

SECOND DIVISION

[G.R. No. 119832, October 12, 2000]

**RAYMUNDO TAN, JR., AND EDUARDO TAN, PETITIONERS, VS.
THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

For review is the decision^[1] of the Court of Appeals, dated January 30, 1995 in CA-G.R. CR No. 10680, which affirmed the judgment^[2] rendered on September 7, 1990 by Branch 24 of the Regional Trial Court of Maasin, Southern Leyte, in Criminal Case No. 1170, finding petitioners guilty beyond reasonable doubt of the crime of homicide. Also for review is the appellate court's resolution dated April 4, 1995, denying petitioners' motion for reconsideration.

The factual backdrop of this case is summed up by the trial court as follows:

Petitioners Raymundo Tan, Jr., and his brother Eduardo were neighbors of victim, Rudolfo^[3] Quinanola, in Divisoria, Bontoc, Southern Leyte. At around 5:30 P.M. of March 3, 1986, Eduardo and Raymundo, Jr., arrived in their community in a truck driven by James Todavia, a neighbor. They parked in Todavia's yard. As they alighted from the truck, Tereso Talisaysay suddenly confronted Raymundo, Jr., about a previous incident wherein the former was almost run-over by the latter while driving the truck at a reckless speed. A heated exchange of words between Raymundo, Jr. and Tereso ensued. The argument threatened to get physical, but before the two could exchange blows, Tereso retreated to his house. Raymundo, Jr. was following Tereso when, suddenly, a fistfight ensued between petitioner Eduardo and Renato Talisaysay, a son of Tereso. Virgilio Bersabal rushed to the aid of Renato. Virgilio kicked Eduardo, then ran away. Eduardo gave chase and a fresh exchange of blows followed.

Informed of the melee involving her sons, the petitioners' mother sought the assistance of the victim, Rudolfo Quinanola, to help stop the fight. The latter proceeded to the place of the fray where he immediately confronted James Todavia. James resented Rudolfo's meddling and became belligerent towards the latter. Meanwhile, prosecution witness Guillermo Cinco, who also rushed to help stop the fight, pulled Eduardo away from his adversary and succeeded in pacifying him. Seeing that another fight between James and the victim was threatening, Guillermo stepped in and stopped James from attacking Rudolfo, who then moved behind Guillermo.

At this juncture, Raymundo Tan, Sr., the petitioners' father, arrived at the scene of the incident, carrying a bolo. Seeing Raymundo, Sr. so armed, Guillermo told one of the spectators, Gorgonio Nueve, Jr., to take the bolo from him. Raymundo, Sr.

handed his bolo to Gorgonio without resistance.

Meanwhile, petitioner Raymundo, Jr. picked a wooden stool ("*bangkito*") in front of Tereso's house and tried to hit Rudolfo with it. Rudolfo evaded the blow, while Raymundo, Jr. fell to the ground. Guillermo moved in between the two, helped Raymundo, Jr. get up and held him from further attacking Rudolfo. Without any warning, Raymundo, Sr. approached Rudolfo and boxed him on the right jaw. As Rudolfo turned to face Raymundo, Sr., petitioner Eduardo moved in and struck Rudolfo on the nape with the wooden stool. The blow stunned the victim. With head bent forward, he fell to the ground. Guillermo let go of Raymundo Jr. so he could prevent Eduardo from further hitting the prostrate Rudolfo. Raymundo, Jr. then got hold of a leg of the stool, which had broken off and hit Rudolfo with it. Petitioners then took turns in kicking Rudolfo and stomping on his back until Guillermo managed to hold them. Guillermo then asked them to leave. The duo heeded his advice and hurriedly left the premises.^[4]

Guillermo's wife and neighbors rushed Rudolfo to a hospital, but he died on arrival. His corpse was then brought to his father's house, where Dr. Teresita Salvador, Municipal Health Officer of Bontoc, Southern Leyte, conducted a necropsy. Her post-mortem findings were reduced to writing as follows:

"Abrasion, about 3 cm. in diameter at the right temporal area adjacent to the lateral canthus of the eye; Contusion at the left auricular and mastoid regions. Abrasion, about 2.5 cm. at the right elbow. Abrasion about 2.5 cm. at the left elbow; (2-a) blood passed out from nose and right ear;

cause of death: Intracranial Hemorrhage, Traumatic."^[5]

The Provincial Prosecutor of Southern Leyte filed an Information with the trial court, docketed as Criminal Case No. 1170, charging Raymundo Tan, Sr., Raymundo Tan, Jr., Eduardo Tan and James Todavía with Murder. The accusatory portion of the charge sheet reads:

"That on or about the 3rd day of March, 1986, at around 5:30 o'clock in the afternoon, along the National Highway of Barangay Divisoria, Municipality of Bontoc, Province of Southern Leyte, xxx, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, evident premeditation and treachery, and with the use of fistic blows a wooden stall which they provided themselves for the purpose, did then and there willfully, unlawfully and feloniously attack, assault and box one Rodulfo (sic) Carcueva Quiñanola and beat him with a wooden stall (sic) many times, thereby inflicting upon the latter the following injuries:

'Abrasion, about three cm. in diameter at the right temporal area adjacent to the lateral canthus of the eye; contusion at the left auricular and mastoid regions; abrasion, about 2.5 cm. at the right elbow; abrasion, about 2.5 cm. at the left elbow, blood passed out from the nose and right ear.'

which caused the untimely death of said victim, to the damage and prejudice of his heirs and of social order.

"CONTRARY TO LAW." [6]

Only the three Tans, however, were arraigned and pleaded not guilty to the charge. The fourth accused, James Todavia, remained at large. It was only when the prosecution was about to rest its case against petitioners that the trial court acquired jurisdiction over Todavia. However, the prosecution could no longer establish Todavia's guilt beyond reasonable doubt since the witnesses against him were no longer available. Upon the instance of the prosecution, the case against Todavia was dismissed and he was utilized instead as a witness for the prosecution.

Petitioners raised the defense of denial. Their version of the events of that fatal afternoon, adopted and synthesized by the appellate court from the findings of the trial court reads:

"Evidence for the defense is to the effect that in the afternoon of March 3, 1986, Tereso Talisaysay confronted Raymundo Tan Jr., complaining that the latter was driving the KKK hollow block truck so fast. Both faced each other in a fighting stance. Olimpio Tindugan who came from nowhere, boxed Raymundo Tan, Jr. at the back and immediately ran way. Tereso Talisaysay returned to his house and stayed inside. Raymundo, Jr. followed him. He then took a wooden stool at the stairs of Tereso's house and angrily struck it against the cemented base of the stairs. The wooden stool broke into pieces. Then Raymundo Jr. picked up the leg of the stool and threw it against Tereso's window.

"Thereafter, Raymundo, Jr. assisted his brother Eduardo ganged up by Renato Talisaysay, Virgilio Bersabal and Juan Delima. He noticed that Eduardo's head was bleeding because Renato hit him with a stone. At that time, Raymundo Tan, Sr., who was at the back of his house, clearing his banana plantation, rushed to the aid of his two sons. He brought Eduardo to the nearby hospital for immediate treatment. Later, he and his sons surrendered to the police upon learning that the Talisaysay family would charge them with physical injuries." [7]

The lower court, after trial, rendered its decision as follows:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court hereby finds the accused Raymundo Tan, Jr. and Eduardo Tan guilty beyond reasonable doubt, as principals, of the crime of Homicide punishable under Art. 249 of the Revised Penal Code, and appreciating in their favor the mitigating circumstance of voluntary surrender, hereby sentences each of the said two accused Raymundo Tan, Jr. and Eduardo Tan, to suffer and undergo an indeterminate penalty of from SEVEN (7) YEARS OF *prision mayor* minimum to FOURTEEN (14) YEARS OF *reclusion temporal*; the Court also hereby finds the accused Raymundo Tan, Sr., guilty beyond reasonable doubt, as principal, of maltreatment under paragraph numbered 3 of Art. 266 of the Revised Penal Code, hereby sentences said accused to suffer and undergo imprisonment of FIVE (5) DAYS of *arresto menor*; the two accused Raymundo Tan, Jr. and Eduardo Tan are ordered to pay the heirs of the victim Rodolfo (sic) Quiñanola the amount of P30,000.00 for the death of the victim, and the three accused to pay the widow of the victim, Norberta G. Quiñanola, the amount of