

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX ATIENZA, ACCUSED-APPELLANT.

G.R. No. L-39777. August 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal by accused Felix Atienza from the decision of the Court of First Instance of Quezon in Criminal Case No. 307, convicting him of the crime of murder, the dispositive portion of which reads:

"VIEWED IN THE LIGHT OF ALL THE FOREGOING, the court finds the accused Felix Atienza guilty beyond reasonable doubt of the crime of murder as charged. There being no mitigating or aggravating circumstance, considering that the aggravating circumstance of dwelling, the attack (stabbing) having been made in the house of the victim, is compensated by the mitigating circumstance of voluntary surrender, the court hereby sentences the accused Felix Atienza to suffer imprisonment for life; with the accessories of the law; to indemnify the offended party in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the penalty imposed; and to pay the costs of the proceedings."

Prosecution evidence shows that about 8:30 in the evening of April 20, 1972 there was a drinking party in the house of Atty. Jose Parentela, Sr., in Zaballero Subdivision, Lucena City. The host, Atty. Jose Parentela, Sr. and his guests, including the accused, Felix Atienza, and his common-law-wife Eleanor Camacho, Amparo Manansala Llanera, and Julianita Comia were drinking beer and Tanduay Rum in the terrace. When the drinking party was in full swing and the host and his guests were quite drunk, Atty. Parentela, Sr. touched the knees and thigh of Eleanor Camacho, saying: "Pare, why is it that my comadre Eleanor has some blackish spots on her thighs, on her back and stomach?" Felix got angry and said: "Bakit mo, pare, nalaman na may itim sa katawan ang aking asawa, maaring binalatan mo na iyan, kaya mo nalaman!" (Why do you know, pare, that there are blackish spots on the body of my wife. Maybe you have 'skinned' her, that is why you know.)

Thereafter, Parentela, Sr. passed another round of drinks and when the appellant Felix Atienza was offered, he refused. The glass was then passed to Julianita Comia for her to give it to Atienza who, again, refused to drink. Irritated by his reaction, Parentela remarked: "Pati ba naman babae ay hihiyain mo? Huwag kang bastos." At that juncture, both Parentela and Atienza stood up. A heated verbal altercation followed, with Parentela throwing curses and insulting epithets at Atienza who was finally told to "get out." Cooler heads intervened, one holding Parentela who, notwithstanding, was able to hold Atienza by the shoulder, telling him to leave.

As Julianita Comia led Atienza out of the house, he was able to free himself from her and with a knife stabbed her once at the left back portion of her waist. Thereafter, Atienza attacked and stabbed Parentela, Sr. who shouted for help from his driver: "Sinto, tulungan mo ako."

The driver, Jacinto Sotomayor, immediately went inside the house and got a pistol from his master's drawer. Returning to the scene, Sotomayor fired the gun in the direction of the grappling protagonists.

Shortly thereafter, Parentela fell to the ground on his back, with his arm outstretched and his head lifted upward

while Atienza was astride the victim's thighs, his left hand holding the collar of Parentela while his right hand continuously stabbed him. The accused then stood up and ran away, followed by his wife.

The victim was taken immediately to the hospital where he expired.

Post-mortem findings on the deceased, Atty. Jose Parentela, Sr. revealed that he sustained eight (8) stab wounds, two of which were considered fatal. Hemorrhage was the immediate cause of his death.

Evidence further shows that before the night of the fatal stabbing, the victim was having amorous relation with Eleanor Camacho, common-law-wife of the appellant. According to Jacinto Sotomayor, driver of Atty. Parentela, Sr., on five occasions, more or less, he conducted Ely Camacho and his master Parentela, Sr. to Dalahican beach where the two went swimming and even stayed in a cottage thereat. The appellant, a client of Atty. Parentela, Sr., must have suspected that something was going on between the two because he was heard to have told Jacinto Sotomayor, sometime before the stabbing: "Sinto, pag ako'y niloko ng amo mo, ay baka kung saan pulutin ang kaluluwa niya."

Appellant's version was that when they arrived in the house of Atty. Parentela, Sr. late in the afternoon of April 20, 1972, liquor was served to the guests in the terrace. A little later, Amparo Llanera and Julianita Comia, clients of Atty. Parentela, Sr. and Pabling Aseron, a bodyguard of the deceased arrived. While they were drinking the two bottles of Tanduay Rum, Atty. Parentela, Sr. embraced and kissed his client Amparo Llanera who pushed him away and ran inside the house, followed by Atty. Parentela, Sr. At that juncture, appellant said to his wife: "We will excuse ourselves as Atty. Parentela is misbehaving."

After several minutes, Atty. Parentela, Sr. returned, approached Eleanor Camacho, touched and tried to embrace her. Thereupon, Atienza told Parentela not to do it but the latter replied: "Leche ka, busisero ka; babasagin ko ang mukha mo," following which he hit Atienza on the head with the butt of his gun. Atienza, seeing the drunk condition of his lawyer, told his wife: "Let us go, as he is really drunk," and turned his back to go home. At this juncture, Atty. Parentela fired his gun hitting Atienza on his right thigh. He fell to a kneeling position as he turned around and held the hand of Parentela which was holding the gun. They grappled until they reached a place near the fence where appellant was able to take hold of a pair of scissors used in cutting the plants. With it, he stabbed Parentela many times until the latter fell on the ground, dropping his gun. Atienza took the gun and proceeded to the house of the City Mayor where he surrendered the pair of scissors and the gun. He was investigated by the police and executed his affidavit, Exhibit "M". That same night, he was brought by the police to the hospital where his wounds were treated.

Appellant claims in his favor the justifying circumstance of self-defense. Appealing to this Court, Atienza alleged that the trial court erred in finding (1) that the killing was qualified by treachery; (2) that there was an aggravating circumstance of dwelling the alleged attack having been made in the house of the victim; (3) that there was no unlawful aggression on the part of the deceased; (4) that there was no reasonable necessity of the means employed to repel that aggression; and (5) that the accused is guilty of the crime of murder as charged.

Having admitted that he repeatedly stabbed Parentela and, as a consequence, the latter died, it was incumbent upon the appellant in order to avoid criminal liability, to prove the justifying circumstances claimed by him - self-defense - to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after the accused himself had admitted the killing. (*People vs. Ansoyon*, 75 Phil. 772).

The plea of self-defense must be proved by clear and convincing evidence, otherwise conviction would follow from his admission that he stabbed the victim to death. (*People vs. Boholst-Caballero*, 61 SCRA 180).

We find that the trial court committed no error in holding that appellant was responsible for the death of Parentela. The trial court, in its decision regarding the issue of self-defense, dismissed the same because the defense of the accused was incredible:

"x x x there is no evidence to show the existence of the circumstance of unlawful aggression on the part of the deceased, considering that the court discredited the testimony of the accused, it being unreliable and contrary to the ordinary course of human nature and behavior, aside from its being inherently self-serving. On the other hand, it has been satisfactorily established by the prosecution that immediately before the stabbing incident, the deceased emptied his revolver of its bullets in the presence of the accused and others, pocketed the bullets before tucking his revolver to his waist. This being so, the deceased could not have fired at the accused that supposedly made the accused to react by stabbing the deceased with a pair of scissors that he supposedly picked up by accident. True that the accused had a gun shot wound on the back of his right thigh above the knee, but there is evidence to show that this wound could have been caused by the shot that was fired at the accused by Jacinto Sotomayor, driver of the deceased, who, responding to the cry for help of his boss, Atty. Parentela, who shouted 'Sinto, tulungan mo ako,' while he (Parentela) was being stabbed by the accused, Jacinto Sotomayor took the 38 caliber pistol, (Exhibit 'H'), from the drawer of the table of Atty. Parentela at his office and fired at the accused twice. Assuming arguendo that the deceased, according to the accused, struck the accused on the head with his revolver, before the deceased was stabbed to death by the accused, this circumstance would not and cannot be considered as the unlawful aggression that the accused repelled by stabbing the deceased because the accused himself, by his testimony, said that he did not resent or mind his being struck on the head by the deceased. x x x"

On the issue of the reasonable means to repel the aggression claimed by the appellant as existing in his favor, the trial court observed that:

"x x x This circumstance is not present in the case at bar, not only because there is no satisfactory evidence to establish the same, but principally because there is no unlawful aggression to be prevented or repelled. And because there is no unlawful aggression on the part of the deceased, as found by the court, there is nothing to prevent or repel and, therefore, the second requisite of self-defense has no basis. Assuming arguendo that there was unlawful aggression on the part of the deceased, the knife used by the accused in stabbing the deceased is not a reasonable means under the circumstances obtaining in the case at bar. It is true that the deceased had a revolver tucked to his waist. It is equally true that said revolver was emptied of its bullets in the presence of the accused, the wife of the accused Ely Camacho, Julianita Comia, Amparo Llanera Manansala, Pabling Aseron and other companion. This fact is sufficiently established and, therefore, the knife used by the accused in stabbing the deceased is not reasonable as against the empty gun which the deceased tucked to his waist and un-drawn. Therefore, the second element of reasonable means employed to repel an aggression is wanting in the case at bar."

However, we agree with appellant that the trial court erred in finding that the assault was qualified by treachery. Prosecution witnesses testified that during the drinking spree there was a verbal altercation between the victim and the assailant. Thus, the element of a sudden unprovoked attack, indicative of treachery, is lacking and cannot be taken against herein appellant. The attack on the victim was not sudden and unexpected. It was not a premeditated and well planned killing due to the suspicion of the appellant regarding the amorous relation between his common-law-wife and the deceased. The Solicitor General, in the People's brief, aptly observed that the accused "attacked Parentela frontally. Prosecution witness Jacinto Sotomayor testified that Parentela was facing towards the direction of the accused and Julianita Comia as the accused was being led out of the house and stayed in that position until the accused broke away from Julianita Comia and stabbed her. The accused then rushed to Parentela who did not change his position facing the accused. Prosecution witness Dra. Paraluman Q. Rabano who conducted the autopsy on the victim testified that the fatal stab wounds were inflicted while the attacker was facing the victim who was positioned more to the right side of the accused. There is positively no

evidence that the victim was attacked from behind."

Likewise, We agree with appellant that the aggravating circumstance of dwelling should have not been considered against him. While it is true that the incident happened in the house of the victim, what really triggered off the stabbing was his provocative and insulting acts. Article 14, paragraph 3 of the Penal Code, considers dwelling as an aggravating circumstance, if the offended party "has not given provocation." In the case at bar, it was Parentela who gave sufficient provocation before the commission of the crime. Thus, he loses his right to the respect and consideration due him in his own house.

"The aggravating circumstance of dwelling is not taken into account in the instant case since the provocation came from the deceased." (People vs. Cabellon and Gaviola, 51 Phil. 847)

In the absence of the qualifying circumstance of treachery, the crime committed is Homicide, not murder; and in favor of the accused is the mitigating circumstance of voluntary surrender.

WHEREFORE, the decision of the Court of First Instance of Quezon in the above-entitled case is MODIFIED in the sense that the accused-appellant shall be deemed guilty beyond reasonable doubt of the crime of Homicide and, considering the mitigating circumstance of voluntary surrender, hereby sentences him to suffer an indeterminate prison term of EIGHT (8) YEARS AND ONE (1) DAY of prison mayor as minimum, to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of reclusion temporal as maximum; to indemnify the heirs of Jose Parentela, Sr. in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency; and to pay the costs.

Appellant shall be credited with the period of the preventive imprisonment.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Vasquez, JJ., concur.

Makasiar, J., on leave.

Gutierrez, Jr., J., no part.

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