

## FIRST DIVISION

[ CA – G.R. CR NO. 26806, August 04, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN BALONSO, ACCUSED-APPELLANTS.**

### D E C I S I O N

**ROXAS, J.:**

***Legal Principles in this Case:***

When no improper or self-seeking motive could be attributed to the victim for imputing an offense against the accused, his identification of the accused is entitled to full faith and credit.

To take advantage of superior strength to be considered an aggravating circumstance, the accused must be proven to have used excessive force out of proportion to the means of defense available to the person attacked.

Treachery requires the concurrence of two conditions: (1) the employment of a means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.

Abuse of superior strength is absorbed in treachery, and thus, only one of them qualifies the crime and the other could not be considered as a separate and distinct aggravating circumstance.

#### **The Case**

Two (2) accused were charged with Frustrated Murder. Since only one of the two accused was arrested, he was the only one charged.

His defense was that his identity as one of the perpetrators of the crime was not sufficiently established and that the prosecution was not able to prove his guilt beyond reasonable doubt. Accused interposed this appeal.

#### **The Facts**

This is an appeal from the July 12, 2002 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Naga City, Branch 19, in Criminal Case No. RTC'95-5755, which convicted accused-appellant Edwin Balonso (BALONSO) of the crime of Frustrated Murder and ordered him to pay civil indemnity in the amount of P40,000.00 as well as actual damages in the amount of P40,798.40.

On February 15, 1995, Prosecution Attorney II Richard T. Cu filed an Information<sup>[2]</sup>

with the Regional Trial Court of Naga City, Branch 19, docketed as Criminal Case No. RTC 95-5755, charging accused-appellant BALONSO and accused Jessie Bajamonde (BAJAMONDE) with the crime of Frustrated Murder, committed as follows:

“That on or about 7:00 o’clock in the evening of the 3rd day of October 1994, at Bagolatao, Minalabac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, conspiring and mutually helping one another, with intent to kill and with treachery, while armed with bolos, and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack and hack for several times one Bobby Bitchayda who suffered injuries on the different parts of his body and which could have caused his death had no medical attention been rendered to him, thus, the accused performed all the acts of execution which could have produced the crime of Murder as a consequence, but nevertheless did not produce it by some reason or cause independent of the will of the accused, to the damage and prejudice of said Bobby Bitchayda.

ACTS CONTRARY TO LAW.”

Accused-appellant BALONSO was arrested, but accused BAJAMONDE remained at large.

When arraigned on April 19, 1995, accused-appellant BALONSO, with the assistance of his counsel *de officio*, Atty. Renato Marpuri, pleaded not guilty to the charge.<sup>[3]</sup>

During trial, it was established that at around 7:00 in the evening of October 3, 1994, while the victim Bobby Bitchayda (BITCHAYDA) was having a drinking spree with Simplicio Velasco at his residence at Brgy. Bagolatao, Minalabac, Camarines Sur, accused-appellant BALONSO and accused BAJAMONDE passed by. BITCHAYDA invited accused-appellant BALONSO and accused BAJAMONDE to join them, but accused BAJAMONDE declined explaining that he was tired and his wife, who was pregnant, was with him.

The victim BITCHAYDA then asked accused BAJAMONDE’s wife how old she was and how many months she was pregnant. Accused BAJAMONDE interrupted saying that he had a problem because his first child had not yet been baptized. At that point, the victim BITCHAYDA offered to be the godfather of the child, which was declined by accused BAJAMONDE saying: “*It’s ok, in fact there are many people offering to be the godfather but I have no money.*” The victim BITCHAYDA retorted: “*binibilog kaya ninyo ang payo ko*” (you are making a fool of me), and then he boxed accused BAJAMONDE on the left side of his face. Thereafter, accused BAJAMONDE and accused-appellant BALONSO left while shouting at the victim BITCHAYDA to follow them at Sitio Sibunot.

The victim BITCHAYDA followed them and when he was in front of the house of Amado Malvarosa, he heard accused BAJAMONDE shout: “*biraha na*” (attack). When the victim BITCHAYDA turned his head, he saw accused-appellant BALONSO wielding a bolo. Accused-appellant BALONSO hacked the victim BITCHAYDA on the left elbow and head. Accused BAJAMONDE also hacked the victim BITCHAYDA twice, one at the head and the other at the back while he was already lying on the ground,

using a "wastari" or a long bolo.

The victim BITCHAYDA, however, was able to run away. He reached the house of Pablito Aroncillo, where he asked for help to bring him to the hospital. Pablito Aroncillo asked him what happened and he replied that he was hacked by accused-appellant BALONSO and accused BAJAMONDE. The victim BITCHAYDA was then brought to the St. John Hospital.

The victim BITCHAYDA was hospitalized from October 3, 1994 to October 17, 1994. He was treated by Dr. Francisco J. Sales III, who certified that the victim sustained 7 injuries.<sup>[4]</sup> Dr. Francisco J. Sales III also testified that the victim's scalp injury would have caused his death due to loss of blood if no immediate medical attendance was rendered.<sup>[5]</sup>

The Statement of Account<sup>[6]</sup> and various receipts<sup>[7]</sup> issued by the St. John Hospital showed that the hospitalization, treatment and medical services rendered to the victim BITCHAYDA amounted to P40,495.10.

### **Assailed Decision of the RTC**

On July 12, 2002, the Regional Trial Court of Naga City, Branch 19, rendered the assailed Judgment,<sup>[8]</sup> in Criminal Case No. RTC 95-5755, convicting accused-appellant BALONSO of the crime of Frustrated Murder and ordering him to pay civil indemnity in the amount of P40,000.00 as well as actual damages in the amount of P40,798.40, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds accused Edwin Balonso GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248 in relation to Article 6 and 50 of the Revised Penal Code, taking into consideration the qualifying circumstances of abuse of superior strength and treachery, and hereby imposes upon him an indeterminate sentence of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, to indemnify the victim, Bobby Bitchayda, in the sum of forty thousand pesos (P40,000.00) without subsidiary liability in case of insolvency; and to reimburse him of actual damages in the amount of forty thousand seven hundred ninety-eight and forty centavos (P40,798.40).

Anent the accused, Jessie Bajamonde, pending his arrest let the record of this case be consigned to the ARCHIVES.SO ORDERED."

Accused-appellant BALONSO filed a notice of appeal<sup>[9]</sup> on August 9, 2002, which was given due course by the trial court in its Order<sup>[10]</sup> dated August 20, 2002.

### **Assignment of Errors**

In his Brief,<sup>[11]</sup> accused-appellant BALONSO assigned the following errors:

- I. THE TRIAL COURT ERRED IN NOT GIVING DUE COURSE TO THE ACCUSED'S DEFENSE OF ALIBI; and

II. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT AND EVENTUALLY ORDERING HIM TO INDEMNIFY THE OFFENDED PARTY FOR HOSPITALIZATION EXPENSES AND OTHER ACTUAL DAMAGES.

**The Ruling of this Court**

**The assailed decision ought to be affirmed except for the penalty imposed which should be modified to conform to jurisprudence.**

Accused-appellant BALONSO contends that the prosecution failed to establish with certainty the identity of accused-appellant BALONSO because the victim testified that the attack was so sudden for the victim to be able to catch a glimpse of the accused-appellant BALONSO and the crime was committed at around 7:00 in the evening in an unlighted place which prevented the victim from ever seeing the face of accused-appellant BALONSO. Moreover, accused-appellant BALONSO alleged that the victim BITCHAYDA was drunk at that time of the commission of the crime and therefore did not have the faculty to recognize anyone and that there were no eyewitnesses to the hacking incident to corroborate the testimony of the victim.

The above defenses of accused-appellant BALONSO fail in the face of positive identification by the victim himself, BITCHAYDA, of accused-appellant BALONSO, as one of the perpetrators of the crime. His testimony is as follows:

“Q What happened when you passed by the house of Amado Malbarosa?

A When I passed by the house of Malbarosa, I heard a shout, “biraha na” (attack) and I turned my head I saw a bolo.

Q Were you able to see who shouted, “biraha na”?

A Jessie Bajamonde.

PROS. DY:

Q You said, you saw a bolo when you turned your head, who was carrying that bolo?

WITNESS:A Edwin Balonso was the one carrying the bolo.

Q What did Edwin Balonso (do) with the bolo in his hand?

A He hacked me sir.

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Q How many times did Edwin Balonso hack you with his bolo?

A He hacked me twice, sir.

Q Will you specify where the hack landed?