

EN BANC

[G.R. No. 148912, September 10, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TIMOTEO
ESCARLOS, ALIAS "TOMY," APPELLANT.**

DECISION

PANGANIBAN, J.:

By interposing self-defense, herein appellant admits authorship of the killing. Thus, shifted to him is the burden of proof showing that the killing was justified. Despite his failure to prove self-defense, he may be convicted only of homicide, not murder, because of the inability of the prosecution to establish any qualifying circumstance. Here, treachery is negated by the victim's awareness of the impending attack.

The Case

For automatic review before the Court is the May 29, 2001 Decision^[1] of the Regional Trial Court (RTC) of Urdaneta, Pangasinan (Branch 46) in Criminal Case No. U-10792, finding appellant guilty of murder beyond reasonable doubt and sentencing him to death. The dispositive portion of the Decision reads as follows:

"WHEREFORE, JUDGMENT is hereby rendered CONVICTING beyond reasonable doubt accused Timoteo Escarlos of the crime of Murder and the Court sentences him to suffer the penalty of DEATH; he is likewise ordered to indemnify the heirs of Antonio Balisacan the sum of P28,650.00 as actual damages, the sum of P50,000.00 as moral damages and the further sum of P50,000.00 as exemplary damages.

"The Clerk of Court is hereby ordered to prepare the mittimus.

"The Jail Warden, Bureau of Jail Management and Penology (BJMP) Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living body of Timoteo Escarlos to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision."^[2]

The Information^[3] dated August 29, 2000, charged appellant as follows:

"That on or about July 1, 2000, in the evening, at Barangay Dumanpot, Asingan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharp pointed bladed weapon, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, hold and stab from behind Brgy. Kgd. Antonio Balisacan, inflicting upon him the following injuries:

External Findings:

1. Stab wound located below right clavicle measuring 3 inches length and 8 inches depth.
2. Stab wound located at left armpit measuring 4 [inches] length and 6 inches depth.
3. Stab wound located at mid lumbar area measuring 3 inches length and 4 inches depth
4. Stab wound located between right first and second finger measuring 3 inches length.

Internal Findings:

1. Cutting of the upper and lower lobe of the right lung.
2. Cutting of the lower lobe of the left lung.

which injuries directly caused the death of said Brgy. Kgd. Antonio Balisacan, to the damage and prejudice of his heirs.

"Contrary to Art. 248, Revised Penal Code in relation to Republic Act No. 7659."^[4]

During his arraignment on November 8, 2000, appellant, with the assistance of his counsel,^[5] pleaded not guilty to the charge.^[6] After trial in due course, he was found guilty by the lower court.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) narrates the factual version of the prosecution as follows:

"Around 9 o'clock in the evening of July 1, 2000, Antonio Balisacan went to the residence of Jaime Ulep in Domampot, Asingan, Pangasinan to attend a benefit dance which was near the place. In the benefit dance was his son Crisanto Balisacan, who attended the dance with his friends. Crisanto stood beside the emcee, Ceasario Escarlos, appellant's brother. While Ceasario was calling the victim, Antonio Balisacan, to come to the stage as he was a *kagawad*, Crisanto heard the people at his back shout 'Ay!'. Five (5) to six (6) meters at his back, with the place [illuminated] by a 50 to 100 watts bulb, he saw appellant stab his father, Antonio, several times. Crisanto was momentarily shocked that he was not able to react. When appellant fled, Crisanto came to his senses and ran to Antonio. Antonio was still alive so he brought him to Urdaneta Sacred Heart Hospital where he expired a few minutes after arrival.

"Jesus Dismaya was also beside Ceasario when Antonio Balisacan's name was called. When he heard people shout, he turned around and saw from a distance of four (4) meters appellant stabbing Antonio four (4) times with a ten (10) inch-long knife. He then called Antonio's brother, [Marcelo] Balisacan.

"Within the vicinity was Antonio's brother, Marcelo Balisacan. He was in the Asingan-Urdaneta road, which was about fifteen (15) meters outside

Ulep's yard when he heard people shout and run from the benefit dance. Wanting to know what was happening, he went to the benefit dance and saw that Antonio was stabbed. He went near Antonio, hugged him, and asked who stabbed him. He replied, 'Tomy Escarlos.'

"Meanwhile around 9:30 of the same evening of July 1, 2000. SPO1 Patricio Badua was on duty. He received a phone call about a stabbing incident in a benefit dance in Domampot, Asingan, Pangasinan. When he went to the scene of the crime, the victim, Antonio Balisacan was already in the hospital and appellant had already fled. He later learn[ed] that Antonio died.

"Dr. Noemi Taganas conducted an autopsy on Antonio's body and found:

External Findings:

1. Stab wound located below the right clavicle measuring 3 inches length (in) and 8 inches (in) depth.
2. Stab wound located at left armpit measuring 4 inches length and 6 inches depth.
3. Stab wound located at mid lumbar area measuring 3 inches length and 4 inches depth
4. Stab wound located between right first and second finger measuring 3 inches length.

Internal Findings:

1. Cutting of the upper and lower lobe of the right lung.
2. Cutting of the lower lobe of the left lung.

"She later issued a death certificate. She stated in court that out of the four (4) stab wounds, Antonio's second stab wound was fatal because the lungs were penetrated.

"Dr. Ronald Bandonil, an NBI medico-legal officer confirmed Taganas' autopsy report. He also conducted an autopsy on the exhumed body of Antonio. In his autopsy he found that Antonio's first and second wounds were fatal as these caused his death due to hypovolemic shock or massive blood loss."^[7] (Citations omitted)

Version of the Defense

Appellant, on the other hand, relates his version of the facts in this manner:

"On the night of July 1, 2000, accused TIMOTEO ESCARLOS together with Rexie Yabes, Fredo Ramos, Erwin Ramos, Rowena Alamigo and others were at the yard of Jaime Ulep, in Purok Inanama, Domanpot Asingan, Pangasinan watching a benefit dance sponsored by Mr. & Mrs. Organization. He was invited to buy lechon during the benefit dance.

"While thereat, Kgd. Antonio Balisacan who was then drunk, passed in front of accused and told him, 'You are here again to create trouble.' Accused was offended so he answered back saying 'Why do you say that

to me when I am not doing any trouble here.' Antonio Balisacan told him, 'OKINNAM KETDI' (vulva of your Mother) and without warning boxed him. Timoteo was hit on the forehead, which left a scar on his forehead about an inch above the right eyebrow. He intended to box back but he noticed that the victim was pulling out a kitchen knife, so for fear of his life, he grabbed the weapon from Antonio Balisacan and used the knife in stabbing the latter who was hit at the side below the left armpit. He stabbed him twice and when the victim was about to fall down, he was able to hit him for the third time.

"The weapon that Timoteo was able to get from Antonio was a kitchen knife about 10 to 12 inches. Antonio drew the knife from his left side. Timoteo was able to get hold of the handle of the knife when he grappled for the same from the victim, by taking hold of the knife with his right hand and stabbed Antonio who was intending to stab him. Antonio was one (1) inch taller than accused.

"Timoteo's testimony was corroborated by an eyewitness, CESARIO ESCARLOS, the brother of Timoteo and president of the Mr. & Mrs. Association which sponsored the benefit dance on July 1, 2000.

"On the night of July 1, 2000, Cesario Escarlos was at the yard of Jaime Ulep. At about 9:00 o'clock in the evening of the said date, he saw his brother Timoteo Escarlos together with Dexie Yabis standing in a corner watching the dance. Several minutes later Kgd. Antonio Balisacan arrived and later on, while Cesario was on his way to urinate. He heard Antonio uttered to Timoteo 'ADDA CAYO MANEN NGA AGARAMED TI NILOLOCON.' While relieving himself, he heard both Timoteo and Antonio arguing and before he could get near and pacify them, he saw them wrestling with each other. Many people were around but nobody pacified them. Next minute he saw Antonio bloodied and lying on the ground. There were at least 100 people then and might have seen the incident. He noticed that Jesus Dismaya was there but the latter did not do anything. Cesario, after the incident only stayed there for 3 minutes because he was looking for his three year-old daughter. In the meantime, nobody touched the body of the victim."^[8]

The Ruling of the Trial Court

The trial court believed that the prosecution's evidence was sufficient to convict appellant of murder qualified by treachery. It rejected his plea of self-defense, because there had been no unlawful aggression on the part of the victim.

"x x x. The established facts revealed that the victim was one of the persons who filed a case of malicious mischief against [appellant]. Said case was filed five (5) months before the instant case happened. To the mind of the Court, the accused only found a way of avenging what he felt towards the victim. He took advantage of that x x x particular time and place to let out his feelings in the presence of his barangay mates. Such hidden grudge by the accused against the victim, established the motive of the former.

"The second element of self-defense is also lacking. The nature, location and the number of wounds inflicted on the victim belie and negate the accused[']s claim of self-defense. The post mortem findings of the autopsy report showed that the victim sustained four stab wounds.

"If there is any truth to the accused'[s] claim of self-defense, he would not have stabbed him several times. [Worse,] the location of the wounds suggested that the accused was at the back of the victim when the wounds were inflicted. It is therefore evident from the conduct of the accused that he was determined to kill the victim and did not just act to defend himself. In view of the foregoing, it is no longer necessary to discuss the third element."^[9]

Hence, this automatic review.^[10]

The Issues

Appellant assigns the following alleged errors for our consideration:

- "1. The honorable trial court erred in appreciating treachery as a qualifying circumstance despite failure of the prosecution to prove its attendance.
- "2. The honorable trial court erred in not finding that the testimony of the supposed eyewitnesses for the prosecution as to the attendance of treachery is flawed and unworthy of belief.
- "3. The honorable trial court erred in not giving exculpatory weight to the theory of self-defense interpose[d] by the accused-appellant.
- "4. The honorable trial court committed a grave and serious error in not finding that the victim [was] the first to assault accused.
- "5. The honorable trial court erred in considering motive to establish the guilt of the accused.
- "6. The honorable court erred in convicting the accused-appellant of murder instead of acquitting him or at most convicting him of homicide."^[11]

These issues boil down to four: (1) sufficiency of the prosecution's evidence, (2) viability of self-defense, (3) appreciation of treachery as a qualifying circumstance, and (4) propriety of the penalty and the damages imposed by the trial court.

The Court's Ruling

The appeal is partly meritorious.