

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. CR-HC NO. 00835-MIN, August 11, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN B. TAWAKIM, ACCUSED-APPELLANT,**

### **D E C I S I O N**

**INTING, J.:**

This is an appeal from the August 15, 2005 Decision<sup>[1]</sup> of the Regional Trial Court Branch 13, Cotabato City in Criminal Case No. 2622 for Murder, the dispositive portion of which reads:

"WHEREFORE, upon the foregoing consideration, the Court hereby finds the accused Allan B. Tawakim guilty beyond reasonable doubt of the crime of Murder.

Accordingly, with the application of Art. 248 (1) and (5) of the Revised Penal Code, and appreciating the existence of Treachery and Evident Premeditation, with no mitigating circumstance, the Court hereby sentenced accused Allan Tawakim to suffer the penalty of reclusion perpetua in its Maximum to death and to indemnify the heirs of victim the amount of Fifty Thousand Pesos (P50,000.00) for the death of Mohaliden U. Dimaporo and Forty Four Thousand Five Hundred Eighty Three Pesos and Forty Centavos (44,583.40) Philippine Currency for damages.

The accused shall be entitled to one hundred (100%) percent reduction of his sentence for the number of years he had served in jail during his preventive detention.

SO ORDERED."

Accused Allan Tawakim was originally charged in an Information dated December 13, 1999<sup>[2]</sup> later amended to include another unidentified suspect. The May 29, 2000 Amended Information<sup>[3]</sup> partly reads:

"That on or about December 8, 1999, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with a Batangas knife about ten (10) inches long, including the handle, with intent to kill, did then and there wilfully, unlawfully and feloniously attack and stab Mohaliden Dimaporo at his left neck, inflicting upon him stab wound (L) neck, with treachery and known premeditation, and as a result thereof said Mohaliden Dimaporo died on December 10, 1999."

Tawakim, assisted by counsel, was arraigned on June 1, 2000. He pleaded not guilty to the crime charged.<sup>[4]</sup> Per records, Tawakim is detained at the National Bilibid Prisons in Muntinlupa after he was transferred from the Cotabato City Reformatory Center on November 21, 2005.<sup>[5]</sup> However, per May 2, 2012 Resolution of this Court, accused was granted outside hospitalization for a medical treatment.<sup>[6]</sup>

The facts of the case are as follows:

Evangeline Uy testified that at about 8:20 p.m on December 8, 1999, she was with her niece Jean Arap and nephew Mohaliden Dimaporo drinking soda at the C&D Resto. When they were about to leave, Mohaliden excused himself to go to the bathroom. Evangeline and Jean waited at their table. After a while, Evangeline went to the bathroom to wash her hands. Before she could get to the bathroom, Evangeline saw Mohaliden come out of the men's toilet wounded and covered with blood. She asked Mohaliden what happened but the latter merely replied that they have to go as he has a wound on his neck. Evangeline then followed Mohaliden when she noticed a man chasing them. When they reached the main door the man and his companion went to a different direction after having noticed policemen standing by the restaurant entrance. Evangeline asked for assistance while Jean directed the policemen to the men whom they suspected as the assailants. The policemen caught one of them who was later identified as Allan Tawakim, the uncle of a woman whom Mohaliden impregnated. Meanwhile, Mohaliden was boarded in a tricycle and brought to the Cotabato Medical Hospital.<sup>[7]</sup>

On cross-examination, Evangeline attested that while she was still on her way to the bathroom, about four (4) to five (5) steps away from the men's toilet, she saw Tawakim stab Mohaliden. At that time, Mohaliden's back was towards Tawakin; and the latter, using his right hand, stabbed Mohaliden on the left side of his neck. Mohaliden then ran towards her. Evangeline saw Mohaliden's four (4) other wounds when they were already at the hospital. Evangeline admitted not having mentioned Tawakim in her affidavit but reasons out that she was just bothered at that time. She did not expect the accused could do that to Mohaliden especially because they were neighbors. However, she maintains that when her statement was taken, she indicated Tawakim but it was not written in her affidavit.<sup>[8]</sup>

Evangeline's testimony was corroborated by Jean Arap, who deposed that after Evangeline went to the bathroom, she also followed. It was at that time when she saw Evangeline and Mohaliden being chased by Tawakim with a knife. At that moment, Mohaliden was already holding his neck. Tawakim had a companion but Jean could not identify him because of the commotion. When they got to the entrance, Jean asked for police assistance and pointed out Tawakim as the assailant. She could not recall any altercation between the accused and Mohaliden but she knew that the latter got Tawakim's niece pregnant.<sup>[9]</sup>

On her cross-examination, Jean averred that before the incident, she already noticed Tawakim in the restaurant seated near the toilet. She did not actually see him stab Mohaliden.<sup>[10]</sup>

PO1 Ronald Dumaldal was also presented for the prosecution. He testified that he was at the vicinity of the restaurant at about 8:45 pm together with PO2 Manuel

Davila. They were taking a break from patrolling when they noticed an approaching teenager whom they later came to know as Mohaliden. He was followed by three persons - two women and one man. Mohaliden tried to speak but to no avail due to his neck wounds. Mohaliden's female companions informed them of the incident and pointed at Tawakim as the suspect. The authorities immediately apprehended Tawakim and turned him over to their Patrol Team Leader SPO4 Siang, who conducted the body search on the accused at the police station where a ten-inch *balisong* knife, still covered with blood, was recovered from the accused's right back pocket.<sup>[11]</sup> PO2 Manuel Davila also saw the bloodied knife taken from the accused.<sup>[12]</sup> However, the knife was not presented in court which was already submitted to the prosecutor's office when the case was filed.

Dr. Faisal Samanodi was the hospital consultant who issued Mohaliden's medical certificate. Per doctor's findings, the victim had stab wounds on his left neck penetrating and lacerating external through and through the esophagus to the right internal jugular vein which carries blood from any organ towards the heart. The incise wounds were about 2-3 cm in length and about 6-8 cm in depth and was possibly inflicted by a double edged knife. Aside from the two (2) major inflicted wounds on the victim, he also had smaller extremity wounds on his left lung and abdomen.<sup>[13]</sup>

On the other hand, the defense presented the accused Allan Tawakim who denies the allegations against him. According to him, there was already a commotion when he arrived at the C&D Resto. He saw people rush outside the restaurant and followed them without knowing what was going on. Suddenly, a man in civilian clothing held and slapped him. He felt scared and dizzy so that he sat down. He was then detained and that was only the time he knew of the charges against him. He refutes owning the knife recovered by the authorities. He admits knowing Mohaliden as the boyfriend who impregnated her niece; but he did not have any ill feelings towards him and that any misunderstanding had already been settled. He could not also think of any reason why the police would implicate him in the crime.<sup>[14]</sup>

The RTC rendered the assailed decision finding that the stabbing of the victim by Tawakim was convincingly established beyond reasonable doubt; that in the crime scene, two witnesses saw Tawakim chasing the victim with a knife, which was later recovered from him with blood stains; that the failure to present the knife was not fatal to the case because the witnesses' positive identification of the accused sufficed; that there was the presence of evident premeditation considering that the accused chose to kill the victim in a comfort room with a limited space, with only one door for exit and while the victim was urinating with his back facing the accused ensuring he would not see the attack; that the strike was sudden and unexpected and the victim was not in a position to defend himself; that the accused intentionally chose the comfort room to ensure the execution of his criminal design without risk to himself; that the accused had a grudge on the victim who impregnated the former's niece and has clung to his plan of retaliation despite sufficient time that has lapsed for the accused to change his mind, hence, he is not entitled to any mitigating circumstance for his stabbing was not from lawful sentiments but from lawlessness and revenge; and that the accused's denial cannot stand against the positive testimonies of the witnesses who did not have anything against the accused.

Unyielding, accused appeals to Us assigning as lone error his conviction by the court a *quo* notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt. The accused-appellant asseverates that Evangeline's testimony lacks credibility because in her affidavit, she failed to mention that she saw the stabbing but in her later testimonies, she claimed to have seen the stabbing; that she did not mention the accused-appellant's name in the affidavit considering that they knew each other; that the witnesses' testimonies were inconsistent as to who sought help and where the accused-appellant was caught; and that treachery and evident premeditation were not established.

### Our Ruling.

We uphold the accused-appellant's conviction.

The failure of Evangeline to mention all the details of the stabbing incident or to name the accused-appellant in her affidavit will not necessarily affect the credibility of her testimony. It bears stressing that the court a *quo*'s finding of the facts was not solely based on her testimony but also on the depositions of the other witnesses who corroborated the events and identified the accused-appellant as the assailant. The case of *Decasa v. CA*,<sup>[15]</sup> is enlightening on this point and we quote pertinent portions thereof, to wit:

"Petitioner argues that the RTC and the Court of Appeals committed grave abuse of discretion in giving credence to the testimony of eyewitness Rogelio since there were grave and irreconcilable inconsistencies in the latter's affidavit and court testimony. According to petitioner, when Rogelio executed his affidavit and was subjected to a preliminary examination two weeks after the incident, he never mentioned therein that he actually saw the hacking of Teodoro by petitioner. It was only during the trial on the merits of the instant case that Rogelio for the first time testified that he personally witnessed the hacking of Teodoro by petitioner.xxx

The contentions are devoid of merit.

When Rogelio was asked during the trial why it is not reflected in his affidavit that he actually saw petitioner hack Teodoro, he explained that he believed that everything he said was already included in his affidavit, including that part wherein he actually saw petitioner hack Teodoro, viz:

He [Rogelio] was investigated by the police anent this case at the Municipal Hall of Bilar where he also executed an affidavit (Exhibit "1" for the defense). It was Fred Pangan, Acting Chief of Police, who took his affidavit, Fred Pangan asked him questions relative to the incident, and he told him everything that he saw. However, when he was asked to explain why it is not reflected in his affidavit that he actually saw the accused hack Teodoro Luzano, he answered that he believed that everything he said were already included in his affidavit, including that part wherein he actually saw Nestor hack Teodoro.

As can be gleaned from the foregoing, it was Rogelio's honest belief that