

THIRD DIVISION

[G.R. No. 97914, November 22, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL BROMO @ "CANO", ACCUSED-APPELLANT.

DECISION

GONZAGA_REYES, J.:

Accused-appellant Joel Bromo appeals from the decision dated March 11, 1991 of the Regional Trial Court of Negros Oriental, Branch 34, Dumaguete City,^[1] in Criminal Case No. 5842, finding him guilty beyond reasonable doubt of the crime of murder qualified by treachery, imposing the penalty of *reclusion perpetua* and directing him to indemnify the heirs of the victim the sum of P30,000.

In an amended information dated March 2, 1984, Joel Bromo alias "Cano" was charged by Assistant Provincial Fiscal, Jacinto S. Bautista with murder, allegedly committed as follows:^[2]

"That on or about the 19th day of March, 1983, at sitio Guindahogan, Barangay Suquib, Municipality of Tayasan, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one ZACARIAS LINDO with a hunting knife with which the accused was then armed and provided thereby inflicting the following wounds on the victim, viz.:

1. Stab wound measuring two (2) cm in length, one (1) cm in width and nine and a half (9 1/2) cm in depthness located at the left side of the base of the neck about six (6) cm away from the anterior midline and one and a half (1 1/2) cm above the left clavicle. The wound was oriented horizontally with the medial extremity rounded and the lateral extremity sharp. The said wound was directed vertically downward and slightly to the right cutting partly the subclavian artery and penetrating the posterior portion of the left lung.
2. Stab wound measuring two and a half (2 1/2) cm in length, one (1) cm in width and ten (10) cm in depthness, located at the left side of the trunk about three (3) cm away from the mid-axillary line posteriorly and nineteen (19) cm above the left iliac crest. The wound was oriented obliquely downward and posteriorly with lower extremity sharp and the upper extremity rounded. The said wound was directed slightly upward to the right penetrating the liver substance.

3. Incised wound measuring about one (1) cm in length and half (1/2) cm in width located at the left posterior aspect of the left arm along the posterior midline and nine (9) cm above the elbow joint.
4. Incised wound measuring about one and a half (1 1/2) cm in length and one (1) cm in width located at the posterior aspect of the left arm about half (1/2) cm away from the posterior mid-line medially and eight (8) cm above the elbow joint.
5. Incised wound about three (3) cm in length located at the posterior aspect of the left shoulder, about three (3) cm away from the anterior mid-line laterally. The wound was oriented horizontally.
6. Presence of hemothorax on the left side of the pleural cavity.
7. Presence of blood about one liter on the abdominal cavity.

which caused the latter's instantaneous death."

Upon arraignment, accused, duly assisted by his counsel, entered a plea of not guilty.^[3]

The prosecution presented the following witnesses:

Victorina Zuñiega was presented as an eyewitness to the stabbing incident. The victim was her brother-in-law, being married to her sister. She testified that at around eleven o'clock in the evening of March 19, 1983, she was outside the dance hall of sitio Guindahogan, Barangay Suquib, Tayasan, Negros Oriental in celebration of the town fiesta.^[4] At that time, she saw Joel Bromo alias "Cano" in front of her about a half meter from where she was standing facing north; Joel Bromo who was also facing north stood at the back of Zacarias Lindo at a distance of about two feet. Zacarias at that time was also facing north. Suddenly she saw Joel Bromo stab Zacarias Lindo at the left base of the neck with a stainless hunting knife.^[5] She claimed that she clearly saw the knife as it glittered as there was light coming from a petromax about three feet away and another one placed at the gate.^[6] She testified further that after the first wound was inflicted, Joel Bromo pulled the knife and again thrust it at the left side of Zacarias Lindo.^[7] She demonstrated this in court by raising her right hand holding a ballpen as the supposed knife, over the left shoulder of the court interpreter, who acted as the victim, then lowered and pushed it down at the base of the left side of the neck made a pulling motion as she removed the weapon knife from the base of the neck then brought it down and swayed it towards the left side of the victim. She said that after the victim was hit, the victim ran inside the dance hall and upon noticing this, she too ran and followed the victim inside the dance hall. She overtook the victim and hugged him and the latter said that he was stabbed by "Cano", referring to accused Joel Bromo.^[8] She then went outside of the dance hall and looked for Joel Bromo and found him by the road being investigated by policeman Warlico Balasabas. She went near the accused and pulled his hair and so accused fell flat on the road. She then went home and informed her elder sister, Ramonita Zuniega Lindo, that her (sister's) husband had been stabbed.

Dr. Rogelio Kho, Municipal Health Officer of Jimalalud, Negros Oriental, testified that he conducted a post mortem examination on the body of Zacarias Lindo at about 11:45 A.M. of March 20, 1983^[9] and the result of his examination was reduced into writing in an autopsy report.^[10] He described wound no. 1 as embodied in his autopsy report as having been inflicted on a spot between the left side of the neck and the left shoulder and could have been inflicted while the assailant was standing just a little bit to the left side of the victim while the latter was standing.^[11] He opined that stab wound no. 1 was fatal as it partly cut the sub-clavian artery which contained the blood coming from the heart pumping it to all parts of the body and which could cause death in one to two hours from moment of infliction;^[12] As for stab wound no. 2, he intimated that it could have been inflicted in the same position as wound no. 1 was inflicted using the same weapon and that wound no. 2 was also fatal because it hit the liver substance which would also cause death in 7 to 10 hours. As to incise wounds no. 3, 4, 5, they were inflicted by the person having the same position in inflicting wounds no. 1 and 2.^[13] The cause of death was severe hemorrhage and shock secondary to stab wounds which meant that the victim could have died of profuse bleeding and the patient went into shock before he died; that the weapon used by assailant on the victim was a pointed sharp single bladed instrument possibly a kitchen or hunting knife.

Ramonita Lindo, widow of the victim, testified on the civil aspect of the case. She testified that she spent P4,000.00 for the prayers and burial expenses. She further stated that they have six children and that after her husband died, she was the only one who supported her family; that she was worried upon her husband's death and if this worry and sadness would be compensated in terms of money, she asked for P20,000.00 as moral damages.^[14]

Patrolman Ricardo Barrera, member of INP of Tayasan, testified that on March 19, 1983 at around 11:00 P. M. Zacarias Lindo was brought to their station for medical treatment and an entry was made in the police blotter that the victim was allegedly stabbed by Joel Bromo alias Cano.^[15] He described the condition of the victim as almost dying and stated that the words which came out of his mouth could no longer be understood. Accused was escorted by Sgt. Fabillar and was later placed in jail.^[16]

Cpl. Warlico Balasabas , also a member of INP Tayasan, testified that on March 19, 1983, there was a town fiesta in Sitio Guindahogan, Tayasan, Negros Oriental. While he was inside the dance hall, he heard a shout from a certain Zacarias Lindo saying in the vernacular "*Nahibalo ko ug kinsay gabuno nako-si Cano Bromo*"; the Cano Bromo referred to was Joel Bromo as he was known in the locality as Cano.^[17] He arrested the accused and searched him and found in his possession a rolled carton which he believed was formed into a scabbard for a deadly weapon such as hunting knife;^[18] He then asked the accused for the knife but accused did not answer.^[19] Balasabas together with the other policemen present in the dance hall rode in a vehicle and brought the accused to Tayasan Municipal Building.

On cross examination, Balasabas testified that when he heard the shout of the victim that he was stabbed by Cano Bromo,^[20] he looked for the accused who was

leaning in front of the jeep and arrested him and conducted a search on his person but was not able to recover any bladed weapon from him and did not find any blood stain in the T-shirt of the accused. When he approached the accused, the latter smelled of liquor.^[21] Accused was about 15 to 20 meters from the place where the victim shouted that the accused stabbed him.^[22] He denied Zuniega's testimony that the victim was stabbed in front of him at a distance of about ½ meter.

On the other hand the defense presented the accused Joel Bromo who testified that at around 10:00 o'clock in the evening of March 19, 1983, he, together with Perseus Pioquinto and Sedric Bayawa, were seated at the bumper of the jeep of Atty. Jesus Bromo.^[23] At around 11:00 P.M., while still seated at the jeep, he saw people running in different directions, which was about 15-20 meters away from where he was seated and he heard a shout "I know I was stabbed by Cano Bromo."^[24] He stood up from the place where he was seated and was approached by policeman Balasabas who searched him but was not able to recover any weapon from him but only found a rolled carton which the accused used in scratching his back.^[25] When asked by policeman Balasabas whether he stabbed the victim, he denied this and said that they were just seated at the jeep when the incident took place.^[26] He was brought to the patrol car and was seated in the middle of the driver and the Acting Chief of Police Fabellar and a certain Victorina Zuniega who was seated at the back pulled his hair.^[27]

Defense witness Perseus Pioquinto corroborated the testimony of accused appellant that at around 11:00 P.M. of March 19, 1983, he was seated close to the accused and a certain Cedrex^[28] at the bumper of the jeep of Atty. Jesus Bromo which was parked about 15 to 20 meters from the place of the incident^[29] until they heard the victim's shout that he was stabbed by Cano Bromo. They just stayed at the jeep when Policeman Balasabas searched the accused and Pioquinto said that the "accused has not stabbed the victim because he just stayed here."^[30]

Another defense witness Willy De Baguio testified that at about 11:00 P.M. of March 19, 1983, he was outside the dance hall of Guindahogan, Tayasan, particularly in a store drinking beer with Mario Dagunton, his first cousin.^[31] He saw the victim squatting on the ground and drinking wine with his nephew Alfonso Sabanal and others whom he could not recognize.^[32] He saw Sonny Boy Alejo standing behind the victim (at squatting position) holding a sharp bladed weapon with a length of about 7-8 inches, hitting the victim at the left shoulder and his left side.^[33] After the stabbing, the victim ran inside the dance hall while he took the outside path of the dance hall but heard the victim shouting "I know who stabbed me. I was stabbed by Cano." He further testified that revenge was the motive of Sonny Boy Alejo in stabbing the victim because about four or five days before the stabbing incident, victim Lindo manhandled the brother of Sonny Boy;^[34] He intimated that he did not report the matter to the police or to the barangay captain because he was afraid as he had also been a victim of Sonny Boy Alejo when the latter stabbed him sometime in 1978 and as a result of which he had sustained wounds but he did not file a case against Sonny Boy. Sonny Boy is now dead as he was stabbed by a nephew of Zacarias Lindo.^[35]

After weighing the evidence adduced, the trial court rendered its decision dated

March 11, 1991, the dispositive portion of which reads:

"WHEREFORE, accused Joel Bromo alias "Cano" is hereby found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, for the killing of victim Zacarias Lindo, and the Court hereby imposes on said accused the penalty of imprisonment of RECLUSION PERPETUA.

Accused is likewise directed to indemnify the heirs of the victim the sum of THIRTY THOUSAND PESOS (P30,000.00).

Also, considering the fact that the accused is charged with a capital offense and taking into account his conviction today, where it can no longer be said that the evidence against him is not strong, and considering that the possibility of his jumping bail and evading arrest is not now remote, the accused is likewise hereby ordered to be immediately detained, without prejudice to his filing an appeal. The bailbond accused earlier posted is ordered cancelled.

SO ORDERED."

The trial court believed the testimony of the lone eyewitness, Victorina Zuniega, who positively identified the accused as having stabbed to death the victim Zacarias Lindo, once at the left base of the neck and then at the left side of the body. It found the theory of the defense which was premised on alibi and denial to be weak specially since at the time of the incident the accused was at the vicinity of the crime scene. The trial court rejected the claim of the defense that it was a certain Sonny boy Alejo who stabbed the victim considering that there was no record showing that the accused brought this up at the time of his arrest or during the criminal investigation; the allegation was only brought up during the trial when the supposed assailant was already dead and could no longer dispute the assertions of the accused and his defense witnesses. It also found that the discrepancy in the testimony of Zuniega and Policeman Balasabas regarding their particular positions at the time of the stabbing are considered of minor significance, and will not impair the material declarations of the prosecution witnesses. It ruled that the crime committed was murder qualified by treachery since the assailant dangerously armed was at the back of the victim and suddenly inflicted fatal wounds on the victim who was not aware that he would be attacked nor was he in the position to defend himself.

Contesting the decision of the trial court, accused-appellant interposed the instant appeal with the following errors assigned in his brief:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF THE SUPPOSED EYEWITNESS FOR THE PROSECUTION AS TO THE IDENTITY OF THE ASSAILANT IS FLAWED AND UNWORTHY OF BELIEF

SECOND ASSIGNMENT OF ERROR