

## THIRD DIVISION

[ G.R. No. 132324, September 28, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NORLITO TAN @ "NORLY" AND JOSE TAN, ACCUSED-  
APPELLANTS.**

### DECISION

**PANGANIBAN, J.:**

When an accused invokes self-defense, the burden of proof to show that the killing was justified shifts to him. Even if the prosecution evidence may be weak, it could not be disbelieved after his open admission owing authorship of the killing. However, to implicate a co-accused as a co-principal, conspiracy must be proven beyond reasonable doubt. In the absence of conspiracy, the responsibility of the two accused is individual, not collective.

#### The Case

Before us is an appeal of the Decision<sup>[1]</sup> of the Regional Trial Court of Pili, Camarines Sur, in Criminal Case No. P-2297, which convicted Norlito Tan of murder, and Jose Tan of being an accomplice in such crime.

On January 3, 1994, an Information<sup>[2]</sup> was filed against the appellants, the accusatory portion of which reads as follows:

"That on or about the 6th day of September, 1993, in Barangay Gatbo, Municipality of Ocampo, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, conspiring, confederating together and mutually helping one another, did then and there, wilfully, unlawfully and feloniously attack, assault, stone and stab with a deadly weapon one Magdaleno Rudy Olos alias Modesto Olos, thereby inflicting upon the latter mortal wounds on the different parts of his body which caused his death, to the damage and prejudice of the heirs of the offended party in such amount as may be proven in court."<sup>[3]</sup>

On December 14, 1995, Jose Tan was arrested in Ocampo, Camarines Sur. Upon his arraignment on January 3, 1996, he entered a plea of not guilty.<sup>[4]</sup> Subsequently, Norlito Tan was arrested on April 1, 1996. When arraigned on May 23, 1996, he likewise pleaded not guilty.<sup>[5]</sup> Trial on the merits ensued. On July 2, 1997, the trial court rendered its assailed Decision, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused NORLY alias NORLITO TAN guilty beyond reasonable doubt of the offense of MURDER and is hereby imposed the penalty of

RECLUSION PERPETUA ranging from twenty (20) years and one (1) day to forty (40) years while the other accused JOSE TAN is also adjudged guilty as an accomplice to the offense of MURDER and is hereby imposed an indeterminate penalty of PRISION MAYOR in its medium period ranging from eight (8) years and one (1) day as minimum to ten years (10) as maximum, together with its accessory penalties. As civil liability, both accused are hereby ordered to pay the heirs of MODESTO OLOS, represented by his widow, Ofelia Nueva Olos, the sum of FIFTY THOUSAND PESOS (P50,000.00) Philippine currency with costs against them.

"The accused Norly Tan and Jose Tan are credited with the full period of their preventive imprisonment if they agreed in writing to abide with all the terms and conditions of their provisional detention, otherwise, to only 4/5 thereof."<sup>[6]</sup>

The appellants lodged their appeal with the Court of Appeals which, in view of the penalty imposed, forwarded it to this Court.<sup>[7]</sup>

### **The Facts**

#### **Version of the Prosecution**

In the People's Brief,<sup>[8]</sup> the Office of the Solicitor General presents the facts as viewed by the prosecution in this wise:

"On September 6, 1993, at about 6:00 p.m., Ramon Nueva was weeding his ricefield located at Gatbo, Ocampo, Camarines Sur. At that time, there was still sunlight. (pp. 7-8, TSN, July 3, 1996).

"At a distance of about twenty (20) meters, Ramon Nueva saw Magalino Olos, (who was also his brother-in-law), walking along the road going to Gatbo. At that time, appellant Jose Tan who was then sixteen (16) years old, was also walking in front of Olos. Appellant Norlito Tan, (brother of appellant Jose Tan), who was holding an eight-inch knife known as "gatab," suddenly emerged from the grassy portion at the right side of the road where the grasses [were] "higher than a person." Appellant Norlito Tan stabbed Olos three (3) times. Olos was hit twice at the upper portion of his back and once at his abdomen. Thereafter, appellant Jose Tan threw a stone at Olos, hitting him at his neck (pp. 9-16, 35-37, TSN, July 3, 1996).

"Ramon Nueva decided to go to the place of the incident to pacify appellants. However, when appellants saw Ramon Nueva coming, they fled. Ramon Nueva and his brother, Simplicio, brought Olos to the Municipal Hall of Ocampo. From there, Olos was brought by an ambulance to the Bicol Regional Hospital in Naga City where he later died. (pp. 18-20, TSN, July 3, 1996).

"Olos was examined and treated at the Bicol Regional Hospital by a certain Dr. Jullie Sy. However, at the time of the trial of this case, he was no longer connected with [the] Bicol Regional Hospital, hence, was not

available to testify in this case. His findings as reflected in the medical certificate (Exhibit B) which he issued were interpreted by Dr. Thomas Gonzales, the incumbent Municipal Health Officer of Pili, Camarines Sur (p. 3, Annex A, Appellants' Brief).

"Dr. Gonzales testified that the first finding in the medical certificate (Exhibit B) consists of a 1.4 centimeter-wound found at the left portion of the back side of the victim which would have been inflicted by a sharp-bladed instrument (pp. 11-12, TSN, August 14, 1996); the second finding consists of a 1.6 centimeter wound located "on the level of the 4th introspect anterior left side of the body of the victim below the level of the nipple or left front side of his body below the nipple" (p. 13, *ibid.*); the third finding consists of a fatal injury located "at the umbilical area left side of the liver of the victim with the intestine coming out." (pp. 13-15 *ibid.*).

"xxx xxx xxx"[9]

### **Version of the Defense**

In their Brief,<sup>[10]</sup> Appellants Norlito Tan and Jose Tan claim self-defense and denial, respectively, alleging as follows:

"B. Evidence for the Defense:

"On September 6, 1993 in Bgy. Gatbo, Ocampo, Camarines Sur, at about 4:00 o'clock in the afternoon, Jose Tan was then watching a basketball game while his brother Norlito Tan was playing basketball. At about 5:30 o'clock PM, they left together to go home but on their way home, they passed the road and dropped by at the house of Wilfredo Bale to chew betel and betelnut. While they were in yard of Wilfredo Bale, the latter told accused Norlito Tan to go home as Modesto Olos might chase him again. Heeding the advice of Wifredo, Norlito left to go home, while Jose remained on the yard of Wilfredo. While Norlito was on his was home, Modesto Olos who was then in the ricefield walked fast towards the road and met the former who evaded the latter by proceeding to the other side of the road as Modesto had been blocking his way and telling him that Norlito would be buried alive. Then Modesto drew a knife and stabbed Norlito who was able to parry the thrust and holds the former's hand holding the knife. Norly Tan immediately drew his knife from his boot and retaliated by stabbing Modesto who was hit and fell to the ground. Then Ramon Nueva arrived and embraced Norlito, and at this moment, Angel Paular who was holding a stone ran towards him but Norlito was able to extricate himself from the hold of Ramon and ran away.

"When Modesto and Norlito were then fighting, Jose Tan was in front of the house of Wilfredo Bele. Then, when Norlito was fleeing and passing by the house of Wilfredo, Jose Tan also ran away.

"At the time of said incident, Jose Tan was then below sixteen (16) years

old as he was born on September 18, 1977 as per birth certificate submitted to the trial court.

### **The Trial Court's Ruling**

In convicting Appellant Norlito Tan of murder, the trial court ruled that his claim of self-defense was "negated by the evidence on record." It added that when an accused pleads self-defense, the burden of proof shifts on him, a burden Norlito Tan failed to discharge. Jose Tan's denial was equally unavailing in view of the credible prosecution witnesses' identification of him.

The lower court held that treachery and evident premeditation accompanied the killing and, thus, the crime committed was murder. However, the court *a quo* dismissed the prosecution's claim of conspiracy and adjudged Jose Tan guilty merely as an accomplice.

### **The Assigned Errors**

Appellants fault the trial court with the following errors:

"1. The court a quo seriously erred in finding that accused Norlito Tan treacherously killed Modesto Olos and that accused Jose Tan helped his brother in the fatal stabbing of the victim.

"2. The court a quo gravely erred in relying solely [on] and giving full credence [to] the testimonies of Ramon Nueva and Ofelia Olos and in disregarding the testimonies of both accused and their witnesses.

"3. The court a quo seriously erred in finding that both accused eluded the apprehending authorities indicating that they are guilty of the crime charged.

"4. The court a quo imposed an excessive penalty upon both accused granting but not admitting that accused Norlito Tan is guilty of the crime charged and accused Jose Tan being a minor below 16 years old is guilty as an accomplice;

"5. The court a quo seriously erred in convicting accused Norlito Tan of the crime of murder and accused Jose Tan as an accomplice."<sup>[11]</sup>

To resolve the case, the Court believes that the following points should be discussed: (1) credibility of witnesses; (2) self-defense and burden of proof; and (3) characterization of the crime and the applicable penalty.

### **The Court's Ruling**

The trial court correctly convicted the appellants, but erred in imposing the proper penalty.

#### **First Issue:** **Credibility of Witnesses**

Well-rooted is the rule that factual findings of the trial judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are circumstances of weight and substance which have been overlooked and which, if properly considered, might affect the result of the case.<sup>[12]</sup> Because the trial court is in a better position to examine the demeanor and conduct of the witnesses while testifying on the stand, its conclusions and findings on their credibility are entitled to great weight on appeal and should not be changed except for strong and valid reasons.<sup>[13]</sup>

### **Alleged Irregularities**

Appellants contend that the trial court erred in giving credence to the testimonies of Prosecution Witnesses Ramon Nueva and Ofelia Olos, considering that the defense was not able to cross-examine Nueva thoroughly. With regard to Olos, appellants claim that her presentation as a rebuttal witness was irregular and, as such, should not have been allowed by the court *a quo*.

There is no merit to appellants' assertion of procedural prejudice. True, Ramon Nueva did not return to court to finish his cross-examination; however, this does not mean that his testimony should be expunged, as appellants insists. It must be noted that his failure to appear before the court was not the fault of prosecution. More important, the defense had the opportunity to cross-examine him, as in fact he was actually subjected to cross-examination by the appellants' counsel, Atty. Crispo Q. Borja Jr.<sup>[14]</sup> The cross-examination touched on the material points elicited from Nueva during his direct examination – his eyewitness description of Norly and Jose Tan's participation in the killing.

Neither can the presentation of Ofelia Olos as a rebuttal witness be deemed irregular. Considering that the appellants claimed self-defense only after the prosecution had rested its case, the latter, after being allowed by the trial court, exercised its prerogative to present Olos, so that she could testify that the attack on her husband was sudden and unexpected. Furthermore, it is within the sound discretion of a trial judge to allow a party that has rested its case to introduce rebuttal evidence.<sup>[15]</sup>

### **Alleged Inconsistencies**

Appellants insist that the testimonies of Nueva and Olos were tainted with contradictions and inconsistencies, viz.:

"The vital and material points of the testimony of Ramon Nueva which require careful considerations are as follows, to wit:

"1. He saw [his] brother-in-law Modesto Olos stabbed thrice by Norlito Tan, hitting him twice at the back and once in front of the body, (pp. 12 & 14, tsn, 7-3-96), contrary to the testimony of Dr. Gonzales who testified that the victim suffered injuries at the left portion of the backside body (intercostal post line), at the left front side below the nipple, and on his abdomen. (pp. 11, 12 & 14, tsn, 8-14-96).