

## SECOND DIVISION

[ G.R. No. 133813, August 11, 2004 ]

**SALVADOR ANDALIS Y MORALLO, PETITIONER, VS. COURT OF APPEALS, REGIONAL TRIAL COURT OF CAMARINES SUR, BRANCH XXXV, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**TINGA, J.:**

Before this Court is a *Petition for Review*<sup>[1]</sup> on *Certiorari* filed by Salvador Andalis (Andalis) seeking to set aside the *Decision*<sup>[2]</sup> of the Court of Appeals in CA-G.R CR No. 19550, and its *Resolution*<sup>[3]</sup> of April 17, 1998 denying his *Motion for Reconsideration*.<sup>[4]</sup> The assailed *Decision* affirmed Andalis' conviction for the crime of Homicide by the Regional Trial Court, Branch 35, Iriga City, in Criminal Case No. IR-3322.

The antecedents<sup>[5]</sup> follow:

It was Christmas Day, December 25, 1992. In San Agustin, Iriga City, one Pio Gonowon, 29, single, was stabbed to death by one Salvador M. Andalis, 29, married, both residents of the same barangay.

The prosecution claims that Pio Gonowon was killed by Andalis as an aftermath of a heated discussion during a drinking session, while the defense contends that Gonowon was stabbed by Andalis as an act of defense of the honor of the latter's wife.

As to which of the two (2) versions is worthy of credence is tasked upon the Court to decide.

The charge against the accused is copied verbatim hereunder:

### INFORMATION

The undersigned Assistant City Prosecutor of Iriga City, hereby accuses one SALVADOR ANDALIS y MORALLO of San Agustin, Iriga City of the crime of HOMICIDE, defined and penalized under Art. 249 of the Revised Penal Code, committed as follows:

That on or about 3:00 o'clock in the afternoon of December 25, 1992, in San Agustin, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife, with intent to kill, did, then and there, willfully, unlawfully and feloniously attack, assault and stab

one PIO GONOWON, with said weapon, thereby inflicting upon said Pio Gonowon wounds on his back which wounds directly caused the instant death of the latter, to the damage and prejudice of the heirs of the said Pio Gonowon in such amount as may be proven in court.

CONTRARY TO LAW.

Iriga City, Philippines, March 18, 1993.

(S/T) JOSE M. TAGUM  
PROSECUTOR II

The prosecution presented the following witnesses:

1) Alex Embestro, (25), single, who declared, among others, that on said date and at about 9:00 o'clock A.M., he, Pio Gonowon, Freddie Abonite, Ronnie Biag, Joel Laniog and Amado Nocos were engaged in a drinking session at the yard of Ulysses Salvadora at San Agustin, Iriga City; that at noontime, accused Salvador Andalis joined them; the drinking session lasted up to 3:00 o'clock in the afternoon, when Salvador Andalis and Pio Gonowon were telling stories of their past activities; that Andalis being irritated, said to Gonowon, "Baga na aco pigpaparatesting mo" (As if you are trying to test me); Gonowon replied: "Di ako migo lumalaban kanimo ta di kita magkatalo" (I will not fight you friend as we are not enemies). This witness upon hearing that the exchange of words between the two (Pio and Salvador) was getting heated persuaded Pio to go home, stood up expecting Pio to follow towards the road. Pio also stood up but was hit at his back with a chair by the accused. Pio ran away then but was chased by the accused and upon catching up, accused stabbed Pio Gonowon at the back with a 'balisong' (fanknife). Pio was still able to run but stumbled and fell on the ground, again accused stabbed him for the second time. Pio stood up and again ran and fell again on the ground and crawling, he was again stabbed at the back for the third time. Pio nevertheless stood up tried to return to the place where the ground drank (sic), but was unable to do so and he fell face down on the concrete slab. Witness identified pictures of the deceased: EXH. "A" depicting a person with no upper shirt but with long pants, face down on a concrete slab, marked as EXH. "A-1"; another picture-EXH. "B" depicting wounds on bloodied back, marked as EXH. "B-1"; a third picture EXH. "C", showing sprawled person with bloodied back as EXH. "C-1" and a fourth picture as EXH. "D" the place where the drinking session took place, depicting benches, a table, chairs with a fallen or tumbled one marked as EXH. "D-1". The tumbled chair was identified by this witness as the one used to strike the deceased. Embestro pointed out in the same picture that the big bowl on the table contained the "polutan", the pitcher with water as "chaser", and that the group by the table was facing the road. He pointed to the long bench on the right of the picture as where he and Pio were seated, the long bench on the left where Ronnie Biag, and Joel Laniog were positioned, and Freddie Abonite

on the upright chair, and that accused was seated on the tumbled chair which he used to smash the back of Pio Gonowon.

Significantly, from the questions of the court, this witness said that the drinking session started at around 9:00 o'clock in the morning as a Christmas day celebration and lasted up to 3:00 o'clock in the afternoon; that the drinking party consumed about nineteen (19) round bottles of gin, locally called "marka demonyo", with about 7 persons partaking of the drinks; that it was after one round bottle of gin was consumed that the accused joined them, but Pio was with the group at the very start; that accused left for a while before 1:00 o'clock P.M. to take his mother somewhere but returned and resumed drinking with the group at past 1:00 o'clock that afternoon; and that the drinking session broke up because of the incident at about 3:00 o'clock in the afternoon.

2) Another witness for the prosecution was Justo Retrita, 19, a high school graduate and a resident of San Agustin, Iriga City, who testified that he went to the house of Randy Bona on that Christmas day to get materials for making a "belen" for contest purposes, together with Tirso Gonowon, Rolando Portacio and Randy Bona, at about 3:00 o'clock P.M. They were offered snacks at the house of Randy Bona and while eating outside the house, they saw Pio Gonowon being chased by Salvador Andalis; that Pio stumbled and he was stabbed at the back three times by Salvador Andalis; that Pio got up, ran towards the road until the property of Albano, still being chased. Then upon reaching Albano's property, Pio turned back to the house of Alma Bona and there Pio fell down on a cemented slab.

This witness admitted that Pio's father and his mother are cousins; that he did not know the cause of stabbing, and that he was 10 meters away from where the drinking session was; that he, with his companions, saw upon arrival there (at house of Randy Bona) Pio Gonowon, Salvador Andalis, Ronnie Biag, Alex Embestro, Freddie Abonite and Joel Laniog in a drinking session; that his attention to the incident was called by the shouting; that from the place where they were eating, it was only 5 meters away from where Pio was finally stabbed by the accused.

3) Dr. Loreto G. Leonido, City Health Officer of Iriga City, testified on her post-mortem findings on the body of the late Pio Gonowon and identified her issued post-mortem certificate marked as Exhibit "E". In said certificate, it is stated among others, 3 incised wounds at the back, one with 4 inches long by 1 inch deep, another 2 ½ inches long but only skin and subcutaneous tissue deep, superficial, and a third incised wound, 1 inch long and 2 ½ inches deep. These wounds all gaping according to her were caused by a sharp edged instrument, possibly a "balisong" or fan knife. On these wounds, the doctor said that the back of the deceased was towards the assailant; that the contusion of 2 inches long by 1 inch in diameter on the forehead just above left eyebrow could have been caused by a blunt instrument or even a fall on a concrete pavement. That the cause of death: "Internal and external hemorrhages due to incised wounds at the back" (Exh. "E").

4) The last witness on direct evidence for the prosecution was Felomina Gonowon, (56), mother of deceased victim Pio Gonowon, who testified on the aspect of damages, both actual and compensatory and moral damages and identified receipts in consonance with her claim for the expenses in connection with the death of her son. The documentary evidence she identified are:

Exh. "F",	\$2,688.00 (\$1 x P20.00 in 1992) or P53,760.00 – air fare of father of deceased;
Exh. "G",	P200.00 for niche
Exh. "G-2",	P350.00 for funeral expenses
Exh. "G-3",	P39,400.00 for funeral service
Exh. "G-4",	P5,000.00 for vault construction
Exh. "H"	Receipt – P3,500.00 for pig
Exh. "H-1"	Receipt, P410.15 for miscellaneous & snack expenses
Exh. "H-2"	Receipt, P681.00 for miscellaneous grocery
Exh. "H-3"	Receipt, P1,054.00 for misc. grocery for ingredients for food
Exh. "H-4"	Receipt, P378.00 for vegetables
Exh. "H-5",	Receipt P8,300.00 for cow
Exh. "I"	Certification of Salary of husband \$1,447.00 or P28,940.00 salary lost of husband for 1/3 month
Exh. "J",	P5,000.00 for partial attorney's fees
Exh. "J-1"	(receipts) P10,000.00 for attorney's fees.

The evidence for the defense in chief consisted of the testimonies of:

1) Vicente Orlain, 71, a neighbor of the accused who allegedly heard the cry for help of Vivien Andalis, the wife of the accused. He went out of the house to verify that cry for help and saw Pio Gonowon running out of the house of the accused with a bloodied back.

2) Vivian Andalis, (26), wife of accused testified that deceased tried to attempt on her honor by embracing, and kissing her and trying to lift her dress and so she cried for help and her husband ran inside their house and stabbed the deceased.

3) Flora Andalis Salvadora, (3), sister of the accused who testified that she heard the cry of Vivian for help and saw Pio coming out of the house of the accused and fell dead on the yard.

4) SPO1 Ramon Villamor, a policeman of the Iriga City PNP who fetched the accused from his cell at the Pili PNP Station, after receiving a radio message.

5) SPO1 Pedro Corporal, a policeman from PNP Pili, Camarines Sur, presented to identify Police Blotter Entry No. 1237 and the excerpt thereof regarding the voluntary surrender of accused.

6) Salvador Andalis, 29, married, the accused himself, and a resident of San Agustin, Iriga City. He declared that on December 25, 1992, at about 8:00 A.M. he took his wife and three (3) children by pedicab ("pajak") to