

## SECOND DIVISION

[ G.R. No. 130523, January 29, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARIO ALBA ALIAS "MARIO ALBA", ACCUSED-APPELLANT.**

### DECISION

#### QUISUMBING, J.:

Before us is an appeal from a decision<sup>[1]</sup> dated March 24, 1997, of the Regional Trial Court, Branch 33, in Dumaguete City, in Criminal Case No. 10632, convicting appellant Gario Alba alias "Mario Alba" of the crime of murder under Article 248 of the Revised Penal Code, before its amendment by Republic Act No. 7659.

On February 9, 1993, an Information was filed against Alba, charging him with murder allegedly committed as follows:

That at about 5:30 o'clock in the afternoon of January 31, 1993, at sitio Pananlaya-an, barangay Datagon, municipality of Pamplona, province of Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, that above-named accused with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack, assault and stab one Ricky Aguilar with the use of knife with which the accused was then armed and provided thereby inflicting upon the body of the victim, the hereunder described injuries:

Stab wound, 2 cm., 6<sup>th</sup> intercostal space, anterior, axillary line, right

Stab wound, 6 cm., level of the 1<sup>st</sup> and 2<sup>nd</sup> lumbar vertebra which injuries caused the instantaneous death of victim, Ricky Aguilar.

Contrary to Article 248 of the Revised Penal Code.<sup>[2]</sup>

During the arraignment, counsel for appellant manifested that his client was willing to enter a plea of guilty to the lesser offense of homicide. This was rejected by the prosecution. Thus, he pleaded not guilty to the offense charged.

Trial thereafter ensued. The prosecution presented as witnesses Dr. Quintin C. Bascos, senior resident physician of Bais District Hospital; Esterlito Aniñon, Aguilar's friend; and Roland Ybasan, a pedicab driver; and the victim's father, Valentin Aguilar.

DR. QUINTIN BASCOS testified that he conducted a post-mortem examination on the body of the victim, Ricky Aguilar. His findings showed that the victim suffered two (2) stab wounds as follows: stab wound no. 1, which was located in front, right side, about 15 inches from the top of the right shoulder; and stab wound no. 2,

which was found at the right of his back, 2 inches from the vertebral lumbar. According to Dr. Bascos, the cause of death of the victim was massive bleeding due to the injury to the artery supplying the right kidney and the injury of the right lung causing the lung to collapse as well as the bleeding at the right thoracic region.<sup>[3]</sup> He testified that these wounds were inflicted by a sharp-bladed instrument.<sup>[4]</sup>

ESTERLITO ANIÑON testified that on January 31, 1993, at about 5:30 in the afternoon, the victim (Ricky Aguilar) and he were having a drinking spree at Paterno Flordeliza's store located at Pananlaya-an, Datagon, Pamplona, Negros Oriental. Aguilar ordered a bottle of Añejo rum. They had alternate shots of the rum from a single glass. According to the witness, when his turn to drink came, he saw appellant behind Aguilar, and suddenly appellant stabbed Aguilar at the back with a knife that appellant held by his left hand. He saw the knife pierce the front of the victim's chest. Appellant immediately fled the scene while Roland Ybasan, a pedicab driver, rushed the victim to the house of Iluminada Manahon. He explained he was not able to warn Aguilar because he was too stunned, and his first instinct was to run for cover lest he be the next victim.

ROLAND YBASAN<sup>[5]</sup> essentially corroborated the testimony of Aniñon.<sup>[6]</sup> He testified that he recognized the appellant as one of the regular passengers in his pedicab. He recalled that from where he stood, some 5 meters away, he saw appellant stab the victim once "at the right side of his back and the weapon penetrated the right side of the front chest." Ybasan touched his back and his front a few inches below the right nipple, to demonstrate the location of the victim's wound.<sup>[7]</sup>

The last witness for the prosecution was VALENTIN AGUILAR, father of the victim, who testified that he incurred P9,500 for the victim's coffin, the wake and the burial, and other miscellaneous expenses.<sup>[8]</sup>

Appellant Gario Alba, Ricardo Imbo, a laborer; and Wilfredo Jabar Rodriguez, a *barangay* councilman, were presented as witnesses for the defense. The defense version of the incident showed that appellant killed the victim allegedly in self-defense.

Appellant testified<sup>[9]</sup> that in the morning of January 31, 1993, he was alone, on his way home *via* Hacuton, Mamburao, Pamplona, Negros Oriental. He took this route because the Tanjay River, where he usually passed, was inundated due to heavy downpour. According to him, he had with him a hunting knife for his protection from marauders, who frequented the area. He said he did not know that the carrying of weapons outside residences was prohibited. Upon reaching Pananlaya-an in *Barangay* Datagon, at around 3:00 or 4:30 P.M., he took shelter by the side of a store. There were other people also taking shelter in that area, among them, Ricky Aguilar. According to appellant, Aguilar approached him and asked, "What is your purpose in passing here? Are you going to take revenge against me?" Appellant said in reply that he passed by the place because his usual route was flooded. Thereupon, according to appellant, Aguilar boxed him in the jaw which caused him to fall to the ground. As he lay, he saw Aguilar about to pull out a hunting knife, so he immediately stood up, pulled out his hunting knife, and stabbed Aguilar twice.

RICARDO IMBO, a laborer of Del Prado Ledesma Sugar Plantation, testified to corroborate appellant's story. A resident of Layawan, Tanjay, Negros Oriental, Imbo

testified that at the time of the incident, he was at sitio Pananlaya-an, Datagon, to look for a pig to buy for his brother's wedding. He left his house after lunch and arrived at Pananlaya-an at about 3 o'clock in the afternoon on January 31, 1993. He had a snack in a store along the road. Because of the heavy rain, he remained in the store's waiting shed. He noted other people taking shelter in the shed. He also noticed appellant Alba, alone on the other side of the road, taking shelter in a house. He said that Alba was approximately fifty (50) meters away from him. At around 5:30 P.M., as he was leaving, he saw a stranger box Alba at the base of the latter's right arm. He noticed Alba reel and almost slump on the ground. Alba then stood up, pulled out a knife, and stabbed the person who boxed him.<sup>[10]</sup>

WILFREDO JABAR RODRIGUEZ, a *barangay* councilman, testified that appellant Alba sought his advice about the incident and he told him to surrender. Rodriguez accompanied Alba to the *barangay* captain who escorted the appellant to the authorities.<sup>[11]</sup>

On March 24, 1997, the trial court found appellant guilty, sentencing him as follows:

WHEREFORE, this Court finds the accused GUILTY beyond reasonable doubt of the offense charged in the information of MURDER, with one (1) mitigating circumstance of voluntary surrender and the penalty imposable consisting of one (1) divisible penalty of reclusion temporal and two (2) indivisible penalties, that of reclusion perpetua to death, the accused is hereby sentenced to a determinate penalty of RECLUSION PERPETUA; to indemnify the heirs of the victim Ricky Aguilar, the sum of Fifty Thousand (P50,000.00) Pesos; Thirty Thousand (P30,000.00) Pesos as moral damages; Twenty Thousand (P20,000.00) Pesos as exemplary damages, and to suffer the accessory penalties imposed by law.

x x x

SO ORDERED. <sup>[12]</sup>

From the above decision, appellant timely appealed. In his brief, he impugns that decision on the basis of a lone assignment of error, that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GARIO ALBA GUILTY OF MURDER DESPITE CLEAR AND CONVINCING EVIDENCE THAT TREACHERY WAS NOT PRESENT IN THE COMMISSION OF THE CRIME.<sup>[13]</sup>

Appellant essentially owns up to the killing of the victim but claims that he did so in self-defense.<sup>[14]</sup> He says that he stabbed the victim twice when the latter boxed him. He adds that he was in front of the victim when he stabbed him. According to appellant, an eye-witness, one Ricardo Imbo,<sup>[15]</sup> corroborated his testimony.

For the State, the Office of the Solicitor General contends that appellant's claim of self-defense pales against the clear testimony of the prosecution witnesses. According to the OSG, stealth attended the attack against the victim, Ricky Aguilar. The OSG concludes that appellant's conviction should be affirmed.

To exculpate an accused from any criminal liability on the ground of self-defense,

the burden of proof shifts to the accused. He must prove the following elements of self-defense by clear and convincing evidence: (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 defending himself. [16]

After careful consideration of the evidence on record, we are convinced that unlawful aggression on the part of the victim has not been shown. Appellant failed to overcome the evidence of the prosecution that appellant stabbed the victim, Ricky Aguilar, from behind without any provocation at all. His claim that he had a frontal encounter with the victim was belied by witnesses Aniñon and Ybasan, who testified that they saw appellant suddenly stab the victim from behind, with the knife penetrating from the back to the victim's front chest, on the right side. We note that although Ricardo Imbo, a bystander at the scene of the crime, tried to corroborate Alba's story, the trial court was unimpressed. Instead, the court gave credence to the testimony of prosecution witnesses Aniñon and Ybasan. The assessment of the trial court is generally received with great respect and is conclusive on appeal, barring any showing of any arbitrariness or oversight of material facts that could change the result. For it is the trial judge who directly observed the witnesses on the stand and could detect from their conduct "the furtive lie that will expose the hidden truth." [17]

The trial judge gave little weight to the testimony of Imbo, because it was peppered with improbabilities and inconsistencies. Imbo could not even tell for sure if appellant had companions at the time of the incident. As observed by the trial court with alacrity, Imbo in his first testimony declared that the appellant was alone when he saw him at the time the incident happened. [18] In the succeeding direct examination, Imbo changed his account and declared that Alba had companions. [19] But, upon further questioning, Imbo retracted his statement, saying that appellant had arrived alone walking but was caught in the rain. [20] Equally incredulous was Imbo's testimony that appellant was on the other side of the road, some 50 meters away [21] from where he was standing, when he saw someone punch appellant at the base of his right arm. [22] From his vantage point 50 meters away from the appellant, it is doubtful if he could clearly see the victim hit at the base of his right arm. Significantly, this version by Imbo runs counter to appellant's own testimony that he was hit at the lower jaw. [23]

Imbo's declaration that he saw appellant stab the victim on the chest and on the side [24] is contradicted by the autopsy report revealing two wounds. The autopsy result revealed one at the back as the entrance wound, and the other in front of the victim's chest as the exit wound, both caused by one knife thrust. The report of Dr. Bascos did not support the testimony of Imbo that appellant stabbed the victim twice while face to face, and not from behind.

The trial court gave credence to the testimony of eyewitness Esterlito Aniñon, instead. He categorically declared that he saw the appellant stab the victim once from behind, with the knife piercing "through and through," so that the point of the knife exited in the frontal area, at the right side of the victim, that is to say, the chest of the deceased. Aniñon's narration dovetails with the physical evidence presented and explained by Dr. Bascos who testified that there were two stab