

FIRST DIVISION

[G.R. No. 136017, November 15, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JERRY BANTILING, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Self-defense, like alibi, is a defense which can easily be fabricated. Courts, knowing that in cases of indefensible homicide, the accused can rely on it with facility, are not likely to be deceived by the fabricated claim of the accused that he acted in self-defense.^[1]

Before us on appeal is the decision of the Regional Trial Court, Branch 32, of Iloilo City in Criminal Case No. 37564 convicting accused-appellant Jerry Bantiling for the crime of murder and sentencing him to suffer imprisonment of *Reclusion Perpetua*. He was indicted and tried under the following Information:

"That on or about Feruary 2, 1992, in the Municipality of Balasan, province of Iloilo, Philipppines, and within the jurisdiction of this Court, the above-named accused armed with a .12 gauge homemade shotgun (pugakhang) and with decided purpose to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, shoot and hit one SEVERINO DAMASO inflicting upon the victim fatal gunshot wounds which caused his death thereafter.

CONTRARY TO LAW."^[2]

On being duly arraigned, accused-appellant, assisted by counsel, pleaded not guilty. Thereafter, trial ensued.

The prosecution's version of how the killing transpired was based mainly on the eyewitness account of Rolando Damaso, the younger brother of the victim. He testified that on the evening of February 2, 1992, at about 9:30 PM, he was walking with a certain Milmar Domingo on a road at Brgy. Tinggi-an. They were going home after a day's work at his farm located at Brgy. Quiasan. Their stroll was interrupted when they heard a sudden explosion. Almost instinctively, he lighted his flashlight to where the sound came from. He saw accused-appellant shoot the victim with a *pugakhang* (shotgun) aimed at the latter. Accused-appellant then ran towards their house, shouting, "Cantoy, it is finished." He was sure that it was his voice since they oftentimes met, both of them being natives of Brgy. Tinggi-an, Balasan, Iloilo. Cantoy is the elder brother of accused-appellant. According to Rolando, he ran away after witnessing the crime. Fear enveloped him since he noticed that accused-appellant was with his brothers. He too was

afraid that accused-appellant might also shoot him. It turned out that Milmar Domingo was likewise scurrying next to him. The two rushed straight to the victim's house, where they met his wife (Edna) and children. They related to her the shocking news. Edna demanded to see the body of her husband. They immediately proceeded to the scene of the incident. To their astonishment, the body was not there. So they went to the house of the Barangay Captain Genaro Ceracado and sought his help in finding it. The official readily obliged and accompanied them to the place. When they arrived, there was already a police patrol car on the site. This time, they saw the body of the victim inside the fenced yard of accused-appellant. Rolando entered it together with a policeman and the Barangay Captain. Edna was fainting so they brought her back to her house. That very evening, pictures of the body were taken. He identified these pictures.

The testimony of Rolando was corroborated by Edna Damaso, the wife of the deceased. She narrated how the calmness of her night was disturbed by the tragic news about her spouse. Between the hours of 9:00 and 10:00 in the evening of February 2, 1992, while resting at their house at Brgy. Tinggi-an, her brother-in-law, Rolando, together with Milmar Domingo, unexpectedly pounded on their door. They told her the heartbreaking story that her husband was shot to death by accused-appellant. Upon her urging, they immediately revisited the place where the victim was killed. To their stupefaction, the dead body was no longer within the vicinity of the area. They headed to the house of the Barangay Captain to seek his help. They again went back, this time with the Captain, to the killing spot. Upon their return, they met several police officers who informed them that the body of her spouse was found inside the fenced yard of accused-appellant. Unfortunately, she was not able to get even a glimpse of her dear husband since she was taken back to their home. Edna, in addition, testified on the pecuniary damages they suffered. She stated that she spent P21,960.00 for the wake and burial of the deceased. His untimely death brought sadness and grief to an otherwise happy marriage and family. She estimated that her husband can harvest *palay* with a net income of P40,000.00 for four hectares in one year for only one cropping. Lastly, she agreed to pay for the services of their private prosecutor for the amount of P23,000.00.

Dr. Brade Galo, a government physician, conducted a general physical examination on the dead body at Tinggi-an, Balasan, Iloilo on February 3, 1992. His Postmortem Findings disclose that the victim suffered 11 gunshot wounds located at the left lateral and posterior area of his body. According to him, all the wounds were directed towards the left lung and below the left lung, which when hit by a bullet would suffice to cause a person's death. In his opinion, the point of the gun had been fired from the rear of the victim, rear left side of the body. The firearm used in the shooting, from what he heard, was a .12 gauge shotgun locally known as *pugakhang*.

A member of the local Philippine National Police force, Norberto Macheco, declared that in the evening of February 2, 1992, Apolinario Bantiling, the father of accused-appellant surrendered to him a .12 gauge homemade shotgun and ammunition, but not without first informing him that his son shot an unidentified man using the firearm. He noticed that Apolinario seemed to be telling the truth based on his observation that he was not nervous at all and appeared to be his normal self.

The Chief Investigator of the Balasan Police Station, Balasan, Iloilo, SPO3 Melanio Jordan, stated that in connection with the incident, he conducted an ocular inspection of the crime scene. He found two sets of blood stains in different locations: one, inside the fenced yard of accused-appellant at the exact point where the dead body of the victim was lying; and another, outside the yard, on the barangay road. He then prepared a sketch of the crime scene where the said bloodstains were denoted by red dots.

In a bid to exonerate himself, accused-appellant claims that he accidentally shot the victim in self-defense. The defense presented three witnesses, including himself.

It first called to the stand, Constancio Bantiling, who works and stays at the farm of accused-appellant in Brgy. Tinggi-an. On the evening of February 2, 1992, at about 8:00, he and accused-appellant went to the house of the latter's parents, Apolinario and Arsenia Bantiling, to eat their supper. They carried their own flashlights. They stayed in the parent's house for approximately an hour before deciding to leave. While walking back home, they heard the sound of a firearm being cocked. He directed his flashlight to where the sound came from. He saw a person, with his head bowed, and whom he did not recognize, holding a firearm. He whispered to accused-appellant to make a dash after the gun failed to fire. Upon reaching the house of accused-appellant, they sat on the edge of the fence and tried to observe the person who had the firearm. He then heard the fence crack. It turned out that the armed person was trying to break in. When he lighted his flashlight towards the person, he saw him stumble. When the person was about to stand up, he ordered accused-appellant to run to him and seize the firearm. Accused-appellant immediately did as he was told. He proceeded to the armed man (who has yet to stand up) and tried to grab from him the firearm. While the two were grappling for its possession, the gun suddenly exploded. Accused-appellant fell down. The armed attacker likewise fell with his face down on the ground. It turned out that the person was hit. He was able to recognize him as the victim. According to Constancio, he told accused-appellant to go back with him at the house of his parents since the victim possibly may have some companions, who similarly might attempt to kill them. When they arrived at the house, accused-appellant placed the firearm on a table and asked his father to surrender it to the authorities. Constancio further recalled an incident prior to the fateful night of February 2, 1992, involving the accused and the victim. A few days before, the carabao of the victim attacked that of the accused, and the two fought. The former suffered injuries. The next day, the victim confronted accused-appellant and demanded from him money for medicines. Accused-appellant refused insisting that "had not your carabao attacked my carabao, your carabao would not have been wounded." This, he remembered, made the victim lose his cool.

Next to testify for the defense was the accused-appellant himself, Jerry Bantiling, a resident of Brgy. Tinggi-an, Balasan, Iloilo, a farmer and hog-raiser. His testimony essentially towed the line of Constancio's version of the incident. He stated that on the evening of February 2, 1992, he and Constancio went to his parent's house, about half a kilometer away, to eat their dinner. They stayed there for at least an hour and by 9:30 in the evening they were on the way home. According to him, while they were

walking on a dike going to his house, they suddenly heard the clicking sound of a firearm. Both of them directed their flashlight to where the sound came from. They then saw a person in a crouching position holding a firearm, approximately two and a half (2½) feet long. Constancio asked him to flee after the gun apparently jammed. When they reached his house, they decided to observe the person who had the firearm by the edge of the fence. He then heard part of his fence crack. It turned out that the armed person was trying to break in. When he lighted his flashlight towards the person, he saw him stumble. Constancio next ordered him to seize the firearm. He ran towards the person and grabbed the firearm with his two hands. In the course of their struggle, he fell. Almost simultaneously, the gun exploded. After picking himself up, he focused his flashlight on the person lying on the ground with his face down. He was able to identify that person as the victim, Severino Damaso. He went straight to the house of his parents. There he revealed what happened, placed the gun on top of the table, and asked his father to surrender it to the Municipal Hall of Balasan. Accused-appellant, moreover, admitted that there was an incident which transpired involving their respective carabaos on January 23, 1992. According to him, the carabao of the victim, which got loose, attacked his carabao leading to a fight between the two. It appears that the carabao of the victim lost as it suffered more serious injuries. The very next morning, the victim demanded from him money for medicines for the injured beast. He refused the demand reasoning that it was the former's carabao which attacked his. This made the victim angry who warned him, "Be careful, you stupid, I will put a lug in your head." At that time, he did not mind those words, until after two weeks when the shooting happened.

Finally, the defense presented Apolinario Bantiling, the father of accused-appellant. He testified that on February 2, 1992, at about 7:00 in the evening, his son and Constancio went to their house to take their supper. The two went home only after approximately one hour. After they left, he went to bed. He was roused from his sleep by accused-appellant who was carrying with him a *pugakhang*. "Father, I grabbed this firearm from the possession of Severino Damaso," was what his son told him. Then, he and his other son, Jimmy, went to the Municipal Building, where they turned over the firearm to the policeman on guard, a certain Etok. Five minutes later, the Chief of Police arrived who allegedly harassed him by asking him whether he owns the gun. He replied that it was grabbed from the victim by his son. The Chief apparently did not buy his story and insisted that he admit ownership of the weapon. The police gave him a piece of paper and made him sign it. Thereafter, they locked him in jail and was released only the next morning upon the arrival of accused-appellant.

In time, the trial court rendered a decision convicting accused-appellant, the dispositive portion of which states:

"WHEREFORE, the Court finds the accused Jerry Bantiling GUILTY of the crime of Murder as charged in the Information and hereby sentences him to suffer imprisonment of Reclusion Perpetua, there being no other mitigating or aggravating circumstances attendant to the commission of the crime.

Accused is likewise ordered to indemnify the heirs of the victim the sum of ₱50,000.00 as a mandatory death indemnity; ₱21,960.00 as actual damages; ₱50,000.00 by way of lost earnings; and ₱20,000.00 as moral damages.

The one live ammo and one long firearm used in the commission of the crime are hereby forfeited in favor of the government.

The branch Clerk of Court is hereby directed to submit the same to the proper Office for proper disposal.

SO ORDERED.”[3]

Aggrieved with the verdict of conviction, accused-appellant interposed the instant appeal. He has assigned the following errors in his brief:

“I. The Trial Court gravely erred in not giving exculpatory weight to the defenses interposed by the accused-appellant.

II. The trial court gravely erred in giving full weight and credence to the incredible and inconsistent testimony of prosecution witness Rolando Damaso.”[4]

The appeal is devoid of merit. We affirm the conviction, subject to modifications, which we will discuss below.

Of unbroken consistency in this jurisdiction is the rule that when the accused has admitted that he is the author of the death of the victim and his defense is anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. This circumstance he has to establish by clear and convincing evidence, the *onus probandi* having shifted to him.[5] He must rely on the strength of his own evidence and not on the weakness of the prosecution, **for even if the prosecution evidence is weak, it could not be disbelieved after the accused himself admitted the killing.**[6]

The trial court, after weighing the evidence presented by both sides, did not find credence in the version of the accused-appellant that he accidentally shot the victim in self-defense. It found his account highly improbable and unbelievable.

We agree. In the first place, the physical evidence on record belie the contention of accused-appellant that the shooting was accidental or that the fatal wounds were inflicted in the course of a struggle to get possession of the gun. From the medical findings of Dr. Galo, it can be derived that the gun was fired at level position. It was fired from the rear of the victim, rear left side of his body. Likewise, the investigating police officer who conducted the ocular inspection found two sets of blood stains in different locations: one, inside the fenced yard of the accused-appellant at the exact point where the dead body of the victim was lying; and another, outside the yard on the barangay road. All these should indicate that the deceased was actually waylaid on the road, before his lifeless body was transported inside the fence.