

SECOND DIVISION

[G.R. No. 117690, September 01, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO DANO Y JUGILON, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of San Miguel, Zamboanga del Sur, Branch 29, in Criminal Case No. 1579, promulgated on July 25, 1994, finding appellant Alberto Dano y Jugilon guilty beyond reasonable doubt of murder, for the death of his brother Emeterio Dano, and imposing upon him the penalty of *reclusion perpetua*.

The facts of this case are gleaned from the records.

On April 11, 1994, the Provincial Prosecutor of Zamboanga del Sur charged appellant with the crime of murder, as follows:

"That on or about March 16, 1994 at around 6:30 o'clock in the evening, more or less, at Tiguian, Margosatubig, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, assault, attack, hack and stab his brother Emeterio Dano inflicting several mortal wounds causing his instantaneous death.

"Contrary to law with qualifying aggravating circumstances of evident premeditation and treachery."^[1]

On May 3, 1994, appellant was arraigned and with the assistance of counsel *de parte*, pleaded not guilty to the charge. Trial on the merits then ensued.

The prosecution presented four witnesses: Wilfredo Tapian, a carpenter; Demosthenes Peralta, the barangay captain of Tiguian, Margosatubig, Zamboanga del Sur; SPO3 Jesus Reales of the Philippine National Police (PNP); and Teresita Dano, widow of the victim.

The prosecution's evidence established the following:

On March 16, 1994, at around half past six o'clock in the evening, prosecution witness Wilfredo Tapian was resting in the house of a Neneng Miras in Tiguian, Margosatubig, when Teresita Dano arrived and asked for his help. Teresita told Wilfredo that her husband, Emeterio, attacked his brother Alberto, herein appellant, in the latter's house.^[2] Wilfredo immediately rushed to appellant's house, which

was some one hundred meters away.

On arriving at appellant's house, Wilfredo saw the victim pacing back and forth in appellant's front yard. The victim, armed with a scythe was shouting at appellant, who was looking out of the window, to come down so they could fight to the death. ("*Kanaog diri kay magkamatay ta.*")^[3] Wilfredo tried to pacify the victim who kept repeating his challenge while striking his scythe on the ground, but to no avail.^[4] Appellant also advised his younger brother to go home, but the latter refused to listen. Suddenly, Emeterio leaped at appellant who was standing with his head out of the window and slashed appellant with his scythe but missed.^[5] Seeing that his efforts to stop the fraternal quarrel were of no use and fearful of being hit in the affray, Wilfredo left for home.

Between the hours of six and seven o'clock that same evening, Demosthenes Peralta, the barangay captain of Tiguian, was informed by Wilfredo and a certain Fernando Teves that the Dano brothers were quarreling.^[6] Demosthenes went to appellant's home to investigate. On his way, he met appellant. The latter told Peralta he had killed Emeterio and voluntarily surrendered to him.^[7] Demosthenes left appellant in Wilfredo's house and proceeded to appellant's residence where he saw the bloody corpse of the victim sprawled in the yard, near the stairs.^[8] He noticed that the body bore several hacking and slashing wounds.^[9] Demosthenes fetched appellant from Wilfredo's house and took him to the police station.

Early in the morning of the next day, Demosthenes fetched a doctor from the town proper of Margosatubig. The latter examined the victim's body, still lying in appellant's yard. At the request of the police station commander, Demosthenes took photos of the corpse, which he later turned over to the police.^[10] He conducted a further examination of the crime scene and found a bloodstained scythe beneath appellant's house.^[11] The scythe's wooden handle had the name "Alberto Dano" carved on it. He turned over the scythe to the police.

The necropsy report established that the cause of death was acute blood loss, secondary to multiple hacking wounds.^[12]

When interrogated by the police, appellant, without assistance of counsel, admitted he killed his brother. The pertinent portion of his statement, contained in the police blotter, and read into the records without objection by the defense, reads:

"[S]ubject admitted of (sic) killing his younger brother as the latter was drunk and provoked him for (sic) a scythe duel right downstairs of his house that prompted him to get his scythe and come down from his house and allegedly boxed first his brother and subsequently hacked several times as he was already commanded by his evil thought(s)."^[13]

The victim's widow admitted that the scythe, which her late husband carried on that fateful day, was returned to her by some people in their barangay.^[14] She did not turn over the scythe to the police.^[15]

The defense presented appellant and his spouse as its witness.

Appellant claimed that he acted in self-defense and in defense of his family. He narrated that he and his family were preparing to go to bed at around 6:30 p.m. March 16, 1994, when he heard somebody shout "Boy, come down and we will fight to death." ("*Boy kanang diha kay magpatay ta*")^[16] At first, he tried to ignore the challenge, but when it was repeated several times, he looked out the window and saw his brother Emeterio outside, armed with a scythe. He told his brother to go home but the latter, who appeared disturbed, did not heed his words. Instead, he kept on hitting the ground with the scythe.^[17] Without any provocation on his part, Emeterio suddenly leaped at him and attacked him with the scythe, which he evaded.^[18] Emeterio then ascended the stairs to push open the bamboo door on the porch leading to their living room.^[19] The door partially opened after Emeterio slammed it several times. Appellant's wife and children screamed and cried in fear.^[20] Appellant held and twisted his brother's wrist to disarm him of the scythe.^[21] They grappled for the scythe while in the porch, then tumbled down the stairs.^[22] When they hit the ground, the victim was dead. Appellant did not know how many times he hit his brother or how many wounds he inflicted.^[23] He said he was not in a normal state of mind. Seeing that he had killed his brother, appellant threw the scythe under his house and went to the barangay captain to surrender. His spouse largely corroborated appellant's version of the first round of the fratricidal affray.^[24] She claimed, however, that she did not see how the victim was killed as they were inside the house and she, as well as her children, had their eyes closed in shock and fear.^[25]

Appellant denied owning the scythe found by the barangay captain beneath his house.^[26] He did not know why his name was engraved on the wooden handle of said scythe.^[27] He was sure, however, that it was the same scythe that his brother was carrying during the incident.^[28]

Appellant explained that he had a previous misunderstanding with the victim over the purchase of a horse from his cousin Doroteo Oliver on installment basis. Emeterio wanted to buy the horse, but appellant bought it ahead of him, which caused the former to resent him.^[29]

The court below disbelieved appellant's version of the incident and decided as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Alberto Dano y Jugilon guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code, and there being no proof of any modifying circumstances either to aggravate or mitigate the liability, hereby sentences said accused to suffer the penalty of reclusion perpetua; to pay the heirs of the deceased the sum of P50,000.00 by way of indemnity for the death of said victim; P3,000.00 as actual damages, compensatory damages of P2,000.00 by way of unrealized earnings and to pay the costs.

"SO ORDERED."^[30]

On August 2, 1994, appellant seasonably filed his notice of appeal. He assigns the following errors:

I

THE LOWER COURT ERRED IN MAKING A SWEEPING CONCLUSION THAT TREACHERY EXISTS IN THE CASE AT BAR.

II

THE LOWER COURT ERRED IN DISREGARDING, IF NOT TOTALLY IGNORING, THE ACCUSED'S CLAIM OF SELF-DEFENSE AND/OR DEFENSE OF RELATIVES, OR AT LEAST INCOMPLETE SELF-DEFENSE AND/OR DEFENSE OF RELATIVES.

III

THE LOWER COURT ERRED WHEN IT SAID THAT EXHIBIT "E" OF THE PROSECUTION WAS NOT OBJECTED TO BY THE DEFENSE.

IV

THE LOWER COURT ERRED IN RELYING TOO MUCH CREDENCE (sic) TO THE TESTIMONY OF TERESITA DANO WHO DECLARED THAT THE SCYTHE (EXHIBIT "D" FOR THE DEFENSE ON ONE HAND, WHILE EXHIBIT "4" FOR THE PROSECUTION) WAS OWNED BY THE ACCUSED AND NOT THAT OF THE VICTIM.

Simply stated, the pertinent issues for our consideration are:

- (1) Did the trial court err in admitting the extrajudicial confession of the accused?
- (2) Did the court *a quo* err in failing to appreciate appellant's defense of self-defense and/or defense of relatives, or at the least incomplete self-defense and/or defense of relatives?
- (3) Did it err in convicting appellant of murder qualified by treachery and imposing the penalty therefor?

On the *first issue*, appellant avers that it was error for the trial court to give weight to the admissions made by appellant during custodial investigation (Exhibit "E"). Appellant contends that his constitutional and statutory right to counsel during custodial investigation was violated when the police took his statements without a lawyer to assist him. He further argues that the trial court should have declared his statements before the police inadmissible when they were objected to during the trial.

A person under investigation for the commission of an offense is guaranteed the following rights by the Constitution: (1) the right to remain silent; (2) the right to have competent and independent counsel of his own choice, and to be provided one if he cannot afford the services of counsel; and (3) the right to be informed of these

rights.^[31] These rights “cannot be waived except in writing and in the presence of counsel.”^[32] A confession to be admissible must satisfy the following requirements: (1) the confession must be voluntary; (2) the confession must be made with the assistance of competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing.^[33] In convicting the accused of the offense charged, the trial court held:

“Accused’s testimony on the witness stand however, contradicts his version appearing on the police blotter of the police station of Margosatubig dated March 16, 1994, where he admitted the killing of his younger brother Emeterio Dano as ‘the latter was drunk and provoked him for (sic) a scythe duel right downstairs of his house that prompted him to get his scythe and come down from his house and allegedly boxed first his brother and subsequently hacked several times as he was already commanded by evil thoughts.’

“During the formal offer of evidence by the prosecution, defense counsel admitted the authenticity of the extract of above entry in the police blotter (Exhibit “B”, prosecution) containing the foregoing recital as testified to by SPO4 Jesus Reales. Such entry in the police blotter when not objected to, is presumed to have been accomplished in the regular performance of official duties by the police officer who made the entry, hence is entitled to full faith and credit. It having been entered at the time when the accused had just surrendered to the authorities in a remorseful attitude and in a spontaneous manner free of any extraneous influence and coaching of a lawyer, the same entry carries great weight and high probative value, in the absence of any proof of tampering or alteration thereof. This Court therefore considers the recital in said entry more credible and easy to believe, than the self-serving version of the accused given on the witness stand which is more a product of an after-thought and concocted story than an honest and truthful version of what actually happened.”^[34]

We have carefully scrutinized the records including the List of Exhibits for the Prosecution^[35] and the prosecution’s offer of evidence^[36] and nowhere find mention of Exhibit “E.” What we find offered by the prosecution as evidence is the testimony of SPO3 Jesus Reales “on the authenticity of the entries on the police blotter.^[37] The blotter recorded the incident immediately after the crime and another entry in the morning, recorded what was observed on the scene of the crime including a description of the prostrate body of the accused.”^[38] We also noted in the records that the defense objected to the admission of the testimony of SPO3 Reales “because said witness is incompetent to testify as to the entry...having admitted...that he was not one who entered that (sic) events in the police blotter and...that he has no knowledge when the entries in the police blotter were made....”^[39] Moreover, we noted that SPO3 Reales admitted that as an assistant investigator, he was familiar with investigation procedures.^[40] Under cross-examination, he also admitted appellant was interrogated by the police regarding the incident,^[41] but there was no showing whatsoever appellant was assisted by counsel during custodial investigation.^[42]