

EN BANC

[G.R. No. 124392, February 07, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO ABRAZALDO @ "PEDING," ACCUSED-APPELLANT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision^[1] dated November 15, 1995 of the Regional Trial Court, Branch 44, Dagupan City in Criminal Case No. 95-01052-D, finding accused-appellant Federico Abrazaldo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the supreme penalty of death and to indemnify the heirs of the deceased Delfin Guban the amount of P50,000.00 as indemnity and P27,000.00 as actual damages, plus costs.

In the Information dated August 3, 1995 filed with the trial court, accused-appellant was charged with the crime of murder committed as follows:

"That on or about July 15, 1995 in the evening at barangay Pogo, Municipality of Mangaldan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a bolo, with intent to kill, treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously stabbed **DELFIN GUBAN Y GUINTO** inflicting upon him a stab wound which caused his death to the damage and prejudice of his heirs.

"CONTRARY to Art. 248, Revised Penal Code, as amended by R.A. 7659."
^[2]

Upon arraignment, accused-appellant entered a plea of not guilty.^[3] Forthwith, trial on the merits ensued. The prosecution presented as its witnesses Rosendo Fajardo, SPO1 Ramie Petrache, SP02 Roberto Fernandez, Dr. Alberto Gonzales and Gregorio Guban. Accused-appellant and his sister, Marites Abrazaldo, took the witness stand for the defense.

The facts of the case as presented by the prosecution witnesses are as follows:

On July 15, 1995, at about 10:00 o'clock in the evening, at Barangay Pogo, Mangaldan, Pangasinan, accused-appellant, then intoxicated,^[4] attempted to hack his uncle, Bernabe Quinto, but instead, hit the post of the latter's house.^[5] The incident was reported to the barangay authorities, prompting Delfin Guban, Rosendo Fajardo, Sr., Alejandro Loceste (all are members of the barangay tanod), and Cesar Manaois to rush to the scene. Upon reaching the place, Fajardo heard accused-appellant shouting at his uncle, "*I will kill you!*" Thereafter, he saw accused-appellant coming out of Quinto's house with blood oozing from his forehead.^[6] At

that time, the place was well lighted by a fluorescent lamp. Guban tried to assist accused-appellant. However, for unknown reason, accused-appellant and Guban shouted at each other and grappled "face to face." Accused-appellant pulled out his knife, stabbed Guban at the abdomen^[7] and ran away. When Fajardo got hold of Guban, the latter said, "*I was stabbed by Feding Abrazaldo.*"^[8] Fajardo, together with the other barangay tanod, rushed Guban to the Gov. Teofilo Sison Memorial Hospital where he was operated by Dr. Alberto Gonzales, a Medical Officer III. But after a few hours, Guban died. Dr. Gonzales issued a Medico-Legal Certificate stating that the cause of death was "stab wound, epigastrium, massive hemothorax right."^[9]

Gregorio Guban, the victim's father, testified that he was the one who spent for his son's funeral expenses. For the burial, he spent P10,000.00;^[10] for the 10-day funeral wake, P10,000.00;^[11] for the 9th day novena, P3,000.00;^[12] and for the hospitalization, P4,000.00,^[13] or a total of P27,000.00.

On July 16, 1995, Fajardo learned that the knife used by accused-appellant in stabbing Guban was in Salay, Pangasinan. Together with SPO2 Roberto Fernandez, Fajardo went to the house of Francisca Velasquez, accused-appellant's aunt, and recovered the knife. ^[14]

Invoking self-defense, accused-appellant presented a different version. On July 15, 1995 at about 10:00 in the evening, he was making fans inside his house at Barangay Pogo, Mangaldan, Pangasinan.^[15] His wife Lydia and children Mary Jane, Melvin and Christelle were with him. Suddenly, Delfin Guban, who was then drunk, went to his house and shouted at him, saying, "*Get out Feding I will kill you!*"^[16] When accused-appellant went out, Guban hit him with an iron pipe. Accused-appellant ran towards his house and got his two children. Guban, now armed with a knife, followed him and they grappled for its possession. In the course thereof, both fell down.^[17] It was then that the knife held by Guban accidentally hit him. Accused-appellant did not know which part of Guban's body was hit. Thereafter, he got the knife in order to surrender it to the police.^[18]

Marites Abrazaldo testified that accused-appellant is his brother.^[19] On July 15, 1992, at about 6:00 in the evening, accused-appellant, Guban and Juan Quinto were engaged in a "drinking spree."^[20] At about 10:00 o'clock in that evening, accused-appellant caused trouble at the house of his uncle, Bernabe Quinto.^[21] He attempted to hack his uncle, but instead hit the post of the latter's house.^[22] While running away from his uncle's place, he bumped an artesian well, causing a wound on his forehead.^[23] Afterwards, **accused-appellant killed Guban.**^[24]

On November 15, 1995, the trial court rendered a Decision, the decretal portion of which reads:

"WHEREFORE, premises considered, the Court finds accused Federico Abrazaldo @ Peding guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, as amended by Republic 7659, and in view of the presence of the aggravating circumstances that the crime was committed while the public authorities

were engaged in the discharge of their duties and that the crime was committed at nighttime, which aggravating circumstances are not offset by any mitigating circumstance, accused Federico Abrazaldo is hereby sentenced to suffer the penalty of Death.

"Accused Federico Abrazaldo is ordered to pay an indemnity of P50,000.00 to the heirs of the deceased Delfin Guban. Accused is also ordered to pay the heirs of the deceased Delfin Guban the total sum of P27,000.00 as actual expenses, plus costs.

"SO ORDERED."

In appreciating treachery and the aggravating circumstances under paragraphs (5) and (6) of Article 14,^[25] Revised Penal Code, the trial court held:

"We now come to the issue of whether or not evident premeditation was present. The prosecution's evidence is wanting on this point. **However, there is no question that there was treachery as the accused embraced Delfin Guban and suddenly stabbed him with a knife. The victim was not in a position to defend himself at the time of the attack. The deceased was stabbed without any warning. He was given no chance to defend himself. Treachery, therefore, qualifies the killing of the victim and raises it to the category of murder.**

"The prosecution has established thru the testimony of Gregorio Guban that at the time of the incident on July 15, 1995, the members of the barangay tanod, namely: Rosendo Fajardo, Sr., Delfin Guban and Alfredo Laceste were performing their duties as members of the barangay tanod. (See p. 6 tsn September 18, 1995). **This is an aggravating circumstance under paragraph 5, Article 14 of the Revised Penal Code. The members of the barangay tanod who are public authorities were engaged in the discharge of their duties at the time of the stabbing incident.** Besides, the incident was committed during nighttime, that was 10:00 in the evening. Accused took advantage of the darkness of the night for the successful consummation of his plan to kill Delfin Guban."

Accused-appellant, in his Appellant's Brief, ascribes to the trial court the following errors:

"I

THE HONORABLE TRIAL COURT ERRED IN NOT APPRECIATING THE CLAIM OF SELF-DEFENSE BY THE ACCUSED TAKING INTO CONSIDERATION THE CIRCUMSTANCE OF THE CASE.

II

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE RECOVERY OF THE ALLEGED WEAPON USED IN STABBING VICTIM AT THE HOUSE OF THE AUNT OF ACCUSED BOLSTERED THE CASE AGAINST HIM DESPITE LACK OF SUFFICIENT EVIDENCE TO

PROVE ITS VERACITY.

III

THE HONORABLE TRIAL COURT ERRED IN APPRECIATING THE TESTIMONY EXTRACTED BY THE PROSECUTION FROM DEFENSE WITNESS MARITESS ABRAZALDO WHICH HAD NO SUFFICIENT BASIS AT ALL.

IV

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT TREACHERY ATTENDED THE STABBING OF THE VICTIM WITHOUT SUFFICIENT BASIS TO PROVE THE SAME.

V

THE HONORABLE TRIAL COURT ERRED IN ASSUMING THAT ACCUSED-APPELLANT TOOK ADVANTAGE OF NIGHTTIME IN CONSUMING THE ACT.

VI

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE CHARGE AGAINST ACCUSED-APPELLANT IS AGGRAVATED BY THE FACT THAT THE VICTIM WAS IN THE PERFORMANCE OF HIS DUTY."

The Solicitor General, in the Appellee's Brief, asserts that in pleading self-defense, accused-appellant admitted he killed the victim and, therefore, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Moreover, accused-appellant's version of the incident is completely contradicted by the testimony of his sister. Also, the aggravating circumstance, under par. (5) of Article 14, Revised Penal Code, was clearly established because during the incident, Guban, as the Assistant Chief Tanod, was on duty and engaged in the maintenance of peace and order.

The Solicitor General though agrees with accused-appellant that there was no treachery. Evidence shows that he and Guban shouted at each other and struggled "face to face" before the stabbing incident. Thus, the assault was not sudden. Likewise, the Solicitor General is convinced that accused-appellant did not purposely and deliberately seek nighttime to perpetrate the commission of the crime.

Consistent is the jurisprudence that where self-defense is invoked, it is incumbent upon the accused to prove by clear and convincing evidence that **(1)** he is not the unlawful aggressor; **(2)** there was lack of sufficient provocation on his part; and **(3)** he employed reasonable means to prevent and repel an aggression. On appeal, the burden becomes even more difficult as the accused must show that the court below committed reversible error in appreciating the evidence.^[26]

Accused-appellant miserably failed to discharge the burden. To show that he was not the unlawful aggressor, he testified that it was Guban who went to his house,

threatened to kill him,^[27] hit him with an iron pipe,^[28] and attacked him with a knife.^[29] We quote accused-appellant's testimony, thus:

"ATTY. CAMPOS:

X X X

X X

X

Q You said a while ago that on July 15, 1995 at about 10:00 in the evening you were in your house engaging in fan making, do you know of any unusual incident that happened during that time?

A **Delfin Guban came to my house and he was under the influence of liquor and he shouted at me, sir.**

Q **And what did Delfin Guban shout at you?**

A **He said, "*Get out Feding I will kill you.*"**

Q After this Delfin Guban shouted at you, what happened next?

A When I went out of the house, I was already there in front of the house then he hit me, sir.

Q **You said Delfin Guban hit you, what instrument did he use in hitting you?**

A **He hit me with a pipe , sir.**

X X X

X X

X

Q After Delfin Guban hit you with that pipe, what happened next?

A I ran towards my house inside, then got my two children while Delfin Guban followed me inside my house, sir.

Q When Delfin Guban followed you inside your house, what happened again?

A He was holding a knife and we grappled and during that time both of us fell down, sir.

Q **When you grappled with Delfin Guban, who was holding a knife, what again happened?**

A **We grappled for the possession of the knife then we fell down and the knife he was then holding pointed towards him and hit him. x x x.^[30]** (Emphasis supplied)

The foregoing testimony bears not only the vice of falsity but also isolation. It is uncorroborated and even opposed by Marites, accused-appellant's own sister and lone witness. Contrary to his testimony that Guban hit him on his forehead with a pipe, Marites declared that accused-appellant sustained the wound on his forehead when he accidentally bumped an artesian well. Instead of fortifying her brother's defense, she virtually affirmed the prosecution's story by testifying that he created