluntary surrender. In view of the foregoing findings, accused was convicted of murder and sentenced to suffer the penalty of *reclusion perpetua*. The decretal portion of the decision reads -

"WHEREFORE, premises considered, the court finds the accused RICARDO TORTOSA Y BACLAO, GUILTY beyond reasonable doubt of the crime of murder. ACCORDINGLY, he is sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalty provided for by law, and to pay the aggrieved party Twenty-five Thousand (P25,000.00) Pesos representing actual expenses and Fifty Thousand (P50, 000.00) Pesos as moral and exemplary damages, and to pay the costs.

"SO ORDERED."^[6]

Accused appealed his conviction raising the following assignment of errors:

"ASSIGNMENT OF ERRORS

I

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE INSUFFICIENT PROOF TO ESTABLISH THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PRE-MEDITATION.

III

THE TRIAL COURT GRAVELY ERRED IN OFFSETTING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER BY THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH WHICH IS NOT ATTENDANT IN THE INSTANT CASE.

IV

THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN AWARDING EXEMPLARY DAMAGES AND EXCESSIVE ACTUAL EXPENSES."^[7]

Appellant maintains that it was the prosecution witness, Norlito Surwez, who killed the victim. Appellant testified that the victim owns the property where the house of Norlito Surwez stands and the victim tried to evict Norlito Surwez because the latter gathered coconuts at nighttime. Thus, on November 13, 1992, at around six o'clock in the evening when he went to Norlito Surwez' store to buy sardines, he found the victim having an altercation with Norlito. As he tried to pacify the two, the victim unsheathed his bolo so he wrestled the bolo from the victim in order to defend Norlito. In the process, appellant hacked the victim on the left shoulder. Appellant avers that the wound inflicted was the result of his desire to defend Norlito, a stranger, for which a justifying circumstance of defense of a stranger should be credited in his favor.^[8] Appellant recounted that upon hitting and seeing the victim fall to the ground, he walked away out of fear, leaving the bolo on top of the table outside the store. While doing so, Norlito entered the kitchen and when he came out of his house he was carrying a bolo. At a distance of around ten (10) meters, appellant claims that he saw Norlito continuously hack the victim.

The trial court did not err in giving full faith and credit to the testimonies of the prosecution witnesses. The testimonies offered by Nina and Elena San Jose were more credible and worthy of belief. At the time when appellant hacked the victim, both of them were just two (2) to three (3) meters away from the victim. Terrified, they screamed and fled from the scene of the crime. The shouts prompted Norlito to go out of the house and there he saw appellant continuously hack the victim while lying facedown on the ground. The record is bereft of any evidence to show that Nina, Elena, and Norlito had improper motives to testify falsely against appellant and the rule is well settled that absent evidence showing any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credit.^[9] In the absence of evidence or any indicium that the prosecution's main witness harbored ill