

## THIRD DIVISION

**[ G.R. No. 138609, January 17, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARIANO TOYCO, SR., ACCUSED-APPELLANT.**

### DECISION

**GONZAGA-REYES, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated September 18, 1998, of Branch 7 of the Regional Trial Court of Bayugan, Agusan del Sur, convicting accused Mariano Toyco, Sr. of the crime of murder, the dispositive portion of which reads:

"WHEREFORE, viewed from the above insights, this Court finds Mariano Toyco, Sr. guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code.

He is accordingly sentenced:

- 1) to a penalty of Reclusion Perpetua;
- 2) to indemnify the heirs of the victim the amount of P50,000.00;
- 3) to pay the sum of P30,000.00 as exemplary damages;
- 4) to pay P14,500.00 as actual damages;
- 5) to indemnify the heirs of the victim P30,000.00 for moral damages; and
- 6) to pay the costs.

For insufficiency of evidence, the case against Norman and Mariano Toyco, Jr. is DISMISSED.

SO ORDERED."

The information<sup>[2]</sup> for murder against the accused Mariano Toyco, Sr. and his two sons, Norman and Mariano, Jr. reads -

"That on or about 11:30 o'clock in the evening of January 5, 1995, in the premises and vicinity particularly at Silovia, Talacogon, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill, conspiring, confederating and helping one another did then and there, willfully, unlawfully and feloniously attack, assault and hack one Jay-Ar Sumadia with the use of a bolo, hitting the victim at the different parts of his body which caused his instantaneous death, to the damage and prejudice of the victim's heirs which damage consists of actual, moral and compensatory damages.

CONTRARY TO LAW. Article 248 of the Revised Penal Code."

The accused were tried after a plea of not guilty.

The prosecution presented one witness, eyewitness Primito Sumadia, the victim's father. On the other hand, the defense offered the testimonies of four witnesses, namely, Eduardo Canones, Bienvenido Escrin, Acoy Dogmocan, and Norman Toyco. The facts as gathered by the trial court from the testimonies of the said witnesses as well as the documentary exhibits presented were summarized as follows:

"The excerpt of the People's scenario established that Primito Sumadia, the private complainant, was formerly a member of the 56 Infantry Battalion of the Philippine Army. He resigned in 1989 because his wife objected and was averse to his being in the military.

Primito Sumadia, at the time of the incident, had a house beside the road in Km. 1, Silovia, Talacogon. He is married to Leonarda Boneda and they have three children, Jenlyn, Jovilyn and Jay Ar.

The accused are their neighbors for more than a year before 1995, their respective houses distanced only at about 50 meters.

On January 5, 1995 at around 11:30 in the evening while the Sumadia family were at home, accused Mariano Toyco, Sr. and his two sons, Norman and Mariano, Jr., asked for a glass of water. Sumadia did not bother to ask the accused why and where they came from because he knew them. They were not wearing any mask. The three donned white t-shirts and were all barefooted. Mariano, Sr. and Norman were in maong pants. Sumadia commanded his 10 year old son, Jay Ar to give them water. Jay Ar gave the canteen cup to Norman and Mariano, Jr. below at the side of their stairs. When Jay Ar said that the two refused to accept the water, Primito Sumadia told his son to run.

Accused Mariano Toyco, Sr., who was hiding beneath the house, then chased Jay Ar and hacked him with a twelve-inch bolo. Toyco's two sons were only less than a meter. Sumadia jumped from upstairs and chased them but they ran away. He went back to their house to attend to Jay Ar who sustained 6 wounds.

Sumadia, with Eduardo Canones' assistance, brought Jay Ar to the Provident Tree Farm Clinic in their motorized vehicle but since the victim could not be attended to for lack of facilities, Sumadia was advised to bring his son to Patin-ay Provincial Hospital. After Jay Ar was examined in Patin-ay, however, he died. Sumadia cannot fathom, comprehend or divine of any explanation why his son was killed by the accused. In fact, Jay Ar used to play with the Toyco children.

Sumadia reported the abomination to the police of Talacogon on January 12, 1995, after his son's burial.

To brace their asseverations, the prosecution put up the following documentations:

- 1) Testimony of Complaining witness Primito Sumadia;

- 2) Exhibit "A" - Death Certificate of Jay Ar Sumadia;
- 3) Exhibit "B" - Joint Affidavit of Primito Sumadia and Leonarda Sumadia.

Determined to impugn and overturn the evidence for the prosecution, one of the three accused, Norman Toyco took the witness stand. He testified that, at 8:00 o'clock in the morning of January 5, 1995, he and his co-accused brother, Mariano Toyco, Jr., were at the rice field of Eduardo Canones planting rice. They finished their job at 11:00 o'clock that morning, went home to rest, ate their lunch and rest again. Together with fellow worker Mario Lumbago, Norman and Mariano, Jr. started threshing palay at 2:00 o'clock that afternoon until past 4:00. They then proceeded to the owner of the threshed palay at Purok 5, got their compensation, bought viand and came home after 6:00.

Norman, Mariano, Jr. and Lumbago slept in one room at past 8:00 that evening. His parents, sisters were also there but his father, Mariano Toyco, Sr., slept in the sala because their house had no division.

Tired from their work the previous day, they woke up late. Norman was surprised upon seeing many people in their house and that of the Sumadias. Their respective abode are only less than 100 meters apart.

Norman went near the house of the Sumadias. He came to know that Jay Ar was hacked and an investigation was conducted. He saw Leonarda, Toyco's wife, some of their farm laborers and Barrio Kagawad, Dodong Magdasal. Norman, beside Magdasal, heard Leonarda say that she did not recognize the assailant because it was dark and they had only one kerosene lamp. Norman did not stay long because he was requested by Leonarda Sumadia to accompany the farm laborers to their rice field. Norman learned of his father's arrest thru people when they passed by Purok 6.

Norman knew personally Jay Ar because the latter used to visit their house daily to play with his younger sister Lalay, 8 and brothers, Nitoy and Cocoy, ages 7 and 5, respectively. The Sumadias are related to them by blood through his mother side. He suspected that the Sumadias filed this case against them because of their failure to render help and assistance during the incident.

Defense witness, Bienvenido Escrin, averred that, at 9:00 o'clock in the morning of January 5, 1995, while he was in his house at Purok 5, Silovia, Talacogon, he saw 4 people drinking in a nearby store owned by a former Talacogon Councilor Muntajos. He recognized the four as Romulo Potenciano, Berto Petronilo, Jessie Amado and Acoy Dogmocan. Seeing that they were bringing bolos and observing their actuations to be different, Escrin warned them not to do anything. Escrin even confiscated Berto Petronilo's bolo. After finishing their drinking, the four went away.

Escrin proceeded to the nursery at the mountain to visit his men and to check the sawn log products. He waited for his men until 9:00 o'clock in the evening then left for home. He was only hiking and the nursery was

about 12 kilometers from his residence. When Escrin reached Purok 6, kilometer 1, at around 11:00 that evening, he heard men voices. Escrin saw Romulo Potenciano asking for a glass of water at the Sumaria residence. He saw a child, bringing light, handed the glass.

After Romulo Potenciano drank the water, he hacked the child twice, one in the head and the other, in the arm. Escrin was only fifteen meters from Potenciano.

Potenciano was with Acoy Dogmocan, Jessie Amado and Berto Petronilo. The three were only 8 meters away from Potenciano. When they heard Primito Sumadia's shout, the three ran away. The mother of Acoy Domgocan is his niece.

Escrin admitted, professed and confessed that he executed an Affidavit regarding the gory incident on August 22, 1996 only because 3 days thereafter, he left for Davao City to stay with his son, who was studying as a seaman and also, to rest. All these, not to mention his having secured employment in a banana plantation, made him come home in May, 1996.

Escrin knew Primito Sumadia 3 years before January 5, 1995 but he did not bother to see the Sumadias, any member of his family or the Barrio Captain. He did not go to the police station to report the incident, either. The reason advanced was that he was afraid and wanted to avoid trouble.

On August 20, 1996, he saw Mariano Toyco, Sr. near the plantation of the Philippine match building bringing firewood together with fellow prisoners. Toyco told him that he was a suspect of the hacking incident.

Thereupon, Escrin went to Patin-ay headquarters on August 22, 1996 to have his statements taken on what he witnessed that evening of January 5, 1995

Acoy Dogmocan, a resident of Kumota, La Paz, was in Silovia at 9:00 in the morning of January 5, 1995 just to roam around. It was his first time to be at Silovia although he has a relative in the place named Carding Dogmocan. Dogmocan met Romulo Potenciano and together with Berto Petronilo, they were drinking.

Romulo Potenciano got wild because of his conflict with one Romeo Jumayan whom he hacked the previous day.

At about 11:00 o'clock that evening, Dogmocan saw Romulo Potenciano hacked Jay Ar. He was only 5 meters distance, more or less, from the locus criminis. He does not know why the child was hacked but before that, Potenciano and Petronilo asked for a glass of water. Dogmocan does not know the owner of the house but it was located at Purok 6. A child carrying a pitcher and a kerosene lamp was the one who gave the water.

The victim was hit twice. The child was able to shout. Upon hearing the

shout, the child's father, whose name he does not know even up to the present, chased him and Potenciano.

Dogmocan has not executed any Affidavit to support his avowals because of fear. However, when he met Toyco in 1997 in jail, where he is also confined for charges of Murder, he decided to testify.

The last witness for the Defense is Eduardo Canones. He is a Kagawad of Barangay Silovia, Talacogon, a Production Supervisor and Chief Concession Guard.

Canones said that on January 5, 1995 at around 12:00 in the evening, he was in his house situated at Purok 6, Silovia. He was awakened by Primito Sumadia, with 2 companions, Florencio Dohoy and another whose name he forgot, requesting him to bring Jay Ar to the clinic of PTFI.

On their way to the checkpoint, Canones asked Primito Sumadia who hacked his son. He got a negative answer from Sumadia.

The child, after being given first aid at the clinic, was brought by them to Patin-ay.

As chairman of the Committee on peace and order of their Barangay, he investigated the case on January 6 by going to the victim's house at 8:00 in the morning. Canones queried Mrs. Sumadia anent the identity of the culprit but she answered that she does not know. He prepared an "Incident Report" and submitted the same to the Barangay Office. The Report, among others, stated that the culprit is "un-identified".

The following exhibits were tendered:

- 1) Exhibit "1" and series - Incident Report;
- 2) Exhibit "2" and series - Sworn Statement of  
Bienvenido Escrin;
- 3) Exhibit "3" - Subpoena issued by  
Prosecutor Diaz dated  
January 18, 1995.

Undoubtedly, a crime has been perpetrated that evening of January 5, 1995 at Km. 1, Silovia, Talacogon, Agusan del Sur - the butchery of Jay Ar Sumadia.<sup>[3]</sup>

The trial court believed the version of the prosecution and accordingly found accused Mariano Toyco, Sr. guilty of murder. His two sons were acquitted for insufficiency of evidence. Mariano Toyco, Sr. is now before this Court raising the following assignment of errors:

## I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF LONE PROSECUTION WITNESS PRIMITO SUMADIA DESPITE THE OVERWHELMING EVIDENCE ON RECORD