

SECOND DIVISION

[G.R. No. 134246, February 22, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO SAN ANDRES Y ANTONIO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

This case was originally an appeal to the Court of Appeals from the judgment of the trial court convicting accused-appellant Eduardo San Andres of homicide. He now assails his conviction. On 29 May 1998 however the appellate court found him guilty instead of murder, not homicide, and accordingly sentenced him to *reclusion perpetua*. Consequently, pursuant to Sec. 13, par. 2, of Rule 124 of the Rules of Court, the Court of Appeals refrained from entering judgment and certified the case to this Court for review.^[1]

These are the facts: On the night of 18 November 1994 the spouses Engracio and Sesona Albao of Tarosanan, Camaligan, Camarines Sur, attended the birthday celebration of their grandson, son of their son Arnulfo Albao, in the latter's residence. At around 11:00 o'clock in the evening Engracio and Sesona decided to go home. However, they had to take home another son, Enrico, who was already drunk.

After reaching Enrico's house and making sure he was already asleep, the couple left for home. On their way they passed through rice paddies and then trudged the elevated road where they met accused Eduardo San Andres and Henry San Andres. Eduardo and Henry were standing quietly about one and a half (1 1/2) meters away. They were armed with a *samurai* and a knife, respectively.^[2] Engracio innocently asked them why they were armed and who their enemies were. But before he could get any answer Eduardo and Henry simultaneously attacked him. Eduardo hacked Engracio with his *samurai* while Henry stabbed him several times with his knife.^[3]

Overwhelmed by the unexpected attack, Engracio was forced to parry off the repeated blows with his bare hands. But sensing the futility of any defense as his wounds were now mounting and sapping his strength, Engracio fled. He ran downwards to the rice paddies but Henry chased him.

The deep mud in the paddies coupled with his debilitating condition due to his injuries prevented his escape. He fell on his back, and in no time Henry caught up with him. Henry astraddled his fallen victim and then delivered the *coup de grace*. Meanwhile, Eduardo remained standing on the road with his *samurai* still on hand even as Senona shouted hysterically for help.^[4]

When Enrico and his wife heard their mother shouting from outside they jumped out

of bed and ran towards the place of the "incident."^[5] But they were stopped in their tracks by Eduardo who drove them back to their house brandishing his *samurai*.^[6] It took Enrico some three (3) minutes before he could muster enough courage to make another attempt to rescue his parents. But it was too late. His father was already mortally wounded. He could only bring his father with the help of some *barangay* officials to the city hospital where he eventually died.

The following day, or on 19 November 1994, Dr. Felix Prado conducted a postmortem examination on the cadaver of Engracio Albao. According to Dr. Prado, Engracio's death was the result of the multiple stab wounds he received, and that of the twenty-two (22) wounds he sustained, wounds Nos. 1, 2, 3, 5, 6 and 20 were fatal, each of which being enough to cause the victim's death.^[7] The examining physician further testified that the injuries of Engracio could have been caused by sharp and pointed instruments, e.g., a knife, a *samurai*, or a small bolo.

Accused-appellant Eduardo San Andres swore, in his defense, that he was not a party to the killing of Engracio; on the contrary, he was in fact a victim of Enrico's unlawful aggression. Eduardo claimed that at around 10:00 o'clock in the evening of 18 November 1994 he was attending the birthday party of a friend, Vic David, together with Henry San Andres, Enrico "Boboy" Albao and some other guests he was not familiar with. They ate and drank gin. As the party progressed, Enrico got angry for no apparent reason, venting his ire at no one in particular, which prompted Engracio, whom Eduardo intimately referred to as '*ta Jun*, to take Enrico home. Shortly after, according to Eduardo, he also left. But moments after he arrived home, he heard someone shouting from the road around thirty (30) meters away. So he and his wife went out to see who was causing the disturbance. But as they were ascending the riprap towards the road they found themselves facing an infuriated Enrico brandishing a *samurai*. Since Enrico kept advancing and continuously swinging his *samurai* towards them they moved backwards which sent them falling down the riprap. But Enrico left them unharmed. They then climbed up the road and saw Henry some thirty (30) meters away running towards the direction of Mabulo. After that, they went back to their house.^[8] It never crossed their minds to report the matter to the authorities.

At around 1:00 o'clock the following morning, 19 November 1994, Eduardo and his wife were awakened by two (2) policemen who invited him for questioning. Still in a daze, Eduardo asked them why but his protestations were met with a laconic reply, "just make my complaint at the police station." His query was finally answered when he was told at the police station that he was implicated in the killing of Engracio Albao.^[9]

On 6 February 1995 an Information for murder qualified by treachery and abuse of superior strength was filed against Eduardo San Andres and Henry San Andres in the Regional Trial Court of Naga City. Only Eduardo San Andres was tried as his cousin Henry San Andres has remained at large up to the present.

On 5 March 1996 the trial court rendered a decision finding accused-appellant Eduardo San Andres guilty of homicide and meted him an indeterminate prison term of eight (8) years and one (1) day of *prision mayor* in its medium period to fourteen (14) years and eight (8) months of *reclusion temporal* in its minimum period. He was ordered to pay the heirs of Engracio Albao P50,000.00 as civil indemnity,

P30,000.00 as moral damages and P22,314.70 as actual damages.^[10] The trial court found no basis to doubt the credibility of Senona Albao and her son Enrico who both positively identified accused-appellant Eduardo San Andres and the other accused, Henry San Andres, who is at large. Senona in particular was just one and a half (1 1/2) meters away from the two (2) assailants when they simultaneously attacked Engracio. She could not possibly be mistaken as to their identities as it was a moonlit night.

Finding conspiracy in the commission of the offense the trial court observed -

Eduardo San Andres' presence at the scene of the incident was not merely passive. He and Henry San Andres simultaneously attacked Engracio Albao. He may not have joined Henry San Andres in chasing Engracio Albao and did not strike the deceased anymore when the latter was already lying on his back with Henry San Andres on top of him repeatedly stabbing him, but he remained standing on the road still holding his *samurai*. When Enrico Albao, and his wife came he prevented them from helping the deceased by chasing them with his *samurai* x x x^[11]

But the trial court ruled out treachery and abuse of superior strength as having attended the perpetration of the crime -

x x x x the qualifying circumstance of treachery was not, however, sufficiently established. Although the testimony of Senona Albao shows that the deceased was not aware that he would be attacked by the two accused, there is no showing the method of attack employed by the accused was deliberately chosen with a special view of accompanying the act without risk to themselves x x x x

With respect to the other alleged qualifying circumstance of abuse of superior strength, the same has not been proven beyond reasonable doubt either. While it is true that both accused were armed and the deceased was not, there is no sufficient evidence to show that both accused deliberately employed and used excessive force out of proportion to the means of defense available to the person attack (sic) (*People v. Bacay*, 132 SCRA 27). When the deceased was being stabbed by Henry San Andres when the former was already lying down, Eduardo San Andres merely stood by x x x x^[12]

Perhaps believing, rightly or wrongly, that he deserved to be acquitted, accused Eduardo San Andres appealed his conviction to the Court of Appeals. However, on 29 May 1998 the appellate court found him guilty instead of murder, not homicide, and imposed upon him the higher penalty of *reclusion perpetua* while sustaining the award of damages in favor of the heirs of the victim.^[13]

As found by the appellate court, as by the trial court, the circumstances surrounding the commission of the offense evinced a conspiratorial design between the perpetrators. The fact that both accused with unsheathed weapons waited for the victim and his wife at the place where the latter would pass; that they were together earlier in the same party; that both launched simultaneous attacks upon their victim when they saw him; and, that Eduardo remained standing on the road