

SECOND DIVISION

[G.R. No. 106582, July 31, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. RUPERTO BALDERAS Y CABUSOG, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision dated July 10, 1992 of the Regional Trial Court at Dumaguete City (Branch 30), finding accused-appellant Ruperto Balderas y Cabusog guilty of the murder and sentencing accused-appellant to reclusion perpetua, and ordering him to indemnify the heirs of the victim Gilbert Cadiente in the amount of P50,000.00 and to pay costs.^[1]

It appears that in the evening of March 16, 1991 (not March 17, 1991 as some of the witnesses had mistakenly testified), William Devila met accused-appellant Ruperto Balderas and the latter's companions, McKinly Diada and Samuel Casido, as the latter were on their way home from work in Sitio Matambok, Barangay Mandalupang in the Municipality of Manjuyod, Negros Oriental. The three, who are sugar cane plantation workers, were carrying their "lading" or cane knives.^[2] William Devila invited the three to go with him to the Mayflower dance at Sitio Matambok and enjoy themselves "a little." The three agreed. They arrived at the dance hall at 8:00 in the evening and proceeded to a store beside the place where the dance was to be held and there had a drinking session. They consumed one flat bottle of Añejo Rhum compliments of accused-appellant.

What happened afterwards is subject of divergent accounts by the prosecution and the defense. The prosecution's version is as follows:

Per the testimony of Vicente Calidguid,^[3] at around midnight, there was an altercation between Samuel Casido and Rudy Cadiente. The two were grappling for the hunting knife held by Casido. Calidguid saw Gilbert Cadiente approaching, presumably to help his brother Rudy, but Gilbert was struck from behind with a cane knife by accused-appellant Ruperto Balderas. Gilbert was hit on the back of the head. Seriously wounded, he ran towards the house of his brother Rudy which was 12 meters away. Calidguid said he was three to four meters away from the protagonists and that he was unaware of any previous quarrel between the deceased and the accused.

For his part, Rudy Cadiente, a barangay tanod, testified^[4] that at around midnight of March 16, 1991, he saw Samuel Casido pull out a hunting knife in the middle of the dance floor. As he tried to disarm Casido, William Devila intervened and told him to leave Casido alone and he (Devila) would take care of Casido. As Rudy released Casido's hand, however, the latter boxed him. They then wrestled for possession of the hunting knife. As the two fought each other, the Petromax lamp nearby went off,

rendering the place partly dark. Knowing that Casido had companions who were armed, Rudy Cadiente ran away and went home. He identified Casido's companions as accused-appellant Ruperto Balderas, Mckinly Diada, and William Devila. Upon reaching his house, Rudy saw his brother downstairs wounded. He had injuries on the nape, right foot, and in the middle of the chest. He took Gilbert to the Bais Emergency Hospital, but Gilbert was dead on arrival. In his cross-examination, Rudy Cadiente said that he did not see his brother attacked.^[5]

Dr. Norberto J. Baldado, Jr., resident physician of the Bais General Hospital, issued a medical certificate^[6] which listed the wounds suffered by Gilbert as follows:

- 1) Stab wound, 1 cm., penetrating 6th ICS along left parasternal line;
- 2) Incised wound, 3 cm., right foot distal third anterior;
- 3) Lacerated wound, 5 cm., occiput.

Dr. Baldado, Jr. testified^[7] that Injury No. 1^[8] located just below the nipple on the left side of the breast bone was "penetrating" and "most probably . . . fatal" as it "most probably" injured the blood vessels of the heart. Injury No. 2,^[9] located on the right foot, was considered by Dr. Baldado, Jr. not fatal unless complications set in. Injury No. 3^[10] at the back part of the head was also considered by Dr. Baldado, Jr. not fatal because it only lacerated the soft tissue of the head and did not fracture the skull. According to Dr. Baldado, Jr., damage to the brain as a result of this injury was "possible but quite remote."

Accused-appellant's defense is basically alibi. He testified^[11] that in the evening of March 16, 1991, while he, Samuel Casido, and Mckinly Diada were on their way to Cagihayan, Lamugong, Manjuyod, after coming from work in Alangilan, they met William Devila who invited them to go to the dance in Sitio Matambok. They decided to go with Devila, bringing with them their cane knives, which they used for work, wrapped in the sleeves of their jackets. Accused-appellant and his companions arrived at the dance at around 8:00 p.m. They proceeded to a small store where they had some drinks and stayed there until 10:00 p.m. Accused-appellant then went home with Mckinly Diada. Samuel Casido had gone with his uncle Vicente Calidguid, while William Devila had joined his gang. Accused-appellant's residence is four kilometers away from Sitio Matambok. Upon arriving at his house, accused-appellant went to sleep. Diada proceeded to his house farther down the road. The following morning, accused-appellant was told by Julio Palagtiw that he and Diada were wanted for the killing of Gilbert Cadiente. For this reason, he and Diada went to the Office of the Chief of Police of Manjuyod to verify the information, but no sooner had they arrived than they were taken into custody. Samuel Casido, who had earlier been arrested, pointed to them as his companions. Accused-appellant and Diada stayed in jail from March 19 to 24 until they were released on the 25th upon the intercession of Alberto and Rudy Cadiente and Devila. Accused-appellant's alibi was corroborated by Mckinly Diada^[12] and William Devila.^[13]

Devila's testimony added further details regarding the fight between Samuel Casido and Rudy Cadiente. He testified that after failing to stop the fight, he left the protagonists, but, as he stepped back, he bumped the lamp post and as a result the

light was extinguished. He moved over to a place 30 meters away where there was a light and saw the fight break up as Samuel Casido ran away and Rudy Cadiente went home, although before going Rudy hurled a stone at Casido.^[14] Rudy Cadiente's house could be seen from where the witness was. The people in the house were agog as they found Gilbert Cadiente crawling on the ground wounded.^[15]

In his cross-examination, Devila was shown the affidavit he executed dated March 20, 1991. He denied having made the answer to Question No. 3, in which he pointed to Samuel Casido as having stabbed Gilbert Cadiente. He said that he had merely been made to make the answer by Rudy Cadiente.^[16]

The defense also called as witness SPO1 Jaime Tolete, who had filed the original criminal complaint against accused-appellant. Tolete testified concerning entries in the police blotter of the PNP Police Station of Manjuyod. The entries read:^[17]

A (Witness reads) "Brgy. Capt. Jesus Cadalso Balasabas of Brgy. Mandalupang, reported to this unit at about 1701H March 1991 while holding a benefit dance on the above-mentioned barangay and after the dance ended they found outside the dancing hall that one Gilbert Cadiente, 17 years old, single and a resident of Sitio Matambok, Manjuyod was lying on the ground between life and death and thereby his elder brother, Rudy Cadiente saw him and found out that said victim has stab wound at the center of his breast and allegedly stabbed by unknown person/persons and said victim was rushed to the hospital for treatment but already died while on the way to the hospital. Sgd. Dominador Acabal."

"In reference to Entry 0582 brother of victim, Rudy Cadiente, a Brgy. Ronda came to this office and told the investigator that he allegedly saw the assailants of his younger brother wherein he further stated that these persons were seen at the dancing area of said brgy. and were making trouble thereat. The ff. were (1) Samuel Casido (2) Perto Balderas (3) Misoy (surname unknown) Sgd. SPO3 Errol Pineda."

"Upon follow-up by elements of this unit, Samuel Casido was picked up at this residence and stated that he was at the scene with the ff. persons that were his companions, namely: William Devila, Perto Balderas and Mckinly Diada, all residents of Sit. Cagihayan, Brgy. Lamogong, this municipality. He further stated that this William Devila struck first the petromax that gave light to the dancing area. Samuel Casido is detained in jail for further investigation."

Another entry: "In reference to Entry 0582, page 090 re murder case that on or about 0345H 18 March 1991 one Restituto Palagtiw, a Brgy. Ronda of Brgy. Lamogong, this municipality, brought to this station 2 persons in the name of Mckinly Diada and Ruperto Balderas, all of Sit. Cagihayan, Brgy. Lamogong this municipality. Subject persons were the subject of said murder case and were detained for further investigation."

Another entry: "In reference to Entry 0582, 0584 and 0585 dtd. 17

March 1991 re hacking and stabbing to death of one Gilbert Cadiente, suspect was apprehended by element of this unit one William Devila y Picante and detained for further investigation."

"Reference to Entry 0582, 0584, 0585, 0588 and 0592 dtd. 17 & 18 March 1991 re murder case at Mandalupang this municipality, turned over to this unit a plastic bag with cane knife, clothing and 2 plastic plates owned by Samuel Casido by Brgy. Ronda Rudy Cadiente. Sgd. Dominador Acabal." That is all.

On July 29, 1992, the trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua, and ordering him to indemnify the heirs of Gilbert Cadiente in the amount of P50,000.00 and to pay costs.

In its decision, the RTC disregarded Exhs. 1-4 of the defense, which were the affidavits taken during the preliminary investigation. Exh. 1 was William Devila's affidavit in the dialect dated May 22, 1991, retracting his affidavit dated March 20, 1991 (Exh. 1-a). Exh. 2 was Alberto Cadiente's affidavit, while Exh. 3 was that of Rudy Cadiente. Xerox copies of certain pages of the police blotter (Exhs. 4 and 4-a) were likewise excluded.^[18] The court explained that -

Exhibit "1" is inadmissible as evidence as it is not accompanied by a translation in an official language as required by Section 33, Rule 132 of the Revised Rules on Evidence. Exhibits "1-a," "2" and "3" which are alleged affidavits are not only unidentified by the affiants, but have not been testified to as authentic by the person who certified therein that they are true copies. Exhibit "4" is not certified as a faithful reproduction of the original entries which it purports to represent. It is, therefore, worthless as secondary evidence.

Exhibits "1" to "4," therefore, cannot be considered in favor of Accused by reason of the foregoing infirmities.

With the exception of Devila's affidavit, the affidavits pointed to Samuel Casido as the person who assaulted Gilbert Cadiente during the dance. In its decision, the RTC stated:

While the evidence has amply shown the treacherous participation of Accused Ruperto Balderas in inflicting injuries on Gilbert Cadiente, justice has not been fully served by the absence of a determination of the author or authors of the other injuries sustained by said victim as found by the medical officer. During the trial the prosecution has passed sub-silencio the matter of the "stab wound" in particular which the medical officer described as "most probably fatal" among the three injuries. It must have been the active cause of the death of Gilbert Cadiente, yet no one has been called upon to answer for it. This is a sad commentary on the criminal justice system in this jurisdiction. Accused Ruperto Balderas should not suffer alone for the killing of Gilbert Cadiente, for all that he may have done to said victim. A little extra effort, one that is sincere, well-meaning and diligent, is all that is needed approximate the administration of justice to the people of the State who have been offended by the criminal killing of one of them.

It is, therefore, suggested that another inquiry by the Police and by the office of the Provincial Prosecutor be undertaken for the purpose of identifying the person or persons responsible for the infliction of the "stab wound" and the "incised wound" which contributed to the death of Gilbert Cadiente so that he or they may be made to answer for the same.

Accused-appellant appealed, assigning the following errors as having been committed by the trial court:

I. THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II. GRANTING WITHOUT ADMITTING THAT THE ACCUSED HACKED THE VICTIM ONCE AT THE BACK OF HIS HEAD ACCORDING TO THE LONE TESTIMONY OF VICENTE CALIDGUID, THE SAME WAS NOT A FATAL WOUND AS TESTIFIED BY THE DOCTOR.

Accused-appellant lays store by the fact that, during preliminary investigation, witnesses including the victim's brother Rudy Cadiente, pointed to Samuel Casido as the one who attacked the victim with a cane knife and an icepick. He argues that even granting that he indeed hacked the victim, he could not be held liable for murder as the wound he inflicted was not fatal.

First. As in all criminal prosecutions, the conviction must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.^[19] In this case, the only prosecution eyewitness, Vicente Calidguid, testified that accused-appellant struck the victim Gilbert Cadiente with a cane knife once, hitting him on the nape. The wound inflicted, which the doctor identified as Wound No. 3, was according to him not a fatal one.

The Solicitor General argues that infliction of this wound is sufficient to convict accused-appellant of murder, because it "could have caused brain injury as admitted by the attending physician [and] contributed as cause of the death of the victim."^[20]

This possibility, however, is a remote one as the following testimony of Dr. Norberto Baldado, Jr. explains:^[21]

Q Let us proceed to Finding No. 3 doctor, please elaborate.

A Lacerated wound, 5 cm. occiput, it is somewhere here (witness indicating in the sketch).

Q Please indicate that in your head.

A (Witness touching the back part of his head).

Q What instrument could have caused this type of wound, doctor?

A A sharp-bladed instrument.

Q Are you familiar with the bolo used in cutting sugar cane?

A Yes.