

## EN BANC

[ G.R. NO. 171271, August 31, 2006 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELBERTO  
TUBONGBANUA Y PAHILANGA, APPELLANT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

Appellant Elberto Tubongbanua was charged with the crime of murder in an amended Information<sup>[1]</sup> that reads:

That on or about the 12<sup>th</sup> of February, 2001, in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill and with evident premeditation, treachery, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab Evelyn Kho y Sua on the different parts of her body with the use of a deadly weapon, thereby inflicting upon said Evelyn Kho y Sua stab wounds, which directly caused her death; that the act was committed inside the dwelling of Evelyn Kho y Sua and with insult or in disregard of the respect due to the offended party on account of his (sic) rank, age or sex.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty and trial on the merits ensued.

The facts are as follows:

Accused was employed as a family driver by Atty. Evelyn Sua-Kho since 1998. The latter worked as the managing partner of the Lawyer's Advocate Circle, a law firm operated as a sole proprietorship, and located at 2302 Atlanta Center, 31 Anapolis St., Greenhills, San Juan, M.M. Accused was initially paid P6,000.00 a month as wages, aside from boarding, food, overtime and extra pay, which he received when he did extra driving and other work for Atty. Sua-Kho's family.

On February 12, 2001, at around 6:00 o'clock in the evening, the accused drove Atty. Sua Kho to her condominium unit at 1702 Platinum 2000, Anapolis St., Greenhills, San Jun M.M. After handing his employer's bag to Marissa Hiso, the housemaid, accused proceeded to the kitchen where he drank a glass of water. Also in the condominium unit were Atty. Sua-Kho's three year old daughter Issa and her nanny, Nelie Maglasang. After talking and playing with her daughter for a few minutes, Atty. Sua-Kho emerged from the bedroom to talk with the accused. Shortly thereafter, Marrisa heard her employer screaming, and she saw the

accused stabbing her with their kitchen knife. She tried to stop the accused, shouting "Kuya Bert!", but the latter continued to stab Atty. Sua-Kho. Meanwhile, Nelie also heard her employer's screams, and locked herself with Issa in the master's bathroom. When she peeped-out from her hiding place, she saw Marissa, whom she signaled to go downstairs for help. The latter did so, and sought help from the security guard. Nellie, meanwhile called Atty. Sua-Kho's father, Marcelino Sua, and husband, Daniel Kho, on the bedroom phone.

When Marcelino Sua arrived, he saw Marissa and a security guard in front of the condominium unit. When they entered, they saw the bloodied and unmoving body of Atty. Sua-Kho sprawled on the floor. Marcelino then brought his daughter to the Cardinal Santos Memorial Hospital, where doctors tried to revive her, but failed. The accused, meanwhile, fled, using the victim's car. He was arrested soon afterwards in Calapan, Mindoro, while on his way to his home province.

Upon examination of the victim's body, Dr. Edgardo Rodriguez Vida found that she suffered eighteen (18) stab wounds and three (3) incise wounds aside from other minor injuries. The stab wounds on her chest were considered fatal as they affected both lungs, the main blood vessel of the heart and the heart itself. There were four stab wounds on the heart, one on the right lung and four on the left lung. According to the doctor, the wounds could have been caused by a sharp single-bladed object and that the incise wounds found on the left forearm, right wrist and left leg could have been inflicted while Atty. Sua-Kho tried to parry the blows.

Marian Aquino, legal secretary of the Lawyer's Advocate Circle, where the victim worked, related that prior to the killing of Atty. Sua-Kho, the accused had confided to her about his grudges against the victim, such as being given spoiled food, that his meals were being measured, that he worked long hours of the day and served many bosses. On February 11, 2001, accused spent the day at her boarding house where he told her he could no longer take the way Atty. Sua-Kho treated him. Later he said "*nadedemonyo na ako*" and that he would finish Atty. Sua-Kho. He would hit her at the back, very deep, and he would make sure that she would die. Then he would go to the province, his territory, where he could not be followed.

Atty. Joel Baguio, an associate at the Lawyer's Advocate Circle, also testified that before the killing, the accused told him of his grudges against Atty. Sua-Kho, like his being scolded for being late, and being called a thief, a killer, and ex-convict and other bad names. On February 12, 2001, the accused also told him not to get too close, as he might get involved in what was going to happen.

The accused, on the other hand, raised the defense of self-defense. Atty. Sua-Kho, he testified, didn't want her husband to know that she had been taking trips with a company guest, a certain Phillip Robinson, to Puerto Azul and Daranak Falls in Tanay. She warned the accused that something bad would happen to him if her husband would learn about it. In the evening of February 12, 2001, Atty. Sua-Kho urged accused to go

to her father's house, because her husband Daniel Kho would be arriving. As she and the accused argued about Phillip Robinson, the former got a knife and stabbed him with it, catching him on the wrist. Accused managed to wrest control of the knife, and with it, stabbed Atty. Sua-Kho three or four times. After he stabbed her he was shocked and left the place using the victim's car. He fled to Mindoro where he allegedly surrendered to the police.<sup>[2]</sup>

On March 26, 2002, the Regional Trial Court of Pasig City, Branch 163, rendered judgment, the dispositive portion of which reads:

WHEREFORE, accused, Elberto Tubongbanua y Pahilanga, is found GUILTY beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and is sentenced to suffer the severe penalty of death by lethal injection with all the accessory penalties provided by law and to pay the costs.

On the civil liability of the accused, he is ordered to pay the legal heirs of the victim actual, moral, nominal, exemplary and temperate damages in the respective sums of P298,202.25, P50,000.00, P200,000.00, P200,000.00 and P50,000.00. He is also ordered to pay the victim's heirs P50,000.00 for the loss of the victim's life, all with interest thereon at the legal rate of 6 percent per annum from this date until fully paid.

SO ORDERED.<sup>[3]</sup>

The case was elevated to this Court because the penalty imposed was death. However, pursuant to our ruling in *People v. Mateo*,<sup>[4]</sup> the case was transferred and referred to the Court of Appeals.<sup>[5]</sup>

On October 21, 2005, the Court of Appeals affirmed with modifications the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, the Decision of the Regional Trial Court of Pasig City is hereby AFFIRMED with MODIFICATIONS, in that, the accused-appellant, having been found guilty beyond reasonable doubt of Murder, is hereby sentenced to Death. He is ordered to indemnify the heirs of the victim the following:

- (1) P50,000.00 as civil indemnity;
- (2) P50,000.00 as moral damages;
- (3) P298,202.25 as actual damages; and
- (4) P50,000.00 as exemplary damages

The awards of temperate and nominal damages are hereby DELETED.

Since the imposition of the death penalty in this case was affirmed, this Decision and the complete records of this case are hereby ordered TRANSMITTED to the Supreme Court on automatic review, immediately upon the promulgation of this Decision.

SO ORDERED.<sup>[6]</sup>

The Court of Appeals disregarded appellant's claim of self defense for lack of evidence and for being incredible considering the number and location of wounds sustained by the victim and his flight from the crime scene. It also noted that treachery did not attend the commission of the crime as there were no particulars as to how the killing began or executed.

However, the appellate court found that evident premeditation was adequately established which qualified the killing to murder. Likewise, it appreciated abuse of superior strength as an aggravating circumstance.

As regards the aggravating circumstances of dwelling and insult to the rank, sex and age of the victim, the Court of Appeals noted that these circumstances were included as amendments to the information after the presentation by the prosecution of its evidence. As such, the same should not be allowed because it will prejudice the rights of the appellant.

In a Resolution dated March 7, 2006, we required both parties to file supplemental briefs. The Office of the Solicitor General manifested that it will no longer be filing a supplemental brief. On the other hand, appellant insisted on his theory of self defense and prayed for his acquittal.

We agree with the findings of the trial court and the Court of Appeals that appellant's claim of self-defense is self-serving hence should not be given credence. In *Cabuslay v. People*,<sup>[7]</sup> we ruled that:

One who invokes self defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. He must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of a relative or a stranger. With clear and convincing evidence, all the following elements of self defense must be established: (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 claiming self defense.

Appellant's version of the stabbing incident does not inspire belief. His testimony that it was Atty. Sua-Kho who attacked him is uncorroborated and improbable. Appellant's alleged use of reasonable means to repel the aggression is also untenable considering the nature and number of wounds inflicted on the victim which demonstrate a determined effort to kill the victim and not just defend oneself.

<sup>[8]</sup> We note that the victim suffered 18 stab wounds which were all directed to her chest, heart and lungs. She also had incised wounds which were inflicted while she was parrying the blows coming from the appellant. In fact, appellant testified that Atty. Sua-Kho was running away from him but he still pursued her and inflicted the fatal wounds:

Q: According to you, Atty. launched at you and you covered and cut on your left hand and that was the time you got the knife and what happened after that?

A: What I remember is that she went inside.

Q: So, she run (sic) away from you, is that what you are saying?

- A: When I was hit and I was able to stab her, she ran towards the room.
- Q: So she was trying to avoid [you] after she stabbed you the first time?
- A: I do not know, what I know is that when I stabbed her, she went inside the room.
- Q: What part of the body did you hit her the first time?
- A: At the abdominal area, sir.
- Q: After that initial wound, Atty. Kho ran (sic) towards the room, is that correct?
- A: What I remember, she ran (sic), sir.<sup>[9]</sup>

Moreover, appellant's act of fleeing from the crime scene instead of reporting the incident to the police authorities is contrary to his proclaimed innocence but highly indicative of guilt and negates his claim of self defense.<sup>[10]</sup>

We agree with the Court of Appeals that the qualifying circumstance of treachery was not present. Treachery under paragraph 16 of Article 14 of the Revised Penal Code is defined as the deliberate employment of means, methods, or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise. For treachery to be present, two conditions must concur: (a) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (b) the means, method and manner of the execution were deliberately and consciously adopted by the offender.<sup>[11]</sup> Treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.<sup>[12]</sup>

In the instant case, there is no proof on how the attack was commenced. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions that the killing was perpetrated by treachery.<sup>[13]</sup>

We find however that evident premeditation and taking advantage of superior strength attended the killing.

Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive evidence;<sup>[14]</sup> that is, by proof beyond reasonable doubt.<sup>[15]</sup> The essence of premeditation is that the execution of the act was preceded by cool thought and reflections upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. To be considered, the following elements must be proven: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between the decision and the execution, to allow the accused to reflect upon the consequences of his act.<sup>[16]</sup>