

## EN BANC

[ G.R. No. 126116, June 21, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERLINDO YAM-ID ALIAS "ELY," ACCUSED-APPELLANT.**

### DECISION

**MELO, J.:**

Before us on automatic review is the decision dated June 17, 1997 of Branch 29 of the Regional Trial Court of the 7th Judicial Region stationed in Toledo City in its Criminal Cases No. TCS-2381 and 2382 finding accused-appellant ERLINDO YAM-ID guilty of murder and frustrated homicide, respectively, and sentencing him to suffer the supreme penalty of death in the first case. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, in Crim. Case No. TCS-2381 this Court finds the accused GUILTY of the crime of Murder and pursuant to Rep. Act 7659 hereby imposes the Mandatory penalty of DEATH and to indemnify the parents of the victim the sum of P50,000.00 and to pay actual damages in the amount of P40,000.00.

In Crim. Case No. TCS-2382, this Court finds the accused GUILTY of the crime of Frustrated Homicide under Art. 249 RPC in relation to Art. 50 and after applying the indeterminate sentence law, it is hereby the sentence of this Court that said accused will suffer the penalty of SIX (6) Years and ONE (1) DAY of Prision Mayor in its minimum period to TEN (10) YEARS of Prision mayor in its maximum period. The OIC, Branch Clerk of Court is hereby directed to remand the records of these cases to the Supreme Court for automatic review.

SO ORDERED.

(p. 45, *Rollo*.)

The case for the prosecution is summarized by the Office of the Solicitor General as follows:

Julius Cantutay was a resident of Saksak, Pinamungajan, Cebu. Appellant Erlindo was his neighbor. So, too, was Danilo Tejamo, his uncle, and six (6) year old Jerry Tejamo his cousin (p. 2, *tsn*, July 31, 1995).

On April 1, 1994, at around 2:00 o'clock in the afternoon, Julius was sent by his grandmother, Amanda Ceniza, to Brgy. Tutay, Pinamungajan, Cebu, to deliver *benignit*, a local delicacy, to his aunt Bebing Dequiado. Jerry Tejamo was with Julius. On their way to Dequiado's house, they passed by the house of appellant who greeted them, "Good Evening".

After said salutation, appellant suddenly unsheathed a long bolo. On instinct, Julius pushed Jerry, who was then walking in front of him, and told the latter to run. Appellant ran after the two. Jerry was overtaken by Julius. Julius momentarily stopped to wait for Jerry, but appellant caught up with Jerry. Appellant stabbed Jerry with the bolo on the left portion of his back. Not content, appellant held Jerry by the hair and hacked him on the nape. Jerry fell to the ground. As a *coup de grace*, appellant stabbed Jerry on the right side of his back. Jerry died on the spot. Appellant then knelt over the prostrate body of Jerry and sucked the blood from his neck (pp. 3-9, tsn, July 31, 1995).

Scared out of his wits, Julius ran towards the house of Jerry to the latter's father, Danilo Tejamio. Danilo was then sleeping, Julius narrated the harrowing incident to Aniceta Tejamio, wife of Danilo. Aniceta Tejamio is the sister of Julius's father, hence, an aunt (p. 5, tsn, Oct. 26, 1995).

Aniceta roused Danilo from his sleep and both of them ran to the site of the incident. Before they could reach the place, however, they were met by appellant, who had a bolo in hand. Danilo asked appellant the whereabouts of his son. Appellant instead answered, "I will kill all of you", and immediately hacked Danilo. Danilo was able to dodge the attack, but he slipped and fell to the ground. Appellant struck at the fallen Danilo, who tried to parry the attack, but Danilo nevertheless got hit on the bridge of his nose. Danilo tried to stand, but appellant hacked him anew. This time, Danilo was hit on the head, and he fell to the ground, bloodied (pp. 7-11, tsn, Oct. 26, 1995).

Since Danilo was not moving anymore, Aniceta shouted that Danilo was already dead. Appellant took hold of Danilo's collar to finish him off. Inexplicably, the tip of the bolo hit appellant's stomach and blood oozed from the wound. Perturbed, appellant ran towards his house and threw the bolo to the ground. Danilo regained consciousness and sought treatment (pp. 12-15, tsn, Oct. 26, 1995).

Expenses for the wake and burial of Jerry amounted to P40,000.00 (p. 14, tsn, *ibid.*)

(pp. 109-112, *Rollo.*)

During the trial, accused-appellant denied killing the 6-year old Jerry Tejamio and pleaded self-defense for his assault on Danilo Tejamio, Jerry's father. He contended that due to a land dispute between his family and the in-laws of Danilo Tejamio, the latter tried to kill him by firing at his house. In retaliation, he hacked Danilo Tejamio at the forehead but Danilo shot him, hitting him below the navel, in the process, causing a prolapse (the exposure of his intestines). Then, he lost consciousness.

The trial court did not give credence to accused-appellant's tale and after trial on the merits, it found him guilty as charged.

In this automatic review, accused-appellant now makes a complete turn-around and admits killing Jerry Tejamio. He, however, would plead insanity, and, as to his conviction for frustrated homicide regarding his attack on Danilo Tejamio, accused-

appellant seeks reversal on the ground that the prosecution failed to prove his intent to kill.

The People contends that accused-appellant should not be allowed to change his theory on appeal. We do not agree. An appeal in a criminal case opens the whole action for review on any question including those not raised by the parties (*People vs. Villaruel*, 261 SCRA 386 (1996); *People vs. Godines*, 196 SCRA 765 [1991]; *People vs. Villagracia*, 226 SCRA 374 [1993]; see also *Tabuena vs. Sandiganbayan*, 268 SCRA 332 [1997]). The reason for this rule is that every circumstance in favor of the accused should be considered (*Sacay vs. Sandiganbayan*, 142 SCRA 593 [1986]). This legal maxim acquires greater significance in this case where accused-appellant faces the supreme penalty of death. It is our policy that in a death penalty case, the Court cannot rush to judgment even when a despicable homicidal felon is involved for an erroneous conviction will have a lasting stain in our escutcheon of justice (*People vs. Alicundo*, 251 SCRA 293 [1995]).

At this instance, the defense, now as represented by the Public Attorney's Office (PAO), contends that at the time of the incident, accused-appellant was suffering from a chronic mental disorder, otherwise known as *schizophrenia*, which is characterized by a person's inability to distinguish between fantasy and reality and is often accompanied by hallucinations and delusions (Encyclopedia and Dictionary of Medicine and Nursing, *Miller-Keane*, p. 860 cited in the Brief for the Accused-Appellant, p. 63, *Rollo*).

Accused-appellant's defense of insanity is anchored on the testimony of Dr. Antonio Yapha who treated his wound. Said doctor testified that contrary to accused-appellant's claim that Danilo shot him, he did not find any entrance for the alleged gunshot wound. The doctor said that a wound caused by a .38 caliber slug will not result in a prolapse, that is, the intestines slipping out of the usual place. In the words of the defense, this "belied the testimony of accused-appellant that his stomach had a prolapse and instead bolstered the testimony of the prosecution witness that accused-appellant tried to kill himself with a long bolo" (Brief for the Accused-Appellant. p. 63, *Rollo*). As further proof of insanity, the defense cites accused-appellant's gruesome act of sucking Jerry Tejamo's blood after he had mercilessly stabbed the boy to death.

Insanity is a defense in the nature of confession and avoidance, and as such must be proved beyond reasonable doubt (*People vs. Ambal*, 100 SCRA 35[1980]). In considering the plea of insanity as a defense in a criminal prosecution, the starting premise is that the law presumes all persons to be of sound mind, or otherwise stated, the law takes for granted that acts are done consciously. Insanity being the exception rather than the rule in the human condition, "the moral and legal presumption is that freedom and intelligence constitute the normal condition of a person and that a felonious or criminal act (*delicto deloso*) has been done with deliberate intent, that is, with freedom, intelligence and malice" and that whoever, therefore, invokes insanity as a defense has the burden of proving its existence (*People vs. Aldemita*, 145 SCRA 451 [1987] citing Article 800, Civil Code; *US vs. Martinez*, 34 Phil. 305, 308 [1916]; *People vs. Cruz*, 109 Phil. 288, 292 [1960]; *People vs. Tagasa*, 68 Phil. 147, 153 [1939]; *US vs. Guevarra*, 27 Phil. 547 [1914]; *People vs. Renegado*, 57 SCRA 275, 286 [1974]; *US vs. Zamora*, 32 Phil. 218 [1915]; *People vs. Bascos*, 44 Phil. 204 [1923]).