G.R. No. 101798

SECOND DIVISION

[G.R. No. 101798.]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. MARIO RIVERA, ACCUSED-APPELLANT.**

D E C I S I O N

REGALADO, J.:

An evening intended to be a relaxing night out between two friends, herein accused-appellant Mario Rivera and his erstwhile co-accused Venancio Mercado, Jr., provided a tragic tableau for the senseless killing of an unwitting victim and the conviction of appellant for murder. The case did not even have the saving grace of the inscrutability of fate; it was but another mundane episode involving the admixture of bravado and alcohol.

Appellant Mario Rivera and Venancio Mercado, Jr. were charged before the Regional Trial Court, Branch VIII at Aparri, Cagayan, with the crime of murder in an information alleging the commission thereof as follows:

> "That on or about October 19, 1989 in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Mario Rivera and Venancio Mercado, Jr., armed with a sharp pointed instrument, conspiring together and helping each other, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and stab one Remely Padios, inflicting upon him wounds on his body which caused his death.

> That the accused Venancio Mercado, Jr. is a recidivist, he having been previously convicted by final judgment of Homicide in June, 1987, by this Honorable Court (Regional Trial Court, Aparri), Branch IX, in Criminal Case No. IX-498, entitled 'People of the Philippines versus Venancio Mercado, Jr.' for Homicide, which crime is embraced in the same title of the Revised Penal Code."[1]

Both accused were arrested and, when arraigned, entered a plea of not guilty. After due trial, the lower court found both accused guilty as charged and sentenced them to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law. They were likewise ordered to pay jointly and severally to the heirs of the deceased the sum of (1) P50,000.00 by way of death indemnity; (2) P17,128.00 for actual funeral and other incidental expenses; (3) P20,000.00 by way of moral damages; and (4) P15,000.00 by way of exemplary damages, for a grand total of P102,128.00, without subsidiary imprisonment in case of insolvency. The court further declared that, in the service of their sentence, they were entitled to full credit for the period of their preventive imprisonment, provided they had complied with the requirements of Article 29 of the Revised Penal Code, as amended.[2]

A motion for reconsideration was filed by accused Venancio Mercado, Jr., while accused Mario Rivera filed a notice of appeal. The court a quo, in an amended decision dated July 15, 1991, acquitted Venancio Mercado, Jr. on the basis of reasonable doubt since appellant Rivera admitted sole liability for the killing and denied Mercado's participation therein.[3] The subject decision convicting herein appellant is now the subject of our appellate review.

The principal facts of the case for the prosecution were established by lone witness Emma Rival. She testified that on October 19, 1989, at around 11:45 p.m., she took a brief respite from her work as a singer of El Gusto Restaurant and Folk House at Aparri, Cagayan and went to buy merienda at Lansi's Store located adjacent

to said restaurant. On her way back to El Gusto, while she was about three steps away, she saw accused Venancio Mercado, Jr. stab Remely Padios, a security guard of said establishment, with a weapon that looked like a fan knife. Afterwards, Mercado gave said weapon to appellant Rivera who then stabbed Remely Padios two times, prompting the latter to draw his gun. Rivera pushed Padios causing him to fall down and drop his gun. Mercado and Rivera then ran away from the area. When Emma Rival went near the victim, the latter asked her to look for his gun, which she found underneath the security guard's table. She gave said gun to the manager of the restaurant, Mila Talosig, and both of them, together with a waiter of said restaurant, brought the victim to the Lyceum of Aparri Hospital.[4]

Expectedly, the defense gave an entirely different version of the incident. Appellant Rivera took the witness stand and testified that at about 11:00 p.m. of October 19, 1989, he and Mercado were at El Gusto Restaurant having a few drinks. Rivera decided to request Emma Rival, the lady singer of said establishment, to sing a particular song. Rivera approached the stage, which was about two feet high, and whispered the title of the song to the singer. Rivera, however, was "outbalanced" and his face accidentally touched Rival's face, prompting the latter to slap him. Padios, the security guard of El Gusto, grabbed Rivera's collar and dragged him out of the restaurant. Padios then pushed him and drew his gun. While Rivera was trying to stand up, Padios pointed his gun at him. Fearing for his life, Rivera "unconsciously" drew his knife and held the hand of Padios which was then holding a firearm. They grappled and when Rivera saw that Padios was about to fall, he released his grip and ran away.[5]

In this appeal, appellant assigns two errors supposedly committed by the court a quo which can, however, be subsumed into a single supposed error, that is, that the trial court erred in not giving weight and

probative value to his testimony and convicting him as a consequence.[6]
He also calls the attention of the Court to the fact that Judge Efren N.
Ambrosio, who rendered the questioned decision, took over the trial of the case
only after the prosecution witnesses had already testified. Appellant asserts that Judge Felipe R.
Tumacder, who originally presided over the case, thereafter retired prior to
the termination of the case, hence the judge who penned the decision had no
opportunity to observe the demeanor of the witnesses nor to note the
evasiveness of their answers.

Said contention does not persuade. While it is true that the trial judge who conducted the hearing
could possibly be in a better position to ascertain the truth or the falsity of
the testimonies of the witnesses, it does not necessarily follow that a judge
who was not present during a part of the trial can not render a valid and just
decision, since the latter can also rely on the transcribed stenographic notes
taken during the trial as the basis of his decision.[7]

There is no dispute that on the night of October 19, 1989, Remely
Padios died of stab wounds inflicted by Mario Rivera. This has been admitted by the latter.
In view of such admission, the Court shall focus its analysis and
evaluation of the case on whether or not the appellant had presented cogent,
persuasive and compelling evidence to prove his claim that he acted under the
justifying circumstance of self-defense.

Going to the basics, we need merely note that the three
requisites of self-defense are unlawful aggression, reasonable necessity of the
means employed to prevent or repel it, and lack of sufficient provocation on
the part of the person defending himself.[8]
We have consistently stressed that an accused who interposes self-defense must
prove every element of this defense in order to avoid criminal liability for
the killing or injury of the victim,[9]
and he must rely on the strength of his own defense and not on the weakness of
the evidence for the prosecution for, even if the latter's evidence is weak, it
cannot be disbelieved after the accused himself admitted the killing.[10]

Pursuing his theory of self-defense, appellant tried to show that

the deceased victim "pushed him" and "suddenly aimed his gun at (him)." Fearing for his life, so he claims, he "unconsciously drew (his) knife" and "thrust it at him." Appellant further testified that after stabbing the deceased once, he fled from the scene.[11]

The testimony of appellant on how he supposedly stabbed the victim runs counter to the physical evidence in the case, as reflected in the medico-legal report. The medico-legal certificate, issued by the Cagayan Valley Regional Hospital with Dr. Errol Jesus de Yro as the attending physician, reveals that the victim suffered two (2) stab wounds: the first, "5 cms., 5th ICS line, (R) parasternal line," and the second, "5 cms., (L) lumbar area w/ omental evisceration."[12] Dr. Romulo A. de Rivera, interpreting said certificate because of the unavailability of the attending physician, testified that the entry of the first wound was on the fifth right breastbone while that of the second wound was on the left lumbar area, left side of the back.[13]

In addition, Dr. De Rivera testified that when the second wound was inflicted, the assailant was behind the victim. Either wound, both lethal, could have caused the death of the victim.[14] It will also be noted that appellant did not suffer any injury, although the victim was taller, had a bigger build[15] and was allegedly already aiming his gun at appellant before said victim was stabbed.

In the present case, the number of wounds, the point of entry of the second wound, the position of the victim in relation to the assailant when the second wound was inflicted, as well as the fact that appellant did not sustain any injury, conjointly belie any pretension of self-defense. The nature and the number of wounds inflicted by an assailant are constantly and unremittingly considered important incidents which disprove a plea of self-defense.[16]

Appellant tried to demonstrate that his acts were purely in

legitimate self-defense by citing the testimony of prosecution witness Emma Rival which appellant claims corroborates his testimony that indeed there was unlawful aggression on the part of the deceased Padios.[17]

Said attribution of appellant, however, is not only misleading but a gross distortion by truncation of the testimony of said witness. What appellant quotes in his brief starts with the portion where the witness said that the victim drew his gun after he was pushed by Rivera. Deliberately omitted was the preceding portion of her testimony where she clearly explained that, prior thereto, she saw both accused attacking the victim, before he drew his gun, to wit:

> "Q: What did Remely Padios do, being stabbed by the two accused namely Mario Rivera and Venancio Mercado, Jr.?
>
> A: He took his gun, sir.
>
> Q: What did the two accused do after stabbing Remely Padios?
>
> A: They ran away, sir.
>
> Q: And what was the position of Remely Padios when he tried to unseath (sic) or withdraw (sic) his firearm?
>
> A: They pushed him, sir.

Q: Who pushed him?

A: Mario Rivera, sir.

Q: And what happened to
Remely Padios after he was pushed by Mario Rivera?

A: He fell, sir."[18]

If appellant honestly believed that his acts consisted of self-defense against the unlawful aggression of the victim, instead of immediately running away after stabbing the latter, he could and should have informed the people inside the restaurant of what had just transpired and sought aid for himself and Padios. For that matter, he should also have reported the incident to the police, instead of escaping and avoiding the authorities until he was arrested. His actuations cannot but put his case within the ambit of our jurisprudential doctrine that the flight of an accused discloses a guilty conscience.[19]

Appellant further declared that he saw Mercado "in our place" after the incident but they did not talk to each other nor did he inform Mercado that he stabbed the security guard.[20] Said representation of appellant, if true, is perplexing and abnormal. Surely, what had taken place was not a mere ordinary occurrence that one would easily forget or neglect to mention. On the other hand, Mercado would at least have made inquiries as to what had actually happened.

Aside from the foregoing, neither can appellant hope for mileage from the testimony of Mercado on which he relies for corroboration. Mercado declared that although he saw the victim "pull" appellant away and that the latter was brought out of

the restaurant, he (Mercado) did not do anything but he just proceeded to drink his beer. Mercado further narrated that after paying the bill, he went out and saw the victim aiming his gun at appellant, prompting the latter to "box" the deceased. Still, he did not do anything and opted rather to return inside the restaurant where he sat down and, after the incident, he went home.[21]

It is hard, to believe that although the deceased was supposedly aiming his gun at appellant in the presence of Mercado, this witness took no action whatsoever. The Court understands the postulated hesitancy of Mercado not to get involved in any altercation, considering that he is a recidivist. But the Court is baffled why he did not at the very least report that fact to or seek assistance from the people inside the restaurant if he really saw the security guard pointing a gun at appellant Rivera who is his childhood friend and neighbor.[22]
We have perforce to recall the rule that evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself,[23] and reject these blatant prevarications of Mercado.

Although the prosecution's case rested mainly on the testimony of Emma Rival, the Court finds no reason not to favorably entertain her testimony on the particulars regarding the assault of appellant himself against the victim. Our review of the records confirms the trial court's observation that witness Rival testified in a straightforward manner and withstood the rigors of cross-examination. Any flaws in her testimony on other aspects of the incident are minor errors ascribable to inaccuracy in her observation or perception of rapidly moving events, rather than to an intent to fabricate.

Appellant failed to establish any dubious motive on the part of witness Rival as to why she would give a fictional testimony against appellant. Indubitably, said witness, being a co-employee of victim Padios, would have more reason than any ordinary witness to make sure that the real killer of her co-worker be brought to justice. Absent the most compelling

reason or motive, it is inconceivable why witness Rival would openly and publicly lie or concoct a story which would send an innocent man to jail.

Another consideration that sustains the position of the prosecution and derails the proposition of the defense is the fact that any motive for the encounter lies on the part of appellant. Rival testified that, prior to the incident, appellant Rivera and Mercado had created trouble by breaking bottles inside the restaurant. The victim chided the two for creating trouble and brought them out of the establishment, as it was his duty to do so.[24] Resenting the fact that they were admonished and ejected from the premises, it is not hard to conclude that both accused had the ill-conceived reason to take offense and recourse against the victim. Consequently, and on the foregoing considerations, appellant's theory of self-defense must be completely rejected.

The information in the present case specifies evident premeditation and treachery as qualifying circumstances. However, we agree with appellant that evident premeditation may not be appreciated against him. The prosecution failed to present sufficient evidence as to how and when the plan to neutralize the victim was conceived or what time elapsed before it was carried out. Evident premeditation cannot be appreciated in the absence of direct evidence of the planning and the preparation to kill,[25] and that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[26]

We are likewise not inclined to hold that there was treachery in the killing of the victim. We are not unaware of rulings to the effect that even if the attack is frontal, as in this case, but the suddenness thereof rendered it impossible for the victim to make a defense or to escape, alevosia may nevertheless be appreciated. It is to be conceded, however, that such doctrinal pronouncements necessarily envision that each case must be judged in

light of the attendant factual milieu thereof and, more importantly, under the overall concept and rationale for treachery which, if considered as a qualifying circumstance, would change the nature of the unlawful killing and call for the imposition of the highest penalty under the law.

The trial court considered the killing of the victim as treacherous on the theory that the accused employed a manner of execution which ensured the offenders' safety from any defense or retaliatory act of the victim and that such mode of execution was deliberately or consciously chosen by them. It draws for its conclusion upon the following statements of prosecution witness Emma Rival:

> "Q: How come that you saw the stabbing incident?
>
> A: When I returned back (sic) at El Gusto, I thought they were making a sign to 'APPEAR' (clapping of hands together) then, I noticed that they were already stabbing him, sir."[27]

which she amplified on cross-examination in the following manner:

> "Q: Who were making the sign of appear?
>
> A: Venancio Mercado and Mario Rivera, sir.
>
> Q: What about the deceased?
>
> A: No, sir.

Q: What did these two do?

A: They stabbed him, sir.

Q: When they were making
(the) sign of appear?

A: When they were in the
act of making the sign of appear, they suddenly stab(bed) him, sir.[28]

It would, at first impression, imply that appellant and his co-accused resorted to their ploy of making the "appear" sign to delude the victim into thinking that their intentions in talking to him were peaceful so that they could catch him unaware and vulnerable to an unexpected attack. This may have been their purpose but, although they did succeed in fatally stabbing the victim, it would be too simplistic to forthwith conclude that there was treachery without considering the legal implications of the facts antecedent to this charade of appellant and his co-accused.

As earlier stated, while the two accused were still inside the restaurant they started creating trouble by breaking bottles, such that the victim had to forcibly escort them out of the place.[29]
When witness Emma Rival went to buy her merienda at Lansi's Store much later, she saw Rivera there while Mercado was with the victim at the guard post, and they were obviously joined thereafter by Rivera.[30]
When Rival later left the store to return to El Gusto, these were what she witnessed:

"Q: How
far were these two accused from Remely Padios when they were making the sign of

appear?

A: They called Remely
Padios outside, sir.

Q: I am asking where were
these two accused (sic) from Remely Padios when they were making the sign of
appear?

A: They were facing each
other, sir.

Q: And this Remely Padios
was with a firearm?

A: Yes, sir.

Q: You mean to say that it
was not drawn?

A: It was intact in his
waist, sir."[31]

From the foregoing facts, we can readily deduce that the victim
was not completely unaware that herein appellant and Mercado posed a danger to
him and which necessarily put him on his guard. He had forced them out of the restaurant
and he was aware of
their capacity and disposition to make trouble despite his presence therein as

a security guard. Instead of going
home, they loitered in the premises and later called him outside. He would be naive to believe that their
intentions were anything but hostile considering their resentment and
humiliation after being publicly required to leave the restaurant with the
knowledge of other customers. In fact,
when they were making the "appear" sign, the victim did not join them
in the act. Also, we must not lose
sight of the fact that the victim was duly armed with a .38 caliber revolver
which is more than sufficient as a means of defense against a knife and that,
as a security guard, he was trained not only to detect but also to anticipate
the presence of danger.

Turning to doctrines of earlier vintage but which are still
consistently followed as authoritative precedents, we are reminded that
treachery is not to be presumed, but must be proved as conclusively as the act
it qualifies.[32]
The same degree of proof to dispel any reasonable doubt is required before
treachery may be considered either as an aggravating or qualifying
circumstance.[33]
Further, it has long been declared that the qualifying circumstance of
treachery must be based on some positive conclusive proof and not only upon
hypothetical facts[34]
or on mere suppositions or presumptions.[35]

Again, paragraph 16, Article 14 of the Revised Penal Code itself
requires that the means, methods and forms employed, in order to constitute
treachery, must have been directly and specially sought, adopted or used to
insure both the accomplishment of the criminal design and its
execution with impunity or without risk to the offender.[36]
Thus, in U.S. vs. Namit,[37]
it was held that where the aggressor failed to adopt a mode of attack intended
to facilitate the perpetration of the killing without risk to himself, the
circumstance that the attack was sudden and unexpected by the person attacked
did not constitute the element of alevosia necessary to raise homicide
to murder. Where it was not established
that the defendant in killing the deceased employed any means by which all

defenses on the part of the latter should be impossible, there is no sufficient ground to establish alevosia and the killing should be classified as homicide.[38]

Accordingly, in light of the foregoing statutory and jurisprudential guideposts, we cannot conclude that the accused acted with treachery since the means they employed did not eliminate all risks to themselves. As in the aforecited case of Asilo, the victim was not taken entirely unaware by the assault against him. Being adequately armed, neither can it be said that all means of defense on his part were impossible. Here, by the exercise of a reasonable degree of anticipatory caution and vigilance, the victim either could or should have been able to defend himself since he had all the opportunity to do so, and he could have prepared for or anticipated the attack. We, therefore, hold that under the foregoing disquisition and considering that doubts are resolved in favor of the accused since criminal justice inclines in appropriate cases to the milder form of liability, the crime was not attended by alevosia and should be considered as simple homicide without any modifying circumstance.

WHEREFORE, the judgment appealed from is hereby MODIFIED by convicting the accused of the crime of homicide instead of murder, and imposing upon him an indeterminate sentence of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. In all other respects, the aforesaid judgment of the court a quo is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and *Nocon, JJ.,* concur.

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[1] Original Record, 1.

[2]
Ibid., 138.

[3]
Ibid., 153.

[4]
TSN, May 17, 1990, 4-10.

[5]
Ibid., February 26, 1991, 7-16.

[6]
Brief for the Accused-Appellant, 3; *Rollo*, 35.

[7]
People *vs*. De la Paz, G.R. No. 86436, August 4, 1992.

[8]
Article 11(1), Revised Penal Code.

[9]
People *vs*. Caparas, et al., 102 SCRA 781 (1981); People *vs*. Gavino, Sr., 155 SCRA 625 (1987).

[10]
People *vs*. Mercado, 159 SCRA 453 (1988); People *vs*. Rey, 172 SCRA 149 (1989).

[11]
TSN, February 26, 1991, 13-14.

[12]
Exhibit A; Original Record, 95.

[13]
TSN, October 4, 1990, 7.

[14]
Ibid., *id*., 7-8.

[15]
Ibid., February 27, 1991, 18-19.

[16]
People *vs*. Bigcas, et al., 211 SCRA 631 (1992).

[17]
Brief for the Accused-Appellant, 7; *Rollo*, 35.

[18]
TSN, May 17, 1990, 7-8.

[19]
People *vs*. Dalinog, 183 SCRA 88 (1990).

[20]
TSN, February 27, 1991, 25.

[21]
TSN, March 25, 1991, 9-13.

[22]
Ibid., *id*., 20.

[23]
People *vs*. Marti, 193 SCRA 57 (1991).

[24]
TSN, May 7, 1990, 23.

[25]
People *vs*. Samson, 176 SCRA 710 (1989).

[26]
People *vs*. Tunhawan, 166 SCRA 638 (1988).

[27]
TSN, May 17, 1990, 19-20.

[28]
Ibid., *id*., 28.

[29]
Ibid., *id*., 23-24.

[30]
Ibid., *id*. , 19.

[31]
Ibid., *id*., 33-34.

[32]
People *vs*. Abril, et al., 51 Phil. 670 (1928); People *vs*. Gondayao, et al., 30 SCRA 226 (1969).

[33]
People *vs*. Torejas, et al., 43 SCRA 158 (1972).

[34]
U.S. *vs*. Rana, et al., 4 Phil. 231 (1905).

[35]
U.S. *vs*. Perdon, 4 Phil. 141 (1905).

[36]
See People *vs*. Lorenzo, 132 SCRA 17 (1984).

[37]
38 Phil. 926 (1918); see also People *vs*. Boduso, 60 SCRA 60 (1974).

[38]
U.S. *vs*. Asilo, 4 Phil. 175 (1905); People *vs*. Durante, 53 Phil. 363 (1929); People *vs*. Pelago, 24 SCRA 1027(1968).

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