

## SPECIAL SIXTEENTH DIVISION

[ CA-G.R. CR H.C. No. 05866, May 08, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DANNIS VELARDE Y IGLESIA<sup>[\*\*]</sup> A.K.A. "JAPAN," ACCUSED-  
APPELLANT.**

### **D E C I S I O N**

**MACALINO, J:**

This is an Appeal from the Judgment<sup>[1]</sup> dated October 25, 2012 rendered by the Regional Trial Court of Iriga City, Branch 36 (RTC) in Criminal Case No. IR-7659 for murder. The dispositive portion of the assailed Judgment reads:

**"WHEREFORE, premises considered, judgment is hereby rendered by this Court finding the accused, DANNIS VELARDE Y EGLESIA, GUILTY beyond any reasonable doubt of MURDER, defined and penalized by Article 248 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA and ordered to pay the victim's heirs (a) P50,000.00 as civil indemnity; (b) P100,000.00 as moral damages; and (c) P25,000.00, as exemplary damages.**

**SO ORDERED."**

### **FACTS**

In an Information<sup>[2]</sup> dated June 16, 2006, accused-appellant Dannis Velarde y Iglesia a.k.a. "Japan" (Dannis) was charged with murder defined and penalized under Article 248 of the Revised Penal Code (RPC), committed as follows:

*"That on January 1, 2006 at about 5:30 o'clock in the morning in Sagrada, Baao, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to take the life of one, **ARTHUR VELARDE**, and with treachery and evident premeditation, willfully, unlawfully and feloniously stabbed and hacked with a bolo the said **ARTHUR VELARDE**, hitting the different parts of the latter's body, thereby causing the instantaneous death of the deceased, as shown by the Postmortem examination report, hereto attached as annex 'A', issued by Dr. Ruperto R. Alfelor, Municipal Health Officer, Baao, Camarines Sur, to the damage and prejudice of the deceased's heirs in such amount as may be proven.*

**ACTS CONTRARY TO LAW."**

When arraigned, Dannis pleaded "Not Guilty" to the offense charged against him.<sup>[3]</sup>

During the pre-trial held on July 19, 2007, the parties stipulated on the identity of the parties and on the fact that the parties were first cousins.<sup>[4]</sup>

Thereafter, trial on the merits ensued.

For its part, the prosecution presented the following witnesses: Corazon Borromeo (Corazon), Norma Alabastro (Norma), Dra. Mariam Margate, Dr. Ruperto Alfelor (Dr. Alfelor) and Peter Velarde (Peter).

In a nutshell, the evidence of the prosecution tends to establish the following:

On January 1, 2006, at around 5:00 a.m., Corazon was about to leave her residence in Sagrada, Baao, Camarines Sur to hear a mass in San Vicente, Baao, Camarines Sur. While she was about to go out of her house, she saw one Arthur Velarde (Arthur) being followed by Dannis, who, in turn, was carrying a bolo.<sup>[5]</sup>

Corazon testified that she saw Dannis hacked Arthur many times. After the incident, Dannis allegedly ran away to the rice field. Corazon did not attend the mass anymore and just went home, woke up her grandchildren and told them what happened.<sup>[6]</sup>

In addition, Norma, who was also a resident of Sagrada, Baao, Camarines Sur testified that on January 1, 2006, at about 5:30 a.m., she was about to urinate outside her house when she saw Arthur walking and shouting for help. Thereafter, she saw Arthur being followed by Dannis. Armed with a bolo, Dannis hacked Arthur several times on the back portion of his neck and stabbed him on his abdomen.<sup>[7]</sup> Norma stated that she stood about 8 meters away from where the incident transpired.<sup>[8]</sup>

According to Norma, Dannis ran away downhill after assaulting Arthur. Consequently, along with a certain Romulo Velarde and one Edgar Velarde, she brought Arthur at the Robosa Hospital in Baao, Camarines Sur where he died.<sup>[9]</sup>

Corazon and Norma identified in open court Dannis as the person who hacked and killed Arthur.<sup>[10]</sup>

Moreover, Dr. Alfelor testified that on January 1, 2006, being the then Municipal Health Officer of Baao, Camarines Sur, he was requested to conduct a post-mortem examination on the cadaver of Arthur, as shown by a Post-Mortem Report<sup>[11]</sup> dated January 3, 2006 that he executed.

Dr. Alfelor stated that Arthur sustained various injuries on the left side of his face, on the lower portion of the back of his head, on his neck below the adam's apple, on his left collar bone, on his right chest, on his left nipple and on his right forearm.<sup>[12]</sup> He testified that about 5 of the 9 wounds sustained by Arthur from a pointed and sharp instrument were mortal and were more than sufficient to immediately cause his death.<sup>[13]</sup>

Furthermore, Peter, brother of Arthur, testified that after Arthur was stabbed to death, his wake lasted for 12 days to raise money for his interment. Peter averred that they spent for Arthur's coffin, and the food that was served during the wake.<sup>[14]</sup>

In order to refute the version of the prosecution, the defense presented Dannis and Manuel William Fabricante (William).

Dannis averred that on January 1, 2006, at about 5:30 a.m., along with Glen, his brother, and William, he was asleep in their house and woke up at around 8:00 a.m. [15]

Dannis alleged that the reason why Norma testified against him was probably because Norma got angry with him when he demanded from her the payment of the debt she owed him. Also, he declared that Corazon testified against him because the latter got angry with him when he did not testify as witness when Corazon's husband was hacked by her nephew. [16]

On the other hand, William testified that on December 31, 2005 at around 5:00 p.m., he was sent by a certain Abner Alfajaro to get rice from Dannis. Allegedly, on December 31, 2005, William slept in the house of Dannis and on said date, he and Dannis slept at about 11:00 p.m. beside each other. He likewise stated that on January 1, 2006, he woke up at around 7:00 a.m. and he left Dannis' house at around 8:00 a.m. [17]

On October 25, 2012, the RTC rendered the assailed Judgment finding Dannis guilty of murder for killing Arthur.

### **ASSIGNMENT OF ERROR**

Seeking his acquittal on appeal, [18] Dannis now raises the sole assignment of error as follows:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILTY BEYOND REASONABLE DOUBT." [19]

### **THE RULING OF THIS COURT**

#### *Positive Identification Prevails over Denial and Alibi*

Dannis argues that there is doubt as to the identification of him as the perpetrator of the crime because the prosecution witnesses failed to state that the place where the incident transpired was well-lit to enable them to identify the person who hacked the victim. He also avers that on January 1, 2006, sunrise was at 6:21 a.m.

We disagree. The prosecution witnesses were able to describe with reasonable certainty the fact of the killing and to identify Dannis as the assailant.

Specifically, prosecution witnesses Corazon and Norma testified that on January 1, 2006 at around 5:00 a.m., Dannis was following Arthur and afterwards, he hacked Arthur with a bolo. Norma also stated that Dannis hacked Arthur a number of times at the back of his neck and on his abdomen. Their testimonies were supported by the post-mortem findings of Dr. Alfelor that Arthur indeed sustained numerous wound on his head, neck, chest and upper extremities caused by hacking. Dr. Alfelor also testified that these wounds were mortal resulting in Arthur's immediate demise.

The definitive statements of the prosecution witnesses sufficiently established that Arthur was killed and that Dannis was the person responsible for it. In such case, as between the positive assertions of the prosecution witnesses and the negative ones of Dannis, the former deserves more credence and evidentiary weight.<sup>[20]</sup> Also, Dannis' denial and alibi are untenable because these defenses are inherently weak and cannot prevail over the positive identification of him as the person who hacked and killed the victim. Denial and alibi are also easy to fabricate and difficult to disprove, thus, are generally rejected.<sup>[21]</sup>

Dannis is guilty of Homicide, not Murder

The RTC held that Dannis is guilty of murder qualified by the aggravating circumstance of treachery. In holding that treachery attended the commission of the crime, the RTC ratiocinated that:

“Undoubtedly, the assault made by the accused, without provocation on the part of the victim, who was being followed by his assailant, and without the slightest hint of the fate that would befall him as they were not quarreling and they were just walking one ahead of the other, placed him in a position where he could not effectively defend himself, specially that when he was hack[ed] by the accused, he was hit the first time on his neck.

Besides, by following the victim, while carrying two (2) bladed instruments, the accused consciously and deliberately employed a specific form of attack which is hacking and stabbing of the victim which would specially and directly ensure its commission without impunity.”

<sup>[22]</sup>

However, this Court finds that no treachery attended the killing of Arthur.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself from the defense that the offended party might make. The essence of treachery is the sudden and unexpected attack on the unsuspecting victim. It cannot be appreciated when the victim was placed on his guard when attacked. Treachery is not presumed and must be proved as conclusively as the crime itself.<sup>[23]</sup>

In the instant case, there is no showing that Dannis made a sudden and unexpected attack on Arthur rendering the latter completely unaware of the imminent danger to himself. Arthur was allegedly able to shout for help when he was being followed by Dannis and when Dannis actually hacked him. Arthur was aware of the impending danger to himself and he knew that he was about to be assaulted by Dannis.

That there is no sudden and unexpected attack that was made by Dannis against Arthur is shown by the following declarations of Norma in court:

“Q Why, will you tell us what is the freak of nature (sic) [that] prevented you from urinating?

THE WITNESS