

SECOND DIVISION

[G.R. No. 123969, February 11, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO TAVAS ALIAS "BOTOG", ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from the Decision^[1] dated January 30, 1995, of the Regional Trial Court, Branch 32, Agoo, La Union, convicting accused Rogelio Tavas alias "Botog" of the crime of murder, the dispositive portion of which states:

"WHEREFORE, in view of all the foregoing consideration, this Honorable Court finds the accused, ROGELIO TAVAS alias 'BOTOG', GUILTY beyond reasonable doubt of the crime of MURDER contrary to Article 248 of the Revised Penal Code. The accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and indemnify the heirs of the victim for damages in the amount of P50,000.00 for the death of the victim; actual damages and expenses in the amount of P11,000.00 and to pay the cost of the proceedings.

"SO ORDERED."^[2]

The Information for Murder against the accused reads:

"x x x

"That on or about the 4th day of June 1988, in the Municipality of Rosario, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an Armalite rifle, with intent to kill and with Treachery, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence by means of shooting with the said Armalite rifle one ANTONIO DE LA CRUZ Y PANGANIBAN, and as a result of which the said victim suffered fatal gun shot wounds which directly caused his death soon thereafter, to the damage and prejudice of the heirs of the said Antonio de la Cruz y Panganiban.

"Contrary to Article 248 of the Revised Penal Code."^[3]

The accused was tried after a plea of not guilty.

The evidence for the prosecution shows that at about 8:30 in the evening of June 4, 1989, Antonio de la Cruz was shot inside the store of Beatriz T. Colcol, sister of the accused. The store was located at Inabaan Sur, Rosario, La Union. Adorada Dulay, the victim's sister, heard the gunshot from her house located about fifty (50) meters

away. She rushed to Colcol's house and saw the victim sprawled on the floor and wallowing in his own blood. Adorada embraced him and asked who shot him. The victim answered in a loud voice that it was Botog [referring to the accused] who shot him. Standing five and a half (5 1/2) meters away from the victim and Adorada, the accused retorted that the victim was trespassing and intended to steal. The victim countered that he is not at fault. The other persons present at that time, namely, Sgt. Arturo Tavas, uncle of the accused, Beatriz "Betty" Colcol, sister of the accused, Rodolfo Colcol, brother-in-law of the accused, and Roman Tavas, father of the accused, also remarked, "Trespassing ka. Agtatakaw ka!" [You are trespassing. You are stealing!]^[4]

Adorada brought the victim to the Rosario Emergency District Hospital in Rosario, La Union. She was advised to transfer him to the Doña Gregoria Memorial Hospital in Ago, La Union. They arrived at the Doña Gregoria Memorial Hospital at about 9 o'clock in the evening.^[5] Dr. Jose Aspiras, Jr. attended to the victim who was already in critical condition at that time. He was operated on from 12:40 in the evening until 2:30 in the morning of June 5, 1988.^[6]

Meanwhile, Pfc. Alfredo Santiago, police investigator of the Rosario INP, was instructed to investigate the shooting incident. He went to the Doña Gregoria Memorial Hospital and saw the victim in serious condition. In the presence of several persons, Pfc. Santiago took the sworn statement of the victim (Exhibit "F") at about 11:20 in the evening. It reads:

"Q - Please state your name, age and other personal circumstances?

"A - ANTONIO DE LA CRUZ Y PANGANIBAN, 22 years old, single and a resident of Inabaan Sur, Rosario, La Union.

"Q - What happened to you?

"A - I was shot, sir, with a gun.

"Q - Who shot you?

"A - Botog Tavas, sir.

"Q - What kind of firearm did Botog Tavas use in shooting you?

"A - Armalite rifle, sir.

"Q - Why did Botog Tavas shot (sic) you with a firearm?

"A - I do not know any reason, sir.

"Q - What did (sic) you feel now?

"A - I am very weak, sir."^[7]

Since the victim could no longer write, Pfc. Santiago dipped the victim's right thumb in his own blood and affixed his thumb mark above his written name. Florentino Dulay and Rodolfo Ninalga witnessed the taking of the sworn statement and signed

the same.^[8]

The victim died at 1:35 in the afternoon of June 5, 1988.^[9] His family incurred the following expenses: (a) blood bought from the blood bank in the amount of P1,047.00; (b) medicine in the amount of P752.15; (c) funeral services by Abel's Memorial Service in the amount of P6,000.00; and (d) funeral services by Funeraria Cruz in the amount of P3,200.00.^[10]

On the other hand, the accused tried to prove self-defense and defense of a relative to exculpate himself. He testified that on June 4, 1988, at about 8:30 in the evening, he was in the house of his uncle, Sgt. Arturo Tavas, listening to the radio news. Shortly after, he heard his sister Betty shouting, "Agtatakaw!". He took the Armalite rifle (M16) of his uncle below the bed, cocked it in automatic mode and proceeded to his sister's store. He opened its door by means of the rifle and saw the victim brandishing a bolo at his sister. He called the attention of the victim saying, "Oy!". Standing about two (2) meters away, the victim turned and brandished the bolo at him. At that instant, he fired at the victim hitting his left waist. The victim fell down while his sister fainted. Then people started coming in. He was advised by his uncle Lodring to get a lawyer before surrendering to the police. He hid for more than three (3) months and resurfaced only after his bail bond was approved by the lower court.^[11]

Betty Colcol corroborated the accused's testimony. She testified that on June 4, 1988, at about 8:30 in the evening, she was in her store counting the day's earnings when somebody knocked on the door. She opened the door thinking it was a customer. The man, who turned out to be the victim in this case, got inside the store and demanded that she give the money she was then counting. When she was pushed to the corner, she screamed, "Agtatakaw!". The victim then scooped the money [P2,000 in bills and about P25 in coins] from the box. At that instant, the accused arrived. When the victim, holding a bladed weapon about 14 inches long, faced the accused, the latter fired at him. Beatriz then fainted.^[12]

The trial court convicted the accused of the crime of murder. Accused is now before this Court raising a lone assignment of error, to wit:

"The lower court erred in finding the accused guilty of murder by appreciating treachery as a qualifying circumstance."

The appeal is partly meritorious.

Firstly, we reject accused-appellant's argument that he shot the victim in self-defense as well as in defense of his sister. There is no proof of unlawful aggression on the part of the victim. His story that the victim turned around, faced him and brandished a bolo to strike him is repudiated by the testimony of Dr. Aspiras regarding the point of entry of the bullet that hit the victim, viz:

"x x x

"Q There are three findings in this Medico Legal Certificate. The first finding - 'Acute hypovolemic shock'. In layman's language, will you explain the meaning?

"A There is a decrease in the circulation of blood volume causing decreased cardiac output and decreased tissue perfusion due to secondary loss of blood.

"COURT:

"Q What was the cause?

"A Secondary to multiple fracture of the iliac crest, left side; the pubis, left side; the ischium, left side; lumbar vertebra; and laceration of muscles.

"Q You just quoted the third finding. In plain layman's language, will you please explain the meaning of these findings of yours and use your body to show the location?

"A There is a broken bone at the iliac, in the pubis upper left hip.

"Q About the pubis, left, the lumbar vertebra and ischium, left?

"A Part of the pubis. (Witness pointing to the lower part of the hip.)

"Q What was the cause of the broken bone?

"A The force of the bullet.

"Q What was your second finding -- 'gunshot wound' poentry - waist above and posterior to superior iliac crest, left?

"A Lacerated wound. When we opened the wound, the muscles were severely lacerated with continuous oozing of blood.

"Q What was the cause of the lacerated wound?

"A The bullet.

"Q How many did you find - gunshot wound?

"A One wound at the posterior about 6 to 7 centimeters.

"Q The entry point of the bullet?

"A Yes, sir.

"PROSECUTOR HIPOL:

"Q You just mentioned a gunshot wound on the second finding. We have the following entry: 'Gunshot wound; poentry - waist above and posterior to superior iliac crest, left.' Was this the one you have just explained?

"A Yes, sir.