

SECOND DIVISION

[G.R. No. 132167, January 08, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO QUENING Y VERSOZA, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated October 9, 1997, of the Regional Trial Court of Masbate, Branch 46, in Criminal Case No. 7737, finding appellant guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

Appellant was charged under the following Information:

That on or about March 12, 1995, in the afternoon thereof, at sitio Siwayan, barangay Bangon, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack with a bolo one Antonio dela Cruz y Rebesi, hitting the latter on the different parts of the body therefore inflicting wounds which cause[d] his instantaneous death.

CONTRARY TO LAW.^[2]

Appellant pleaded not guilty when arraigned. Thereafter, trial on the merits ensued. The facts of the case, as culled from the testimonies of the prosecution and defense witnesses, are as follows:

BERNADETH DELA CRUZ,^[3] widow of the victim and the first witness for the prosecution, testified that on March 12, 1995, her husband, Antonio dela Cruz, attended a birthday party. In the afternoon of that same day, she saw him walking towards their house but stopped at appellant's house, which was about 10 to 15 meters from theirs. There was a rumor in their *sitio* that her husband and appellant's wife were having an affair. She saw her husband talking to appellant's wife just outside the latter's house. Seeing this, she went over to join them. She overheard her husband telling appellant's wife that should appellant die, he would take the latter's place. She interrupted them and said that this could not be true. She and her husband were about to leave when suddenly appellant arrived. She then tried to explain to appellant that her husband was just joking. Piqued, appellant immediately boxed her husband. She said she tried to hold on to appellant to stop him from further hurting her husband, but instead both fell to the ground. She recalled that appellant's brother-in-law, nicknamed Egoy, appeared and tried to hit her as well. However, her husband hit Egoy first, and the latter fell.

The spouses hurriedly went home. Upon reaching their house, her husband remained and sat by the gate, facing the house, with his back to the road. She was standing about 4 to 5 meters away from him, just outside their gate, when she saw appellant, who was armed with a bolo, walking towards her husband. She recalled that she tried to shout and warn him but to no avail as no sound came out of her throat. She saw appellant hack her husband to death. She said appellant killed her husband because appellant might have envied her family. [4]

On cross-examination, Bernadeth admitted that when her husband left, she stayed behind and talked to appellant's wife who apologized for the rumor. According to her, when she neared her home, Egoy arrived and engaged her husband in a fistfight in the middle of the road. She reiterated what she narrated in her direct testimony. [5]

The second witness for the prosecution was JULITO RABINO, [6] a neighbor of the victim and the appellant. He testified that on March 12, 1995, at around 3:30 P.M., while he was riding his bicycle, he saw appellant hacking at Antonio, near the gate in front of the latter's house. He shouted for appellant to stop but appellant only looked back at him and continued to hack Antonio. The victim sustained wounds on his head and shoulder. Julito said he was just three (3) arms length away. He saw appellant leave and go to the house of Rafael Mendoza, a *barangay kagawad*, to surrender. Meanwhile, he saw Bernadeth faint by the side of the road. He then brought her to her parents' house. [7]

DR. ARTEMIO G. CAPELLAN, Municipal Health Officer of Masbate, testified and interpreted the medico-legal findings of Dr. Noel Jazul, who conducted the autopsy and prepared the autopsy report, as follows: (1) Hacking type of wound located at the left side of the head. (2) Hacking wound, 11 cm. x 5 cm., parieto occipital right. (3) Hack wound 5 cm. x 3 cm., extended from maxillary area, located at the right cheek up to the back passing through the right ear. (4) Hacking wound, 11 cm. x 2 cm., right postero lateral aspect, at the right side of the neck through his back. (5) Hacking wound, 8 cm. x 4 cm., with complete fracture at the right shoulder. (6) Hacking wound, 10 cm. x 10 cm., right scapula, at the right side of the back. (7) Hacking wound at 17 cm. x 2.5 c.m., scapular area posterior chest, at the left side of the back. Dr. Capellan clarified that of the seven wounds, nos. 6 and 7 were at the back. All the wounds were fatal. However, he was not certain which of the wounds caused the actual death of the victim. [8]

For the defense, witness ORLANDO BARTOLAY CABILES testified that on March 12, 1995, while standing six (6) meters away from the house of appellant, he saw Antonio, armed with a bolo, running towards the direction of appellant's residence. Antonio then found appellant in his yard. Antonio tried to hit appellant with the bolo but missed. They grappled for the bolo and appellant, after getting the weapon, hacked Antonio. Appellant then went up his house while Antonio ran towards the middle of the road where he fell. Cabiles also noticed that there were other people who saw the incident but were too afraid to come forward. When cross-examined, he admitted that he resided in Sitio Bangon while the incident was in Sitio Siwayan; that he was in the vicinity of the crime because there was a shorter road in the area leading to his house; and that when he ran for councilor in the local elections, appellant and he were political allies. He likewise admitted that had he not been asked by appellant, he would not have testified for him. He claimed that he never

saw what or how the incident started and that he witnessed only the part when Antonio armed with a bolo rushed towards appellant.^[9]

The final witness was appellant himself. In his own defense, ARMANDO QUENING recounted that on March 12, 1995, at around 3:30 P.M., he was awakened by a commotion near the gate of his house. When he looked out the window, he saw Antonio boxing his brother-in-law, Ego. He went down to pacify them but to no avail. When Antonio saw him, Antonio was uttering "It is good that you came here.", while lunging at him with a twelve (12) inch-knife. Antonio missed. They grappled for the knife and he managed to get hold of it then he thrust the knife at Antonio. He explained that perhaps out of blind rage, he hit the victim four (4) times. At this point, he claimed, he no longer knew where Ego was. He surrendered to Councilor Rafael Mendoza who brought him to the Municipal Building of Aroroy.^[10]

In its decision, the trial court found appellant guilty for the murder of Antonio dela Cruz. The *fallo* reads:

WHEREFORE, the accused Armando Quening y Versoza is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of Antonio dela Cruz y Rebesi the amount of fifty thousand pesos (P50,000.00) as moral damages. The accused is further ordered to be transferred to the National Penitentiary.

SO ORDERED. ^[11]

In this appeal, he avers that the trial court erred:

I. ... IN APPRECIATING THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY. ^[12]

II. ... IN FINDING THE ACCUSED-APPELLANT ARMANDO QUENING GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED AND PENALIZED UNDER ARTICLE 248 OF THE REVISED PENAL CODE. ^[13]

Appellant seeks the reversal of his conviction and raises principally the issue of credibility of the prosecution witnesses as well as the propriety of the trial court's appreciation of treachery as a qualifying circumstance in the commission of the offense.

On the issue of credibility, appellant contends that the trial court erred in giving full faith and credence to the testimony of the prosecution witnesses. He avers that the court *a quo* merely adopted the testimonies of the prosecution witnesses but wholly disregarded those of the witnesses for the defense. ^[14]

For the State, the Office of the Solicitor General posits that the trial court did not err in finding appellant guilty of murder qualified by treachery. However, the State moves for the modification of the trial court's decision insofar as the award of moral damages is concerned, which according to the State should have been denominated as indemnity *ex delicto* and should be increased from P50,000 to P75,000.

It is well settled that in assessing the credibility of witnesses, this Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment while testifying. Such an opportunity is denied the appellate courts, which rely on the cold pages of the records of the case.^[15] Only when such assessment is tainted with arbitrariness or oversight of a significant fact or circumstance that could affect the result will the appellate court depart from the trial court's factual conclusions.^[16]

Appellant claims self-defense. For self-defense to prosper, the following requirements should be met: (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.^[17]

Appellant avers that he merely came to the aid of his brother-in-law, Egoy, who was being attacked with fistblows by the victim. However, Bernadeth dela Cruz, the victim's wife, positively testified that appellant stabbed her husband without any provocation on his part.

Between these contradicting testimonies, we are constrained to uphold the findings of the lower court. It found that there was no unlawful aggression on the part of the victim. Appellant claimed he was attacked by the victim with a bolo. We find it less than credible that the victim who was a bigger man, and armed with a bolo, could be disarmed by appellant, who was unarmed and of smaller built. Noteworthy too is the fact that despite appellant's claim that they grappled for the possession of the bolo, appellant did not sustain any wound or bruise. Other than his bare allegation, there is no evidence on record, testimonial or documentary, to support appellant's claim that the victim was the unlawful aggressor.

Curiously too, as observed by the trial court, appellant's brother-in-law, Christopher dela Peña nicknamed Egoy, was not presented as a witness, when Egoy was the person that appellant allegedly aided. Appellant could not even account for the whereabouts of Egoy after the stabbing took place. If it is true that appellant merely came to Egoy's rescue, it was crucial that Egoy corroborate his plea of self-defense. But Egoy was not put on the witness stand. There was no sufficient proof of unlawful aggression on the victim's part. Thus, appellant's claim of self-defense could not prosper since unlawful aggression is an indispensable element thereof. ^[18]

Appellant when cross-examined by the prosecutor testified, thus,

Q: What is the name of your brother-in-law with a quarrel with Antonio dela Cruz?

A: Christopher dela Peña.^[19]

Q: And according to you, the victim, Antonio dela Cruz boxed on the face your brother-in-law?

A: Yes sir.

Q: He boxed your brother-in-law?

A: Yes sir.