

## THIRD DIVISION

**[ G.R. No. 177769, September 12, 2007 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JONAS  
BUSTAMANTE, APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

On August 19, 1999, Jonas Bustamante was charged with the crime of murder in an Information that reads:

That on or about the 17<sup>th</sup> day of October, 1998 in the municipality of Catigbi-an, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without justifiable cause, with treachery and abuse of or taking advantage of superior strength, attacked from behind the victim Sergio Tandog y Lasaca who was unarmed and unaware of the attack, without affording the latter an opportunity to defend himself, and did then and there willfully, unlawfully and feloniously shoot the said victim with a short firearm, hitting him at the back portion of his head, and causing his instantaneous death, to the damage and prejudice of the heirs of the deceased in the amount to be proved during trial.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended by R.A. No. 7659.<sup>[1]</sup>

During arraignment the accused entered a plea of not guilty.<sup>[2]</sup> Trial on the merits thereafter ensued.

The facts as found by the trial court are as follows:

The State's contention as unfurled from the evidence on record and as argued in their memorandum, may be summed up as follows:

In the evening of October 17, 1998, Sergio Tandog tendered a party in his house at Causwagan Norte, Catigbian, Bohol.

After supper, Sergio, his brother Illuminado and a friend, Gumersindo "Jimmy" Ape, digressed to the yard of Sergio's house to drink Tanduay rum. Sergio's yard was lighted with an extension light bulb at the eaves of the house. While seated partaking of their drinks, Illuminado and Gumersindo heard a gun burst and saw Sergio fell to the ground. Illuminado and Gumersindo saw accused Jonas Bustamante holding a gun two meters behind the place where Sergio was seated. Gumersindo shouted, "why did you shot Mano Sering Bay?" Instead of answering, Jonas pointed his gun at Gumersindo, the latter rolled over to the cement

floor, and heard the gun clicked three times, but did not explode. Accused then ran away. Illuminado tried to chase Jonas, but he was not able to catch up with him. On the road where the accused passed, Illuminado saw a brown right-foot sandal. They were told by a barangay councilman not to touch it. However, Charigen Tandog testified that her cousin Lolito Tandog picked up this sandal and threw it into the bushes by the road-side. In the search that ensued, it was policeman Florencio Ibarra who found the said sandal in the bushes five (5) meters from the spot where it was first discovered.

Two days before the incident, Jonas Bustamante accompanied by Roselo Agon inquired from Jovencio Tandog the whereabouts of Sergio Tandog. Jovencio replied that Sergio was in Cebu. It was at this instance when Jovencio Tandog noticed that the accused was wearing a pair of sandals identical to the one found in the bushes by police officer Ibarra, in the early morning after Sergio Tandog was shot. Policeman Ibarra declared in Court that after arresting Jonas Bustamante, he asked the latter about the sandal and Jonas admitted that the same belongs to him.

Investigating police officers, P/SINSP Antonio Jongco and SPO1 Florencio Ibarra, declared that immediately after the incident they talked to Gumersindo Ape and Illuminado Tandog, who claimed that they were present when the shooting occurred, however, the policemen observed that said eyewitnesses were in the state of shock and apparently afraid to divulge the identity of the assailant. The police, noticing the witnesses' condition, momentarily suspended their questioning to allow them to recover from their shock.

It was only a month later, in November of 1998 when Gumersindo and Illuminado finally informed the police that it was Jonas Bustamante who shot Sergio Tandog. They told the Court that they were hesitant to immediately reveal the culprit's identity because they were afraid of being harmed by the persons who were behind the killing of Sergio Tandog. They knew that Sergio Tandog and his wife Josefa Dinorog-Tandog had strained relations and have lived separately for more than two (2) years on account of frequent spats in the sharing of their common property and Sergio's alleged womanizing. Their children who were not spared from the feud sided with their mother.

After the filing of the instant case, there were sullied efforts to dissuade Gumersindo Ape and Illuminado Tandog from testifying as witnesses in this case. Gumersindo reported to the police that he was pressured not to testify as witness in the killing of Sergio Tandog by Teresita Tandog, and Jaime Dinorog. He was repeatedly asked to see Ex-Mayor Aurelio Dinorog otherwise a case will be filed against him. Upon his refusal, Illuminado Tandog was impleaded as respondent in a complaint, for Frustrated Murder initiated by Aurelio Dinorog, brother of Josefa Dinorog-Tandog, the victim's wife.

The instant case was initiated by Epifanio Tandog, the father of the victim because the latter's wife and children refused to file a complaint against the herein accused. On the witness stand, Epifanio confirmed the

strained relations between his son, Sergio on the one hand, and his wife and children on the other.

Epifanio likewise declared that Dr. Inting was prevented from performing an autopsy on the victim's body by Josefa, wife of the victim and brother of then Ex-Mayor Aurelio Dinorog. Accordingly, the deceased during his lifetime is even afraid of being injected. It is admitted however that the deceased's body was embalmed. Epifanio cannot understand why in the trial for the killing of his son, his daughter-in-law Josefa and her brother chose to be on the side of the accused. Complainant Epifanio Tandog also told the Court that because of Sergio's sudden death he suffered sleepless nights and worries that cannot be paid even by P500,000.00. He paid his lawyer P20,000.00 as acceptance fee, P1000.00 per appearance fees plus 25% of the damages that may be awarded. That his late son earned from his cattle trading business P10,000.00 per week, and 100 sacks of palay per harvest from his rice farm.

Dr. Vito Inting, MHO of Catigbian, took the witness-stand to attest to his Postmortem findings, that the victim Sergio Tandog succumbed to irreversible shock, secondary to brain trauma and hemorrhage, due to a gunshot wound at the back portion of his head. He wanted to perform an autopsy of the victim's body to recover the slug and determine the caliber of the firearm, but Josefa Tandog, the victim's wife and then Catigbian Ex-Mayor Aurelio Dinorog, Josefa's brother, and victim's brother-in-law, prevented him from conducting the autopsy. Dr. Inting found it strange because this was the first time that he was prevented to perform an autopsy in a medico-legal case. Thus, the deceased was buried without any autopsy.

The fact of death of the victim Sergio Tandog is further confirmed by his Certificate of Death on record.

Immediately after the incident Jonas Bustamante left Bohol. It was only after (5) months that accused was arrested by elements of the Catigbian police on May 17, 1999 at Capalong, Davao del Norte. The prosecution also presented documents, showing that accused Jonas Bustamante has a criminal record of conviction for Direct Assault.

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Culled from the record, the defense' contention may be capsulized as follows:

Accused Jonas Bustamante denied the charge against him. He claims that he has no participation and has no motive to kill the deceased whom he doesn't know. At the time Sergio was shot in the yard of his residence at Causwagan, Catigbian, Bohol, accused was at home with his family in Sitio Pandulian, Capalong, Davao del Norte.

Although born in Causwagan, Catigbian, Bohol, accused and his parents migrated to Capalong, Davao del Norte in 1983 when the accused was 12 years old, and finished Fourth Grade at Causwagan Elem. School. Even

before his marriage in 1992, accused was already working with Stanphilco the banana plantation of Dole Phil. Inc. His employment is recorded in the company's pay Roll and was required to submit Daily Time Record (DTR). However, after giving his latest DTR to SPO1 Ibarra, the latter did not return it to him anymore.

Since his migration to Davao del Norte, accused came back to Bohol only twice. First in 1989, to secure his Birth Certificate, and Second on October 4, 1998 when he came to Causwagan, Catigbian, Bohol to pay his respects to his dead grandmother, Maria Suaybaguio. He returned home to Capalong on October 9, 1998. Since then, he has not visited Bohol until his arrest on May 17, 1999.

Accused denied being together with Roselo Agon near the deceased-victim's residence at Causwagan, Catigbian, Bohol on October 14, 1998 to ask for the whereabouts of Sergio. That he is not the owner of the right-foot sandal that was found by Police Officer Ibarra. He does not know the deceased-victim and the prosecution's eyewitnesses and therefore has no motive to kill the victim in this case.

Accused further claims that witnesses Gumersindo "Jimmy" Ape and Illuminado Tandog failed to identify the assailant of Sergio Tandog when they were investigated by the police after the incident. It was only later, after 58 days when these witnesses named the accused to be Sergio Tandog's assailant.<sup>[3]</sup>

The trial court found that prosecution witnesses Gumersindo Ape and Illuminado Tandog positively and clearly identified the accused as the victim's assailant. The accused also tried to shoot Gumersindo but his firearm did not fire. After shooting the victim, Illuminado then chased the accused but was not able to catch up with the latter.

Both prosecution witnesses remained firm in their testimonies despite rigorous cross-examination by the defense counsel and the stern warning that they will be prosecuted for perjury if found to be lying.

Moreover, the trial court noted that the narration of the prosecution witnesses jibed with the physical evidence of the case. Any seeming inconsistencies in their declarations referred only to minor and inconsequential matters. The delay in reporting the identity of the accused to the police officers was found reasonable and justified considering the threats of harm upon their persons and families.

On the other hand, the trial court found the denial and alibi of the accused to be self-serving and unsubstantiated. Accused's testimonies were fraught with inconsistencies that were rebutted by the prosecution. Thus, the prosecution successfully rebutted the claim of the accused that he left Bohol after finishing 4<sup>th</sup> grade by presenting a certification that accused was among the 6<sup>th</sup> grade students who graduated from Causwagan Elementary School in Catigbian, Bohol in 1984; that it is not true that he was employed by Stanphilco during the period 1990 to 2000; that he returned to Bohol after migrating to Davao del Norte not only in 1989 and 1998 but also in 1990 and was even arrested for Illegal Possession of Firearms