

## EN BANC

[ G.R. No. 124452, July 28, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PABLITO TAMBIS Y BALIONG, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

Now before this Court for automatic review is the decision<sup>[1]</sup> of the Regional Trial Court, Branch 51, Carmen, Bohol, convicting Pablito Tambis y Baliong of murder and sentencing him to suffer the extreme penalty of death, and to pay the heirs of the deceased Leonardo Tagsa y Bibat fifty thousand pesos (P50,000.00), as indemnity, and twenty eight thousand pesos (P28,000.00), as actual damages.

On March 21, 1995, second assistant city prosecutor Alejandrino R. Adame of Tagbilaran City, Bohol, filed with the Regional Trial Court, Tagbilaran City, Bohol, an information for murder<sup>[2]</sup> against the accused Pablito Tambis y Baliong, as follows:

"That on or about the 25th day of December, 1994 at barangay Hagbuaya, municipality of Catigbian, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with three long sharp-pointed bolos, with intent to kill, treachery, taking advantage of superior strength and cruelty did then and there willfully, unlawfully and feloniously hack several times and behead one Leonardo Tagsa y Bibat, who was physically handicapped, hitting the victim several times in different parts of his body which caused the instantaneous death of said victim; that not contented with what he had done, said accused went around the neighborhood publicly displaying the head of his victim; thereby deliberately and inhumanly augmenting the pain and suffering of the victim and outraging or scoffing at the person or corpse of the said victim."<sup>[3]</sup>

Upon his arraignment on October 10, 1995, accused Pablito Tambis pleaded guilty to the murder charge.<sup>[4]</sup>

Considering the gravity of the crime charged and of the penalty involved, the trial court conducted a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea of guilty. Thereafter, the court proceeded with the reception of evidence to prove accused-appellant's guilt and degree of culpability.

The facts of the case are as follows:

At about 4:00 in the afternoon of December 25, 1994, prosecution witness Agapito Dano was on his way home after attending mass. He saw accused-appellant Pablito

Tambis y Baliong carrying two (2) bolos going up the stairs of Leonardo Tagsa's house. Seeing an approaching motorcycle, accused Pablito Tambis went down and ordered the driver to stop. When the motorcycle stopped, accused Pablito Tambis approached it and punctured its tires. Out of fear, witness Agapito Dano left the place and proceeded to his house, which was about one hundred twenty (120) meters away from the victim's house.<sup>[5]</sup>

A few minutes later, witness Agapito Dano returned to the victim's house. From a distance of eighty (80) meters, he saw Pablito Tambis carrying the severed head of the victim, shouting it was the head of Leonardo Tagsa. Witness Agapito Dano recognized Leonardo's head because the latter was a first-degree cousin of his wife.<sup>[6]</sup> The victim was physically handicapped, with a limp right arm and a crippled right leg. He was also suffering from a mental disorder.<sup>[7]</sup>

Edgar Regis, another witness for the prosecution, corroborated Agapito Dano's earlier testimony. About 4:00 in the afternoon of December 25, 1994, while driving his motorcycle, commonly known as "habal-habal," towards Hagbuaya, Catigbian, Bohol, accused Pablito Tambis flagged him down near the house of Leonardo Tagsa. Accused Pablito Tambis told him that he would not be killed; he would just puncture the tires of the motorcycle so that he could not go to the police.<sup>[8]</sup> After doing so, accused Pablito Tambis went back to the house of the victim.

Later, accused Pablito Tambis emerged from Leonardo Tagsa's house. From a distance of about twenty (20) meters, Edgar saw accused Pablito Tambis carrying the severed head of Leonardo Tagsa.<sup>[9]</sup> While showing the head to the people in the neighborhood, accused Pablito Tambis was saying, "here is the head of Leonardo Tagsa."<sup>[10]</sup>

Policemen found the severed head of Leonardo Tagsa about one hundred (100) meters from his house. The cause of death was irreversible shock secondary to homicidal decapitation.<sup>[11]</sup>

The family of the victim spent about twenty thousand pesos (P20,000.00) for the wake and burial of Leonardo Tagsa, and eight thousand pesos (P8,000.00) for embalment.<sup>[12]</sup>

Accused Pablito Tambis was the sole witness in his defense.

Accused Pablito Tambis admitted knowing the victim for about ten (10) years, because they lived in the same barangay. He described Leonardo Tagsa as tall, with weak right arm and right leg.

In the afternoon of December 25, 1994, accused Pablito Tambis was drinking with his friends at his house in Hagbuaya, Catigbian, Bohol, during which he got drunk. He had been drinking since he was eighteen (18) years old.<sup>[13]</sup> He was usually drunk once a month.<sup>[14]</sup> Normally, he just slept when he got drunk.

That afternoon, accused did not just sleep. Together with his friends, accused Pablito Tambis went to the house of Leonardo Tagsa, carrying the bolo of his friend.<sup>[15]</sup> A fight between him and the victim ensued, as a result of which he sustained minor

injuries in his right knee and right side of the body, near the pelvic bone.<sup>[16]</sup> He did not submit himself to a medical examination.

When asked during the cross-examination whether he killed the victim, accused-appellant answered in the affirmative:

"Q: So, you admit that you decapitated the victim Leonardo Tagasa?

A: Yes, I admit but I was about to realized [sic] what I did.

Q: In fact you make the recall, [sic] kindly look at this picture if this is the body of the victim after the incident?

A: Yes, this is the body of the victim."<sup>[17]</sup>

After the incident, accused Pablito Tambis went to a vacant house in Hagbuaya, Catigbian, Bohol, where he took a rest and stayed for the night. The following day, he surrendered to the police authorities. He testified during the trial that he was carrying one (1) bolo. However, he surrendered two (2) bolos. The other bolo was allegedly taken from the victim, when the latter was already weak and injured.

When asked why he killed and beheaded the victim, he said that he was not aware of what he did. He denied imbibing drugs that day.

On January 23, 1996, the trial court rendered decision finding accused-appellant guilty of murder. The dispositive portion of the decision reads:

"WHEREFORE, premises considered this Court finds accused Pablito Tambis y Baliong, guilty beyond reasonable doubt of the crime of murder. The Court observes that the manner in which he executed the crime shocks the sensibilities of normal people as it was done beyond the norms of behavior in a peaceful and civil society. As such, the offense committed by the accused would qualify as a heinous crime (as defined by R.A. No. 7659) as the act was grievous, odious, atrocious, perverse, repugnant, and outrageous to the common standards of "decency and morality in a just, civilized, and orderly society."

"The Court further observed throughout the proceedings, the hateful and angry eyes of the accused which shows that he poses a continuous threat, danger, and menace to society. In view hereof, this Court hereby resolves to impose upon the accused the maximum penalty (under Section 6 of the said Heinous Crime Act) of death. The accused is further ordered to indemnify the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) as death indemnity and Twenty Eight Thousand Pesos (P28,000.00) for actual damages.

"SO ORDERED.

"Done in Chambers this 23<sup>rd</sup> day of January, 1996 at Loay, Bohol for Carmen, Bohol.

(signed)

"DIONISIO R. CALIBO, JR.

"Presiding Judge "[18]

Hence, this automatic review of the death sentence.

Accused-appellant does not question his conviction; he questions the trial court's appreciation of the mitigating and aggravating circumstances against him, leading to the imposition of the death penalty. He claims that he should be meted only with the lesser penalty of *reclusion perpetua*.

There is merit in this contention. Accused-appellant is entitled to a reduction of the penalty due to the attendance of two mitigating circumstances, as shown hereunder.

Indeed, accused-appellant admitted the killing. However, even if accused-appellant did not admit responsibility for the crime, his guilt is clearly proven on the basis of strong circumstantial evidence. "Circumstantial evidence is sufficient for conviction, if the following are shown: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[19] The circumstances must be "an unbroken chain which leads to one fair and reasonable conclusion, which points to the defendant, to the exclusion of all others, as the guilty person." [20]

At the proceedings before the trial court, prosecution witnesses positively identified accused Pablito Tambis as the person they had seen going up the house of Leonardo Tagsa, with bolos in hand. He punctured the tires of the motorcycle of one of the witnesses, so that the latter could not report to the police authorities. Later, accused Pablito Tambis came out of Leonardo's house carrying the severed head of the latter.

The qualifying circumstance of treachery can not be taken into consideration in the absence of evidence showing the manner of attack and what ensued inside the house of the victim, who was living alone. Nobody witnessed the act of killing. "Where treachery is alleged, the manner of attack must be proven. It cannot be presumed or concluded merely on the basis of the resulting crime." [21]

However, the aggravating circumstance of abuse of superior strength must be taken against accused-appellant. "Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime." [22]

The prosecution has proved that Pablito Tambis purposely used excessive force, out of proportion to the means of defense available to the victim Leonardo Tagsa. Considering the physical condition of the victim who had a weak right arm and right leg, he was no match to the accused who even used two bolos as his weapons. The victim had no means of defending himself against his well-armed assailant.

Under Article 248 of the Revised Penal Code, the killing would be qualified to murder punishable by *reclusion perpetua* to death if attended "with cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse." [23] Accused Pablito Tambis did not just kill the victim. He