

FIRST DIVISION

[G.R. No. 135551, October 27, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMPIE TARAYA Y CANTUBA @ "BOYET," ARLY CANTUBA Y DAIGO @ "BEGET" AND JONAR ESTRADA Y CANTUBA, ACCUSED-APPELLANTS.

D E C I S I O N

DAVIDE JR., J.:

Accused-appellants appeal from the decision^[1] in Criminal Case No. S-1898 of the Regional Trial Court, Branch 33 of Siniloan, Laguna, which found them guilty beyond reasonable doubt of the crime of murder and sentenced each of them to suffer the penalty of reclusion perpetua and pay P50,000 to the heirs of the victim, as well as the costs.

Accused-appellants are relatives. Ampie Taraya (hereafter AMPIE) and Jonar Estrada (hereafter JONAR) are cousins and the nephew of Arly Cantuba (hereafter ARLY). ARLY is the brother of the respective mothers of AMPIE and JONAR.

The accusatory portion of the information^[2] which charged them with murder reads as follows:

That on or about 11:20 o'clock [sic] in the evening of September 24, 1995 at Sitio Bagong Silang, Barangay Batuhan, Municipality of Famy, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with deadly weapon (itakan), with intent to kill, with evident premeditation and treachery and with abuse of superior strength conspiring, confederating and mutually helping one another did then and there wilfully, unlawfully and feloniously attack, assault, hack and slash the throat of one Salvador Reyes by [sic] the said weapon thereby inflicting upon him hacking/slashing wound anterior neck, proximal end and directing backward and superiorly at the base of the mandible cutting half the circumference of the neck cutting the trachea, esophagus, neck vessels including jugular veins and caroted arteries on both sides sparing the cervical vertebrae and cord which directly caused his death to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, abuse of superior strength and evident premeditation attended the commission of the crime.

CONTRARY TO LAW.

Accused-appellants pleaded not guilty upon arraignment. Trial on the merits ensued.

The prosecution presented Mariano Adillo, David Angeles, Jr., Gregorio Reyes and Dr. Gloria Jamolin. The evidence for the prosecution established the following facts:

Mariano Adillo a co-worker of the victim Salvador Reyes in a sash factory, testified that he had known Salvador for two months. At about 10:00 p.m. of 24 September 1995, he, Salvador and three other companions were in a beer house in Famy, Laguna. Salvador drank his beer outside the pub and was in a conversation with a girl. Both were within the view of Mariano. Later, Salvador was approached and surrounded by three men, one of them faced him while the two others positioned themselves behind him. Mariano hollered at the men, who immediately left.

Half an hour later Mariano went out, but Salvador was nowhere in sight. At about 11:00 p.m., Mariano and a boy searched for him up to a billiard hall which was about 200 meters away. They returned to the beer house and he instructed the boy to hail a tricycle for his ride home. When no tricycle could be found he and a companion walked home.^[3] The following day he learned of Salvador's death.^[4]

When asked in open court if he could identify the three persons who approached Salvador, Mariano pointed to AMPIE, JONAR and ARLY.

David Angeles, Jr. testified that accused-appellants were his neighbors in Famy, Laguna. ARLY, with whom AMPIE lived, was an adjacent neighbor, while JONAR lived some thirty feet away from his house. He had known JONAR for some ten years, ARLY for about five years and AMPIE for three years. He never had any misunderstanding with anyone of them.^[5]

According to David, in the late evening of 24 September 1995, he was at home and could hardly sleep as he was suffering from a backache. He went out of the house to relieve himself. On the street he saw AMPIE brandishing a one-foot long bolo. Behind AMPIE were ARLY and JONAR. They were about five meters away from where David stood. AMPIE approached a man who seemed to be urinating. AMPIE then held up the head of the man and slashed his neck once while his companions ARLY and JONAR stood nearby ready to assist AMPIE. The victim was able to free himself and ran towards David until he dropped a few meters from the house. Immediately AMPIE, ARLY and JONAR ran to their respective homes. David later learned that the victim was Salvador Reyes.^[6]

David was certain of whom he saw because the place was illuminated. He went back to the house and ten minutes later he saw people lurking outside with flashlights. He went out when he heard somebody ask why there were bloodstains around. He kept quiet as he was reluctant to divulge what he saw, and he feared the consequences should he be involved. A few days passed and since his conscience still bothered him, he decided to reveal what he had witnessed. He gave a sworn statement^[7] to the police.

According to Gregorio Reyes, his son Salvador Reyes died on 24 September 1995. At the time of his death Salvador was thirty-nine years old, separated from his wife and was earning an average of P200 a day. Salvador had confided to him that he had an altercation with ARLY. He mentioned this fact in his sworn statement.^[8] The funeral expenses he incurred amounted to P18,000; however, he could not produce any receipt because some of the expenses were paid by his friends.^[9]

Dr. Gloria Jamolin performed an autopsy on Salvador Reyes. She noted the presence of abrasions in the right temporal area and below the eyes and a hack wound at the neck which could have been caused by a sharp instrument such as a bolo. Judging from the nature and the location of the wound, the assailant was in front of the victim during the attack. The cause of death was cardio-respiratory arrest secondary to shock and hemorrhage due to the hack wound penetrating the esophagus.^[10] She prepared a *post mortem report*.^[11]

The defense had another version of the incident. The witnesses it presented were Armando Bilara, Domingo Decena, SPO2 Emmanuel Martinez, ARLY, JONAR and AMPIE.

Armando Bilara, a *barangay tanod*, claimed that he has known all accused-appellants for about three years. On 13 September 1995 he was on his way home for lunch when a commotion took place near his house. JONAR had a fistfight with Danilo Angeles, brother of prosecution witness David Angeles, Jr. Danilo was atop of and giving blows to JONAR. Armando intervened and pacified both of them. He had no idea what caused the scuffle. David was among the spectators of the fight but he did not interfere.^[12]

Domingo Decena was at home and watching a television show on the night of 24 September 1995 and until 2:00 a.m. of the following day. Thereafter, he left the house to go to his brother's place to sleep. While he was walking along the street, he saw another person who was also walking and holding an iron pipe about one and a half feet long. He later learned that the man was Salvador Reyes. He also saw AMPIE. When AMPIE came face to face with Salvador, the latter tried to hit AMPIE once with the pipe, but AMPIE was able to duck and avoid being hit by the pipe. AMPIE retaliated by hacking Salvador with a bolo. Salvador ran away, followed behind by AMPIE. Frightened with what he saw, Domingo rushed back to his house. Twenty-five minutes later he saw a commotion outside and learned that Salvador was found dead twenty meters away from AMPIE's house.^[13]

On cross-examination Domingo admitted that he did not tell anyone in the house of what he had just witnessed. Neither did he inform the police because of fear. He also denied seeing David Angeles, Jr. that night. He was unable to reveal what he saw for one and a half years because he was busy with work and he had just learned that AMPIE was languishing in jail. It was AMPIE's wife who requested him to testify.^[14]

SPO2 Emmanuel Martinez was among the policemen who arrived at the scene of the crime. The body of Salvador Reyes was found some ten yards from the house of David Angeles, Jr. Accused-appellants were implicated by an eyewitness to the death of Salvador. ARLY and JONAR were immediately incarcerated while AMPIE, accompanied by his sister, surrendered at the police station on 9 October 1997. He recorded in the police blotter the date and time of AMPIE's surrender. AMPIE admitted that he killed Salvador, but alleged that he did so in self-defense. Martinez then discontinued the investigation and advised AMPIE to avail of the services of a lawyer from the Public Attorney's Office.^[15]

ARLY raised the defense of alibi. According to him, on 24 September 1995, he was at his place of work, a *coprasan*. He stayed there until 8:00 p.m. and he immediately proceeded home. He slept an hour later. At around 1:00 a.m. of the following day he was awakened by his wife, informing him that there were several

people milling outside. He went out and he saw the dead body of Salvador Reyes, whom he knew by face. He returned home to sleep. He had not gone out of his house between the hours he slept and woke up. In the morning of 25 September 1995, the police came to question him. He was allowed to go home after the investigation.^[16]

ARLY surmised that David Angeles, Jr. linked him to the crime because of the squabble he had with him on 13 September 1995, when his nephew JONAR was mauled by David and Bobby Angeles. He explained that Armando Bilara arrived late during the encounter, for which reason Armando failed to see that David was actually injured by JONAR.

ARLY further declared that he did not go to the beer house at any time on 24 September 1995.^[17]

JONAR also offered the defense of alibi. He had known Salvador Reyes for about fifteen years and during that period he never had any misunderstanding with Salvador. He was at home in the evening of 24 September 1995. He slept at 8:00 p.m. and woke up at 5:00 a.m. the following day. He learned that Salvador was killed that morning and the police came to arrest him two weeks after. He had no involvement in Salvador's death, since he was asleep the whole night. He was not in the beer house as alleged by Mariano Adillo. He asserted that David Angeles, Jr. implicated him in the murder of Salvador because David is the brother of Danilo Angeles and he had a misunderstanding with Danilo's wife. The incident happened on 13 September 1995, when Danilo punched him and David joined in the fracas.^[18]

AMPIE claimed self-defense. According to him in the early evening of 24 September 1995 he was in a beer house. Then he proceeded to the nearby house of his friend Bebet, and stayed at the balcony. He was just a meter away from the beer house when Lorna, a waitress from the beer house, approached him and talked with him. During their conversation he noticed a man and his companions enter the beer house. Later the man approached him and Bebet. The man asked him what he was doing, and he replied that he was just listening to the music. The man also asked him if he had a relationship with Lorna and he answered "not yet." Not satisfied with his response, the man punched him and Lorna parted them away. The man left after warning him to wait as they would settle the matter. Lorna explained that the man was a former boyfriend. After the threat he went home to JONAR's house to sleep.^[19]

However, AMPIE awoke at midnight and went outside the house to answer the call of nature. He armed himself with a bolo as he was suspicious and frightful that night. He then saw a man opposite the house of his neighbor Domeng, and the man, who was Salvador Reyes, attempted to hit him twice with an iron pipe. He was able to avoid the first blow but the second blow hit him. In retaliation AMPIE swung his bolo, dropped it and immediately went back to the house. The following morning he heard of the death of Salvador. He did not tell anyone of what transpired that night. Instead, he reported to work at the coprasan in Sta. Maria, Laguna and stayed there for three days. On the third day, he was fetched by his employer to buy duck eggs in Pateros. He was able to return briefly to Famy, Laguna, on 2 October but that same afternoon he left for Pasig City.^[20]

On 8 October AMPIE asked from his employer permission to leave for Pagsanjan, Laguna. In Pagsanjan he was informed by his sister that the police was looking for him in connection with the death of Salvador Reyes. Thus, the following day he and his sister went to the police station, where he identified himself. He learned that his uncle ARLY and cousin JONAR were both in jail as they too were implicated in the death of Salvador. AMPIE denied the participation of ARLY and JONAR, and insisted that it was only he and Salvador who had an altercation. AMPIE was thereafter detained at the police station. He requested that he be allowed to contact his employer and consult with the lawyer provided by the latter.^[21]

On cross-examination AMPIE claimed that he swung his bolo to parry the second attempt of Salvador to hit him with the pipe. He was unaware that he actually hit Salvador which result in the death of the latter.^[22]

The trial court limited itself to the resolution of the following issues: (1) whether AMPIE acted in self-defense, (2) whether ARLY and JONAR participated in the killing of Salvador Reyes, and (3) whether AMPIE voluntarily surrendered to the police.

In its decision^[23] of 6 February 1998, the trial court convicted accused-appellants and decreed, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding all the accused AMPIE TARAYA y CANTUBA, ARLY CANTUBA y DAIGO and JONAR ESTRADA y CANTUBA, guilty beyond reasonable doubt for the crime of "MURDER", qualified by treachery, absent of any other mitigating or aggravating circumstances, hereby sentences them to Reclusion Perpetua. To pay the heirs of the victim for his death the amount of P50,000.00 and to pay the cost.

Accused Ampie Taraya y Cantuba, Arly Cantuba y Daigo and Jonar Estrada y Cantuba being detention prisoners, it is hereby ordered that they be credited with the full [length] of their preventive imprisonment if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoner, otherwise, they shall be credited with 4/5 of the period they had undergone preventive imprisonment, in accordance with Art. 29 of the Revised Penal Code, as amended.

The trial court gave credence to the witnesses of the prosecution, particularly to its eyewitness who positively identified accused-appellants as the perpetrators of the crime. It rejected ARLY and JONAR's defense of alibi because of its weakness considering their positive identification and that their respective residences were only some meters away from where the dead body of Salvador Reyes was found.

In repudiating AMPIE's claim of self-defense, the trial court noted the weak evidence proffered by him. He failed to show any physical injury he could have sustained when Salvador allegedly hit him with the iron pipe. The pipe was not presented, and none was found at the scene of the crime; and even assuming there was indeed a pipe, AMPIE failed to establish the reasonable necessity of the means employed to prevent the alleged unlawful aggression on the part of Salvador Reyes. It ruled that all the elements of self-defense were not present. Hence, the killing of Salvador was not at all justified.