

FIRST DIVISION

[G.R. No. 128382, July 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
KENNETH CAÑEDO, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the decision of the Regional Trial Court of Cebu City, Branch 5, finding Kenneth Cañedo guilty of murder and sentencing him to suffer the penalty of reclusion perpetua.

Kenneth and his father, Baltazar "Billy" Cañedo, were indicted for murder in an information that alleged:

That on or about the 23rd day of October, 1994, at about 1:00 o'clock dawn, more or less at Sitio Tingkoro, Barangay Pakigne, Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent to kill, by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab VIRGILIO MAÑACAP with the use of a sharp bladed weapon, thereby inflicting upon the latter fatal wounds which caused his death immediately thereafter."^[1]

Both accused pled not guilty. After trial, the trial court acquitted Baltazar but convicted Kenneth.

The evidence adduced by the prosecution show that on October 22, 1994, a dance was held in the basketball court of Sitio Tingkoro, Pakigne, Minglanilla, Cebu on the observance of its fiesta. On this occasion, two commotions took place. The first transpired at about 12:00 midnight inside the basketball court. This was stopped by the barangay tanods at about 12:30 A.M. The second commotion, which ended the life of Virgilio Mañacap, occurred outside the basketball court at about 1:00 A.M.

Arjay Amistad, an alleged eyewitness, testified that during the commotion, he saw Baltazar apply an armlock on Virgilio. Then, Kenneth, with his right hand, stabbed Virgilio twice with a knife. The thrusts were directed on the breast and stomach of Virgilio. Virgilio fell down when Baltazar released his hold. Baltazar then pulled out his gun and fired a random shot.

Virgilio was put in a tricycle and rushed to a hospital.^[2] The stabbing was reported to the Minglanilla police station and three policemen responded. They conducted an on the spot investigation where Arjay recounted what he saw. The police took him to their station to shed further light on the incident. After a while, Kenneth and

Baltazar allegedly arrived at the station accompanied by policemen.^[3] After identifying them, Arjay left the police station.^[4]

Eric Mañacap and Venancio Bacus corroborated the testimony of Arjay. Eric alleged that he was three to four steps away when Kenneth stabbed Virgilio. Kenneth ran away after stabbing Virgilio. Together with Arjay, Joseph Gonzales, Ramil Rosal and Edoy Gacama, they lifted Virgilio to a tricycle. Eric then went to the Minglanilla police station and reported the incident. There, he pointed to Kenneth and Baltazar as the assailants. Allegedly, Kenneth admitted that he stabbed the victim. The two were detained at the police station.^[5]

Venancio Bacus, who was then tending a store beside the basketball court, testified that at about 1:00 A.M. on October 23, 1994, a fight broke out inside the dancing place. The fight continued outside the basketball court where Kenneth stabbed Virgilio while armlocked by Baltazar. After the stabbing, Baltazar fired a shot and shouted "come who is brave"^[6] while Kenneth ran away.^[7]

SPO2 Gerardo Peñafort testified that Arturo Mañacap reported to him the stabbing incident. He dispatched Nestor Canlubo and Ramil Navarro to investigate at Sitio Tingkoro. Peñafort questioned Arjay, Eric, Arturo and Bendulo Especio who claimed to have witnessed the incident. During the investigation, Kenneth and Baltazar were allegedly brought by Raul Pable, barangay captain of Pakigne, to the police station. Kenneth was identified by Arjay, Eric and Arturo as the culprit. When Peñafort asked Kenneth if he stabbed Virgilio, the latter denied it. Baltazar was given a paraffin test and was found positive for gun powder burns. Peñafort did not reduce his investigation into writing but he entered the incident in the police blotter.^[8]

SPO2 Ramil Navarro testified that between 1:00 to 2:00 A.M. on October 23, 1994, he, together with SPO2 Ferdinand Navales, SPO3 Allan Gabuton, SPO1 Nestor Canlubo and a driver named Hilarion Camacho were instructed by Peñafort to take Kenneth and Baltazar to the police station. They proceeded to the barangay hall of Pakigne where they saw Kenneth and Baltazar. Navarro invited them to go to the police station. Kenneth and Baltazar did not go with them but assured him that they would later drop by the police station.^[9]

The autopsy conducted by Dr. Jesus. P. Cerna showed that the victim sustained one (1) stab wound on the chest with a length of two (2) centimeters and another on the right side of the abdomen with a length of three (3) centimeters. Both wounds were fatal. Dr. Cerna declared that the instrument used could have been a sharp pointed single bladed weapon. The location of the wounds suggested that the assailant and the victim could have been facing each other when they were inflicted.^[10] He opined that it was possible that two weapons could have been used in the crime.^[11]

The evidence of the defense is as follows:

In the evening of October 22, 1994, Kenneth and his friends were having a drinking spree at the store of Ana Mae Saavedra Sudaria located beside the basketball court where the dance was being held. A commotion took place inside the basketball court. Kenneth went inside the court to look for his cousins but as people were

running away, he decided to return to the store of Ana Mae.

In the early morning of October 23, 1994, another commotion happened outside the basketball court. They stood and watched the fight. Someone told him, "Ken, your father is mauled (sic) by many persons."^[12] He saw his father surrounded by persons who were attacking him. He shouted for help and helped his father ward off his aggressors. He was able to hit one of the aggressors. Some barangay officials responded and those attacking his father fled. His father complained of an aching back. Kenneth heard that somebody was stabbed. About fifteen (15) meters away from them, they saw a person sprawled on the ground. The person was lifted to a tricycle and Kenneth directed the driver, a certain Socrates, to take him to a hospital. The victim was accompanied by barangay tanod Nap Alipin.

Kenneth and Baltazar remained at the scene of the incident for a while. Later, they proceeded to the barangay hall to report the incident. Kenneth then went to a bakery of his aunt. Lolit, a sister of the victim, accompanied by three policemen, came and identified him as the assailant. He was taken to the barangay hall. Thereafter, he went to the police station of Minglanilla for investigation accompanied by his father and their barangay captain, Raul Pable.

During the investigation, Arjay and Eric, who appeared to be drunk, pointed to Kenneth as the assailant. Baltazar was not implicated. Kenneth denied that he stabbed Virgilio with his right hand. He claimed that he was left-handed. The police made him sign a waiver^[13] for his detention so that a preliminary investigation may be conducted. On January 3, 1995, an information for murder was filed against him and his father.^[14]

Baltazar, chief of the barangay tanods of Tingkoro, testified that they were tasked to maintain peace and order at the dance place. He proceeded to the basketball court during the first commotion. At the gate, he met Cesareo Vicente, one of the tanods, who was wounded on the face. Cesareo said that someone hit him with a belt buckle while he was pacifying the protagonists. Cesareo does not know who hit him. To make further inquiries, Baltazar went outside the basketball court and saw persons converging near the road. He identified himself and asked them who they were. He was immediately boxed on the head and surrounded by the group. He kept on parrying their blows. They struck him with a stone and he fell down. He suffered contusions and dislocation of his right shoulder.

He heard a shout that somebody was stabbed. They went to the place where people were gathered and saw a person lying on the ground. Kenneth suggested that the victim be brought to a hospital. After the victim was put in a tricycle, Baltazar asked his companions if they recognized those who attacked him. No one did. They repaired to the barangay hall. Between 2:00 to 3:00 A.M., barangay captain Pable came accompanied by policemen. Pable requested that they go to the municipal building of Minglanilla. With other tanods, they proceeded to the office of the chief of police where they met two youths who appeared to be drunk. Baltazar was made to undergo a paraffin test. He returned home only at 6:00 A.M. Upon learning that Kenneth was detained, he returned to the police station. He met Christopher Enjambre who told him that he saw the real assailant. Baltazar relayed this information to the police but they did not believe him. Later, a warrant of arrest was served on him.^[15]

Christopher Enjambre who allegedly saw the real culprit described him as a small man wearing a black t-shirt and brown short pants. The assailant escaped after stabbing the victim. He testified that Baltazar was about Fifteen (15) meters away from Virgilio when the latter was stabbed. Kenneth was then not in sight. He only saw Kenneth at the scene when Kenneth ran to help his father. A woman followed Kenneth. He said that only four people were in the immediate vicinity when Virgilio was stabbed. Fearful that another commotion might take place, he proceeded home and met barangay captain Pable along the way. Christopher related to him the stabbing incident since Pable did not see it. At about 7:00 A.M., Pable asked Christopher to accompany him to the municipal hall where they met the parents of Kenneth.^[16]

Laurentino Vellila, a banrangay tanod of Pakigne, related that, together with Napoleon Alipin and Joel Parajes, they helped Baltazar when the latter was attacked. Kenneth came when the fight was about to end. After the aggressors of Baltazar ran away, they noticed that people were gathering around a person who had fallen on the ground twenty (20) meters away from them. Seeing that the person has been stabbed, Kenneth shouted that the victim be brought to a hospital.^[17]

Anna Mae Sudaria testified that she followed Kenneth when he ran to help his father. She was about three (3) meters behind him. While running, she saw a person slumped on the ground who was even stepped on by people scampering away. She also saw Kenneth warding off the persons attacking his father. They did not pass by the place where the victim was found lying. Then, she heard a shout that somebody was stabbed. She was about twenty meters (20) away from this person while Kenneth and his father were about 12-15 meters away.^[18]

Raul Pable, barangay captain of Pakigne, testified that three policemen went to his house at about 2:15 A.M. Police officer Canlubo informed him about the stabbing incident. They requested him to accompany them. Thus, they went to the barangay hall where they met Kenneth, some barangay tanods and some civilians. A certain Mr. Saavedra, a brother-in-law of the victim, suggested that they go to the municipal building since the discussion in the barangay hall was becoming noisy. Kenneth volunteered to go with them as he heard that he was a suspect.

When they arrived at the municipal building at approximately 4:00 A.M., they were met by around seven (7) relatives of the victim. During the investigation, Arjay said that Kenneth stabbed the victim and had changed his clothes. Kenneth replied that he could not have changed his shirt as it still had bloodstains. Eric did not claim that he saw the stabbing incident but averred that Kenneth boxed him. Kenneth admitted that he boxed Eric but explained that Eric attacked his father.^[19]

To explain the presence of gun powder burns on Baltazar, SPO2 Frederick Larrobis testified that on October 22, 1994, at about 1:30 P.M., Police Superintendent Augusto Larrobis and himself conducted a seminar about the use of firearms among the barangay captain and the tanods of Pakigne. They were taught how to dismantle and fire an armalite and a shotgun. Baltazar fired both firearms.^[20]

As stated, the trial court acquitted Baltazar but convicted Kenneth. Appellant now contends:

I

THE LOWER COURT ERRED IN CONCLUDING THAT NO MOTIVE IMPELLED THE PROSECUTION'S WITNESSES, ERIC MAÑACAP AND ARJAY AMISTAD, IN FALSELY TESTIFYING AGAINST THE ACCUSED-APPELLANT.

II

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT WAS "POSITIVELY IDENTIFIED" AS THE ASSAILANT OF THE VICTIM AND HIS DENIAL OF HAVING COMMITTED THE CRIME CHARGED CANNOT PREVAIL OVER HIS "POSITIVE IDENTIFICATION" BY THE PROSECUTION'S WITNESSES.

III

THE LOWER COURT ERRED IN HOLDING THAT TREACHERY 'ATTENDED' THE KILLING OF DECEASED VIRGILIO MAÑACAP.

IV

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND IN SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA WITH A DURATION OF FROM TWENTY (20) YEARS AND ONE (1) DAY TO FORTY (40) YEARS, PURSUANT TO SECTION 21 OF REP. ACT 7659, AMENDING ARTICLE 27 OF THE REVISED PENAL CODE.

We acquit on reasonable doubt.

First. The identification of the appellant by Arjay is not convincing.

On direct examination, Arjay testified that he identified the appellant and Baltazar as the assailants of the victim at the police station of Minglanilla.^[21] On cross-examination, Arjay admitted that before appellant and Baltazar came to the police station, he described Baltazar to the policemen and the neighbors of the victim. He did not give Baltazars name but merely described his built. Nevertheless, the records do not show how he described his built. Thereafter, an unnamed neighbor of the victim declared that the person described is Baltazar. A sister of the victim and a policeman accompanied him to the place where Baltazar repaired after the incident. He pointed to Baltazar who was immediately arrested.^[22] Arjay described Baltazar in this manner:

Q- Now, when did you know for the first time the accused Baltazar (Billy) Cañedo?

A- I only recognized through his face (sic) at the time he held Virgilio Mañacap.

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Q- And when did you know for the first time his