

## SECOND DIVISION

[ G.R. No. 122102, September 25, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LORETO NOAY, ACCUSED-APPELLANT.**

### D E C I S I O N

**REGALADO, J.:**

Paterno Patajo and his wife Bebina Patajo<sup>[1]</sup> were sleeping in their house located at Barangay Balugo, Dumaguete City on May 24, 1992 when they were awakened by the sound of stones virtually raining on their house at around nine o'clock in the evening. Also sleeping inside the house were the couple's son, Pedrito Patajo,<sup>[2]</sup> and the latter's wife, Annabelle Patajo.<sup>[3]</sup> One of the stones also hit the house of Regino Patajo,<sup>[4]</sup> another son of Paterno and Bebina, which was about three meters away.

After falling of the stones stopped, somebody outside the house shouted "yawa" (devil) and called upon Paterno to open the door of his house. Anabelle recognized the voice as that of accused-appellant Loreto Noay who had been their neighbor for ten years and is a cousin of her husband. Paterno and Bebina got up and turned on the interior and exterior lights of the house. Together with Annabelle, they went to the doorway of the house to meet the person outside.

As Paterno opened the door, appellant suddenly directed the beam of his flashlight toward the face of Paterno and immediately stabbed the latter on the left breast with a long machete, locally known as "pinuti." Paterno fell to the ground as a consequence of the stabbing. With this horrifying sight before her, Bebina desperately cried for help.

When Regino heard the screams of his mother, he ran down from his house and proceeded to his parents' house. As Regino passed through the kitchen, he was met by appellant with hacking blows on the face and arms. As a result, Regino sustained incised wounds on his left hand, left wrist, right shoulder and left side of his face transversing towards his nose.<sup>[5]</sup> He then fell to the ground and saw his father bleeding and lying on a bench. Moments later, Regino lost consciousness and found himself already in the hospital when he recovered.

Pedrito, who stood up only after hearing his mother's cry, also tried to help his father; but, as Pedrito approached his fallen father, appellant suddenly hacked Pedrito on the left shoulder with the "pinuti" causing an incised wound.<sup>[6]</sup> Fortunately, appellant stumbled to the ground after hitting a caldron lying near the house. This gave Pedrito the chance to run to the house of their neighbor before appellant could strike him again. Several policemen later came to neighbor's house and brought Pedrito to the hospital. Meanwhile, appellant had already left the scene after Bebina begged him to leave her house.

Postmortem examination conducted by Dr. Susano Larena, Jr.<sup>[7]</sup> on the corpse of Paterno revealed that the latter's stab wound on his left chest had penetrated into and perforated the pulmonary artery of his heart causing internal hemorrhage. This injury ultimately led to the untimely death of Paterno.<sup>[8]</sup> For this burial, the family of Paterno contracted various funeral services and expenses amounting to P4,900.00.<sup>[9]</sup>

Regino and Pedrito were brought to the Negros Oriental Provincial Hospital where they were treated by Dr. Clemente S. Hipe IV.<sup>[10]</sup> This physician testified in court that had Regino not been given timely medical treatment, his four wounds, especially the one on the face, would have caused severe bleeding that could lead to hypovolemic shock and, subsequently, to death. Dr. Hipe described the incised wound suffered by Pedrito on the left shoulder as not so severe or serious as to cause death. From the expert opinion of the doctor, the injuries of Regino and Pedrito were caused by a sharp bladed instrument.

Because of this incident, three criminal informations were separately filed against appellant in three different branches of the Regional Trial Court of Dumaguete City as follows:

In Branch 34 of the said trial court, appellant was indicted for murder for the killing of Paterno in Criminal Case No. 10223.<sup>[11]</sup>

In Criminal Case No. 10358 filed with Branch 31 of the same trial court, appellant was accused of frustrated murder for the hacking of Regino which could have resulted in the death of the latter if not for the proper medical attention given him.<sup>[12]</sup>

For the wounding of Pedrito which did not result in his death by reason of some cause or accident other than appellant's spontaneous desistance. i.e., by the timely escape of Pedrito, appellant was charged with attempted murder in Criminal Case No. 10357 docketed in Branch 36.<sup>[13]</sup>

All of the three crimes were alleged to have been committed with qualifying circumstance of *alevosia*.

On proper motions by the prosecution, the respective presiding judges of Branch 31 and Branch 36 of the Regional Trial Court of Dumaguete City ordered the transfer and consolidation of Criminal Case no. 10358<sup>[14]</sup> and Criminal Case No. 10357<sup>[15]</sup> with Criminal Case No. 10223 pending before Branch 34, it having the criminal case with the lowest docket number.

Appellant pleaded not guilty during his arraignment on July 8, 1992 for the accusation of murder.<sup>[16]</sup> To the charges of frustrated murder<sup>[17]</sup> and attempted murder<sup>[18]</sup> read to him when arraigned on November 10, 1992, appellant also entered a plea of not guilty.

In a bid for exculpation, appellant interposed self-defense before the lower court and presented a different story of what allegedly happened on the night of May 24,

1992.

According to appellant,<sup>[19]</sup> he was at the house of his cousin, Crisanto Albina, at around 7:30 P.M. when he heard Paterno Patajo calling his name outside the house. In the company of Paterno at that time were his sons Regino, Pedrito, Dionisio and Eudes.

When appellant confronted the group, Paterno berated appellant for throwing stones at their house. Appellant denied to the group that he hurled the stones. Not satisfied with his disclaimer, Regino boxed him on the chest causing him to fall on the ground. Regino then picked appellant up by his right foot and spun him around. Thereafter, Pedrito and Dionisio, and later Paterno, joined in the mauling of appellant by kicking and hitting him on face and on different parts of his body. All this time, appellant was begging the Patajos to stop beating him. As appellant stood up to extricate himself from the group, Regino hit him on the back with a rock. Eudes tried to pacify his brothers and father while appellant was being attacked.

After a desperate struggle, appellee was able to break away from the hold of his assailants. He then ran towards his house, followed by his attackers. Feeling pain on his right foot, appellant massaged it in front of his house. Paterno, Pedrito, Regino and Dionisio laughed upon seeing appellant massaging his own foot. This prompted appellant to shout "*letse mo*" at his attackers. His cursing apparently irked Regino who approached and kicked him. Appellant fled from but was chased by Regino. Running around his house, appellant got hold of a machete inserted between the slats of the fence. He and Regino fell to the ground when they tripped upon a coconut trunk lying on the ground.

As he rose, he hacked Regino. Then, while he was pointing the "*pinuti*" towards the direction of Paterno, the latter ran towards him and unintentionally impaled himself on the machete. In the meantime, Pedrito was throwing stones at appellant's house and at him. Hiding behind a coconut tree, appellant approached Pedrito and struck him on the left shoulder.

After the incident, appellant, with the bolo in his hand, went to the house of *Barangay* Captain Carolina Umbac of Balugo and placed himself at her disposal. Later on, two policemen arrived at the house of the *capitana* and brought appellant to the police station of Basay, Negros Oriental.<sup>[20]</sup>

Dr. Larena<sup>[21]</sup> examined appellant on May 25, 1992. According to this witness, appellant came to him with abrasions on his left forehead, left face, left arm, left scapular area, and on the medial aspect of appellant's right knee. These bruises, the doctor explained in court, could only have been caused by the rubbing of the specified body areas against a hard object. Dr. Larena added that falling hard on the ground can cause the abrasions suffered by appellant.

To corroborate his version of self-defense, appellant presented Isabel Bantigue<sup>[22]</sup> in court. This witness is a neighbor and cousin-in-law of appellant. However, she gave a different version of how appellant defended himself against the aggression of the Patajos.

Isabel testified that she was approached by appellant's wife on the night of May 24,

1992 to accompany the latter to Crisanta Albina's house. Crisanta is the wife of Crisanto Albina, appellant's cousin. Before they could reach the house, Isabel saw Paterno hugging appellant and pulling his legs. At the same time, Pedrito struck appellant with a stone and boxed him. Regino and Dionisio also hit appellant with their fists.

Appellant ran to his house after he was able to escape from his attackers. At his point, Isabel also went to her house which was around ten meters away from appellant's house. Inside the house, Isabel heard someone outside shout "*letse mo.*" Then she heard stones falling on the ground. When she went out to check what was happening, she saw the ground around the house of appellant littered with stones.

She thereafter saw appellant holding out the "*pinuti*" when Paterno ran towards appellant. As a consequence thereof, Paterno was pierced by the bolo. In a sweeping statement, Isabel said that appellant was only defending himself when he wounded Pedrito and Regino.

After said joint trial, Branch 34<sup>[23]</sup> found appellant guilty beyond reasonable doubt of all the charges filed against him.<sup>[24]</sup> However, the lower court appreciated in favor of appellant the mitigating circumstance of voluntary surrender in all the criminal cases.

Hence, for the crime of murder in Criminal Case No. 10223, appellant was sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Paterno in the amount of P50,000.00. Appellant was also ordered to pay the burial expenses incurred by the family of the victim in the total sum of P4,900.00.

In Criminal Case No. 10358, wherein appellant was found liable for the crime of frustrated murder, the lower court sentenced appellant to imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum. Appellant was ordered by the trial court to pay Regino P20,000.00 as moral damages.

For the crime of attempted murder established in Criminal Case No. 10357, appellant was condemned to be imprisoned from six (6) months and one (1) of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. The court *a quo* likewise ordered appellant to pay Pedrito moral damages in the sum of P10,000.00.

In the present appeal, appellant maintains that the trial court erred in not appreciating self-defense in his favor and in concluding that treachery attended the killing of the victim Paterno despite the absence of proof thereof.<sup>[25]</sup> Both contentions of appellant must fail.

It is basic in criminal law that where the accused admits committing the crime but invokes self-defense to escape criminal liability, the general rule that the burden of proving the guilt of the accused lies on the prosecution is reversed and the burden of proof is shifted to the accused to prove the elements of his defense.<sup>[26]</sup> To be entitled to this justifying circumstance, the accused must prove by clear and convincing evidence that he acted in defense of himself.<sup>[27]</sup>

The evidence presented by appellant before the trial court can hardly be said to be clear and convincing as his testimony and that of his witness are replete with contradictions within themselves and with each other. Like the trial court, we notice a number of statements given by appellant<sup>[28]</sup> during the hearing on his petition for bail which are inconsistent with his testimony in support of his defense.

During the hearing, appellant denied killing Paterno<sup>[29]</sup> and added during his cross-examination that he was detained only for the wounding of Paterno's two sons.<sup>[30]</sup> He also said that Paterno was with Pedrito, Regino and Dionisio when they went to Crisanto's house.<sup>[31]</sup> No mention was made as to the presence of Eudes. Also, there was appellant's narration that it was Pedrito who boxed him after he answered Paterno's query,<sup>[32]</sup> and not Regino as he stated at the trial. We also note that appellant declared during the bail hearing that he shouted "*yawa*"<sup>[33]</sup> to his attackers while he massaged his foot and not "*letse mo*." Lastly, there is the answer of appellant that Paterno and Dionisio did not follow him to his house<sup>[34]</sup> after he was able to escape from the group.

If accused stabbed Regino merely to defend himself, it becomes polemical why he had to inflict four wounds on Regino. The presence of the large number of wounds sustained by Regino negates appellant's theory of self-defense and, instead, indicates a determined effort on the part of appellant to kill the victim.<sup>[35]</sup>

Then there is the testimony of Isabel. Instead of strengthening appellant's story, the testimony of this witness added doubt to the veracity of appellant's claim. There are extreme discrepancies between the narration of appellant and Isabel with regard to the circumstances surrounding the alleged self-defense. Short of changing appellant's account, Isabel gave, if not added to, different roles of the Patajos' on how they supposedly ganged up on appellant.

It should be noted that appellant did not state during his testimony that Paterno hugged him and pulled his leg in their fight as Isabel declared. According to Isabel, it was Pedrito who hit appellant with a rock while the mauling happened in front of Crisanto's house, contrary to appellant's declaration that it was Regino. And, unlike appellant, Isabel did not place Eudes in the vicinity of Crisanto's house during the mauling.

Considering the inconsistencies in the testimonies of appellant and his witness, the trial court was right in concluding that their testimonies do not deserve belief. With the distinct contradictions of appellant and Isabel in their testimonies, no credence can be accorded to the pretension of self-defense claimed by appellant during the trial.

An obvious contradiction in the stories given by a defense witness and the accused casts doubt on the latter's credibility.<sup>[36]</sup> Moreover, we have held that where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction.<sup>[37]</sup>

Isabel cannot even give a detailed account of how appellant wounded Regino and Pedrito.<sup>[38]</sup> And, while claiming that it was Paterno, Regino, Pedrito and Dionisio