

THIRD DIVISION

[G.R. No. 105583, July 05, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELEUTERIO TAMPON, ACCUSED-APPELLANT.**

DECISION

FRANCISCO, J.:

In an information dated October 26, 1990, appellant ELEUTERIO TAMPON was charged with the murder of ENTELLANO GONESTO committed as follows:

"That on or about the 1st day of September, 1990 at about 7:00 in the evening, more or less, at Barangay Laguna, Greenhills, Municipality of San Fernando, Province of Cebu, Philippines, x x x, the above-named accused, with deliberate intent and intent to kill, by means of treachery and evident premeditation, and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and stab Entellano Gonesto with the use of a knife, thereby inflicting upon the latter fatal wounds on his breast which caused his death thereafter."^[1]

When arraigned appellant pleaded not guilty, hence, trial ensued, after which, Branch 20 of the Regional Trial Court (RTC) of Cebu City rendered a decision convicting appellant of the crime charged and sentencing him to suffer the penalty of reclusion perpetua and to pay the amount of P50,000.00 as pecuniary liability to the victim's widow, Nenita Vda. de Gonesto.^[2] Appellant seeks the reversal of the foregoing decision by this appeal, and assigns to the RTC the following errors:

"I -THE LOWER COURT ERRED IN CONVICTING THE APPELLANT OF MURDER.

"II -THE LOWER COURT ERRED IN GIVING CREDENCE THE PROSECUTION'S SOLE EYE-WITNESS TESTIMONY WHICH IS BELIED BY PHYSICAL FACTS AND MEDICAL EXPERT OPINION.

"III.-THE LOWER COURT ERRED IN REJECTING APPELLANT'S ASSERTION THAT HE ACTED IN SELF-DEFENSE."^[3]

Whether or not the RTC committed the abovementioned errors can only be resolved by determining which of the two accounts of what happened on the fateful night of September 1, 1990 - the prosecution's version or the defense's narration of the

antecedent facts - should be given weight and credence. Thus, the issue here hinges mainly on the credibility of the prosecution vis a vis the defense witnesses.

The prosecution's story relies solely on Herman Tambacan's eyewitness testimony which is succinctly summarized by the RTC as follows:

"x x x on September 1,1990 at about 7:00 in the evening he (Herman Tambacan) was at his residence, more particularly at the door of his house at Green Hills, Laguna, San Fernando, Cebu; that on that occasion he saw Entellano Gonesto, the victim, passed (sic) by his house and later, he also saw Eleuterio Tampon who came out from (sic) the cotton tree and stabbed Entellano Gonesto; that the cotton tree is, more or less, 6 meters away from his house; x x x; that when the accused stabbed the victim the latter was hit on his left breast; that after the victim was stabbed he ran away with the weapon stuck at the portion where he was hit; that he could not tell what kind of instrument hit the victim, whether it was a bolo, a dagger, a chisel, but he only saw that it was a sharp-bladed instrument; that said Entellano Gonesto was hit and ran away with the assailant chasing after him, x x x.

"x x x; that he was certain that there was only one (1) stab wound delivered to the victim x x x who was still able to run away for about 30 meters, more or less, from his (Tambacan's) house and that the victim fell not along the footpath but across the cornfield x x x; that after he (the victim) was hit and ran fast he saw the victim fell (sic) down because of his injury, with face to the ground; x x x; that he was able to see Eleuterio Tampon pulled (sic) the weapon from the breast of Entellano x x x.

"While he was holding the weapon, the accused went to him (Herman Tambacan), about 6 meters distance, more or less; x x x he was confronted by the accused whether he was taking side with the victim, and that he told the accused that he was a barangay tanod x x x; that after that the accused ran away towards the direction of his house; that after informing the barangay captain (Benigno Marilao) he (Tambacan) was brought to the municipal building of San Fernando, Cebu and an investigation was made and the barangay captain and the police went to arrest Eleuterio; x x x."^[4]

On the other hand, appellant posits his own version of the facts in support of his allegation that he inflicted the fatal wound on Entellano Gonesto while acting in defense of himself. In his testimony in open court, he claimed the following: On September 1,1990, at around 7:00 o'clock in the evening, he was on his way to the junction of Magtalisay, San Fernando, Cebu to meet his son who was coming home from work in the city. While on his way, at a distance of about 100 meters from the house of Herman Tambacan, he met Entellano who immediately lunged at him with a "flamingo" knife. He ran away but Entellano was able to grab his left shoulder dragging him down in the process. As his body was blocking the way, Entellano stumbled over him thereby losing grip of the "flamingo". Appellant was able to grab

the "flamingo" and thrust it to the chest of Entellano.^[5] He then fled the scene of the crime bringing with him the "flamingo" which he eventually threw away.^[6]

Defense witness William Campugan who claimed to have witnessed the tragic incident on the night of September 1, 1990 corroborated the testimony of the appellant. He narrated that at around 7:00 o'clock in the evening of the said date, he and five (5) other persons were seated on a bench beside the road when a fight broke out between the appellant and Entellano some twenty (20) to thirty (30) meters from where they were seated. According to him, it was Entellano who started the fight as he was the one who pulled out a knife from his bag. He saw both the appellant and Entellano running in the direction of the farm. They wrestled with each other until the appellant stood up while Entellano was left lying on the ground. Appellant then proceeded home while witness, William Campugan and his companions went to the dance some 100 meters away to ask for assistance from the people there.^[7]

After carefully weighing all the evidence before it, the RTC found the testimony of eyewitness Herman Tambacan to be "straightforward and spontaneous,"^[8] while it declared the story of appellant unworthy of credence for being riddled with material inconsistencies. In debunking appellant's claim of self-defense, the RTC pointed out the various inconsistencies between the statements he made in the affidavit which he executed on September 12, 1990 and his oral testimony in court. In his affidavit, the appellant stated:

"(3) That on September 1, 1990 after taking my supper at about 7:00 o'clock in the evening, more or less, I was to meet my son who is working in Cebu City and returns home every Saturday evening only.

"(4) That while I was walking towards the national road with the night so dark, I met a certain person and I paid my respect, but he did not say a word and at the same time he thrust a sharp-bladed weapon and I evaded.

"(5) That we wrestled and thanks that I was able to snatch his weapon then I stabbed him, and it was only then that I realized that he was Entellano Gonesto who is a brother of my wife. He was already dead when I retreated."^[9]

But appellant's story of what happened on the said night as recounted by him in open court differed materially in several respects. As correctly observed by the trial court, while the appellant claimed in his affidavit that the "night was so dark" that he was unable to recognize Entellano until he had already stabbed the latter and left him for dead, he categorically declared in open court that while on his way to meet his son, he encountered Entellano who was brandishing a "flamingo".^[10] Appellant's allegation in his affidavit is immediately belied by the fact that the PAG-ASA report referred to by the RTC indicated that the moon was 84% illuminated on the said night. As the moon was bright on that night, appellant obviously lied when he claimed that he could not recognize his assailant at the onset. Further, in his

affidavit, the appellant was not able to identify the sharp-bladed weapon allegedly carried by Entellano but in his oral testimony, he stated without prodding and hesitation that it was a "flamingo." Finally and more significantly, whereas during the direct examination of appellant he recounted that Entellano immediately lunged at him with the "flamingo", chased him after he was able to evade the initial attack, stumbled over him and lost grip of the "flamingo," no mention of any such "chasing" nor "stumbling" is made in appellant's affidavit.

Needless to say, these palpable contradictions are fatal in view of the fact that they go into the very essence of appellant's claim of self-defense. Hence, applicable to the case at bench is our pronouncement that:

"The Court is aware of the general rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken ex parte, are usually incomplete and inaccurate. But the Court likewise subscribes to the doctrine that where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim.^[11] [Italics supplied.]

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William Campugan's testimony does more damage than good to the case of the defense. First, he claimed that the moon was not bright on the night of September 1, 1990^[12], yet he proceeded to narrate in detail the fight between Entellano and appellant which took place some 20 to 30 meters away. He unhesitatingly pinpointed Entellano as the assailant whom he saw rushing at the appellant with a knife, while appellant himself claimed that as the "night was so dark" he could not immediately identify the assailant even up close. Furthermore, considering that William Campugan was the nephew of appellant, it is inconceivable that he and his five (5) companions would merely watch the attack against his uncle and not even attempt to aid the latter. His testimony is clearly contrary to human experience and is thus, unbelievable, bespeaking only of his bias as a relative of the appellant.

In view of the foregoing, this Court is left with no choice but to concur with the RTC in disregarding the testimony of appellant and witness William Campugan while attributing full faith and credence to the testimony of eyewitness Herman Tambacan. This case affords no departure from the established rule in criminal jurisprudence that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court^[13] This rule finds basis in the fact that it is the trial court which has the opportunity to accurately weigh the testimony of the witnesses in the light of the latter's demeanor, conduct and attitude at the trial.^[14]

In the face of Herman Tambacan's eyewitness account, appellant miserably failed to prove self-defense. It is true that the cardinal principle in criminal law is that the burden of proving the guilt of the accused lies squarely on the shoulders of the prosecution. Conviction must rest, not on the weakness of the defense but on the strength of the prosecution.^[15] However, in cases where the accused admits

committing the crime but invokes self-defense to escape liability. the rule is reversed and the *onus probandi* to prove the elements of his defense is on him.^[16] He must prove clearly and convincingly the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.^[17] The initial crucial point of inquiry is whether there was unlawful aggression on the part of the victim for absent this essential element, no claim of self-defense can be successfully interposed. If there is no unlawful aggression, there is nothing to prevent or repel and the second requisite of self-defense would have no basis.^[18] Unfortunately, what is immediately apparent from the testimony of Herman Tambacan is the fact that the unlawful aggression was initiated not by the victim, Entellano but by the appellant himself. As the absence of the first element suffices to override appellant's claim of self-defense, further discussion of the other two elements is no longer necessary.

Even granting *arguendo* that the initial act of aggression came from Entellano as alleged by the appellant, we still cannot sustain his plea of self-defense. As testified by the appellant, he grappled with Entellano for the knife and was able to take possession of the same. At this point, it was no longer necessary for appellant to stab Entellano in order to protect himself. His subsequent act of stabbing the now unarmed Entellano belies his claim that he acted in self-preservation, and indicates nothing more than the perverse desire to kill. Thus, this Court held in the case of *People v. So*^[19] that "[a]fter appellant successfully wrested the knife from Tuquero, the unlawful aggression had ceased. After the unlawful aggression had ceased, the one making the defense has no more right to kill or even wound the former aggressor."^[20]

Furthermore, appellant's act of throwing away the knife and his failure to report the incident to the police authorities are inconsistent with a clean conscience and signify instead his culpability of the crime charged. In the case of *People vs. Aliviado*,^[21] this Court said that, "[t]he appellant's claim of self-defense is further negated by his subsequent conduct, viz., (a) the throwing away of the firearm he used in shooting the victims and his failure to report the incident to the police authorities and to lead them, after he was arrested, to the place where he threw the firearm; x x x."^[22]

As a last ditch effort to exculpate himself from criminal liability, appellant invokes the testimony of the medical expert, Dr. Jesus Cerna to further assail the credibility of the prosecution's story. Dr. Cerna testified as follows:

"FISCAL FERNAN

Q There is a marking here with annotation "stab wound." Please tell the court the exact location of this stab wound reflected in the sketch.

A The stab wound as indicated in the sketch is situated on the left side of the chest at the level of the 5th intercostal space or that space between the 4th or 5th or 6th rib.

FISCAL FERNAN