

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIMEON GANUT, DEFENDANT-APPELLANT.

G.R. No. L-34517. November 02, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the judgment rendered by the Court of First Instance of Ilocos Norte, Branch I, convicting the accused Simeon Ganut for the crime of murder and sentencing him to suffer the penalty of reclusion perpetua with the accessories of the law, to indemnify the heirs of the deceased Salvador Malaqui in the amount of P12,000.00 without subsidiary penalty under the following Information which reads thus:

"The undersigned Assistant Provincial Fiscal of Ilocos Norte accuses Simeon Ganut of the crime of MURDER, committed as follows:

That on or about the 17th day of October, 1970, in the municipality of Sarrat, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with intent to kill, and with treachery, evident cruelty, and/or outraging or scoffing at the person or corpse, did then and there will-fully, unlawfully and feloniously attack, assault and hack one Salvador Malaqui, inflicting upon him 25 wounds that caused his death.

CONTRARY TO LAW.

Laoag City, April 20, 1971.

s/t L. D. CARPIO

Asst. Provincial Fiscal"

The version of the prosecution with respect to the events leading to the death of the victim is succinctly recited in the appellee's Brief, as follows:

"On October 17, 1970, at about 8:00 o'clock in the evening, the deceased Salvador Malaqui, his brother, Nelson, together with Antonio Vista, went to the house of Pablo Lagutan where hectic pre-parations were taking place for a wedding to be celebrated the following day (t.s.n., p. 5, June 8, 1971; also t.s.n., p. 10, June 27, 1971). Salvador Malaqui went inside the kitchen and seated himself on the western side of the table while Nelson Malaqui and Antonio Vista remained outside the doorway of said kitchen (t.s.n., p. 8, *ibid.*). Inside the kitchen at that time was the appellant herein, Simeon Ganut, together with Florentino Lagutan and Marciano Lagutan who were then chopping meat (t.s.n., p. 12, July 27, 1971). When the deceased Salvador Malaqui had seated him-self, he asked Marciano Lagutan to make some "Kilawen" which Marciano Lagutan answered, 'You ask the Chief,' referring to appellant Simeon Ganut. Without much ado, appellant Simeon Ganut stood up and hacked with his bolo Salvador Malaqui at the back of the left side of the body (t.s.n., p. 11, June 8, 1971) which he followed with a second blow that hit his (Ganut's) leg (*ibid.*). After the second blow, appellant said 'Come now and let us kill him' (t.s.n., p. 12, *ibid.*). Immediately thereafter, the coleman lamp supplying the light in the kitchen was put out (t.s.n., p. 12, *ibid.*). Antonio Vista and Nelson Malaqui hastily went down the kitchen, the former going to the house of the relative of those who were to be married while the latter went to

their house to inform his mother about the incident (t.s.n., p. 14, *ibid*; also t.s.n., p. 15, July 27, 1971).

Dr. Jovencio Castro who autopsied the cadaver of the deceased testified that the latter suffered 25 wounds, eight (8) of which were inflicted at the front while seventeen (17) wounds were inflicted at the back. The same doctor further declared that the cause of death was hemo-thorax, severe secondary to chopping injury lateral thoracic walls, left, inci-sing the left auricle (t.s.n., pp. 53-54, *ibid*)."

Specifically, the post-mortem report[1] showed the following findings:

" Post Mortem Findings

1. Chopping injury 3" long, occiput, fracturing skull.
2. Chopping injury 2.5" long incising the sternocleidomaatoid muscle.
3. Incised wound 2" long one inch below lesion No. 2.
4. Incised wound 1.5" long, scapular region, left.
5. Chopping injury 4" long incising scapular muscle, right.
6. Lacerated wound 2" long scapular region, right.
7. Lacerated wound, one inch long scapular region, right.
8. Abrasion 4" long, back right, level of the 8th rib.
9. Chopping injury 6" long lateral thoracic wall fracturing the 4th, 5th, 6th and 7th rib, left and incising the left auricle.
10. Chopping injury 6" long anterior thoracic wall level of the left lumbar region.
11. Chopping injury 4.5" long, pos-terior thoracic wall, left lumbar region.
12. Chopping injury 3" long along the posterior axillary fold, left.
13. Incised wound 1.5" long left scapular region.
14. Chopping injury 3" long posterior aspect, upper third, forearm left.
15. Chopping injury 4" long lateral aspect, thigh, left.
16. Chopping injury 3" long lateral aspect, thigh, right.
17. Incised wound anterior aspect, left.
18. Lacerated wound 1.5" long, foot, left.
19. Abrasion 1.5" long, lower third posterior aspect, hand, right.
20. Abrasion 0.5" long, middle third, posterior aspect, arm, right.
21. Abrasion upper third, posterior aspect forearm, right.
22. Abrasion 2" long lower third, lateral aspect, arm, right.
23. Abrasion 3" long, lateral aspect, arm, right.
24. Abrasion 0.5" long, posterior aspect, forearm, right.

25. Multiple abrasion at three points base of the right thumb.

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Cause of Death :

Hemothorax, severe secondary to chopping injury lateral thoracic wall, left, incising the left auricle."

The accused-appellant interposed the justifying circumstance of self-defense and adduced the following version of the incident narrated in his Brief, as follows:

"On the night of October 17, 1970, Santiago Lagutan requested Simeon Ganut (accused), Salvador Malasiqui (deceased), Marciano Lagutan, and Cardito Miguel to butcher a pig for the wedding of his (Santiago Lagutan) son which was to take place the next day, October 18, 1970 (Pp. 2, 29, 35 and 47, t.s.n. Rillera). The four were inside the kitchen of Pablo Lagutan cutting meat. Deceased Malaqui was cutting meat with bones with a short bolo (badang) on a low table (dulang); Cardito Miguel was building fire on the stove in the northern part of the kitchen (P. 2, t.s.n. Rillera); Accused Ganut was cutting meat on a high table; while Marciano Lagutan was washing the intestines of the pig on the low table where the deceased was (P. 34, t.s.n. Rillera). Deceased Malaqui asked Marciano Lagutan to make raw meat (kilawen) but Marciano told the deceased to ask the chief referring to the accused (P. 35, t.s.n. Rillera). At this point, the deceased Malaqui stood up and angrily said: 'Who is the chief, I am the Chief,' and simultaneously thereof hacked Marciano Lagutan on the right forearm. Marciano Lagutan sought cover behind Simeon Ganut who was behind him but the deceased followed him (Lagutan) with his bolo (Pp. 36-37, t.s.n. Rillera). When the deceased followed Marciano Lagutan the accused tried to pacify him by extending his two arms towards the deceased saying: 'What are you doing my son,' but instead the deceased sat down and simultaneously hacked accused Ganut on the left knee (P. 53, t.s.n. Rillera). Deceased then began hacking the accused but the accused was able to parry the blows by striking the deceased first whenever the deceased rushed at him to hack him (Ganut) since he could not stand up because after being hacked by the deceased on the left leg the accused fell on his knees and could not stand up (P. 53, t.s.n. Rillera). The accused and the deceased exchanged blows for one and a half minute and when the deceased continued rushing and hacking the accused, the accused hacked the deceased twice on the breast from right to left and left to right and the deceased stepped backward three meters from the accused (P. 54, t.s.n. Rillera). At that instant the accused went out of the kitchen towards the door of the bataan but the accused followed him with his bolo. Upon getting out of the kitchen the deceased again aimed at the accused but as the deceased hack him (Ganut), the deceased fell and when the deceased was in the act of falling the accused hacked him at the back of the head thinking that he was again being hacked by the deceased (Pp. 54-55, t.s.n. Rillera). At that time the accused was no longer conscious and did not know what he was doing (ibid.). Santiago Lagutan was the person who answered the cry for help of Ganut and assisted Ganut from the main stairs of the house of Pablo Lagutan and there Ganut told Santiago Lagutan that he was hacked by the deceased and that he hacked the deceased in self-defense. (P. 26, t.s.n. Rillera)."

The Court a quo refused to give credence to the plea of self-defense, holding that "(a)ccused Ganut claims that all the time that he inflicted the injuries on Salvador Malaqui at the breast and stomach, he was in a kneeling position. However, the number of the frontal wounds, eight of them, wounds 9, 10, 17, 18, 22, 23, 24 and 25 especially wound No. 9 which is a 'chopping injury 6" long lateral thoracic wall fracturing the 4th, 5th, 6th and 7th rib, left and incising the left auricle' (Exh. A) could not have been inflicted in a kneeling position. The Court is cognizant that a man in a kneeling position cannot give much force to his attacks and movements or effectively defend himself in such an incongruous position. It is so that the Court believes this claim is highly improbable, and indeed, it is utterly inconceivable that accused Ganut would be unscathed if this claim is true that there was an exchange of hacking between him and the deceased Malaqui; and, more likely than not, Malaqui was without any weapon with which to defend himself as shown by the twenty-five (25) wounds he sustained without having inflicted any. There is, likewise, an admission by accused Ganut that after his infliction of the wounds on the

stomach and breast, Salvador seemingly frightened retreated some three (3) meters away. It was then that Ganut claimed he stood up and tried to go to the door to go down but Salvador followed him still with his bolo so Ganut hacked him at the neck which was the coup de grace. At the time of this ultimate hacking by Ganut, Salvador, with the twenty-four (24) wounds, was already helpless, and indeed, could have not held onto his bolo, even if he had any, and considering the one fatal wound, No. 9, a 'chopping injury 6" long lateral thoracic wall fracturing the 4th, 5th, 6th and 7th rib, left and incising the left auricle' (Exh. A), it is sheer gul-libility if one would yet believe that Malaqui still could have stood up, much less walk.

The accused Ganut did not explain, moreover, how deceased Malaqui sustained the wounds at the back, seventeen (17) in all, wounds 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 19, 20 and 21. Antonio Vista, however, testified that accused Ganut hacked Salvador at the back of the left side of the body while the latter was seated at which he fell to the floor. The medical certificate, Exh. A, indeed shows wounds 4 and 13, Exh. B-2, on the left side of the body of Salvador and obviously the other injuries, wounds Nos. 1, 2, 3, 5, 6, 7, 8, 11, 12, 14, 15, 16, 19, 20 and 21 being at the back had been inflicted also at this time; thus, the deceased Malaqui at the onset of the sudden attack by accused Ganut had no inkling of the aggression because in the first place he was talking to Ciano Lagutan, and secondly, the attacks were from his back, and conceivably all the wounds at the back were inflicted after Malaqui fell to the floor at the initial aggression of accused Ganut: thus, the Court is convinced that there was treachery in the commission of the crime qualifying the killing to murder. As to the other aggravating circumstances, the evidence is insufficient to justify an affirmative finding."

Accused-appellant, appealing to Us, now seeks re-versal of the lower court's decision, interposing the plea of self-defense.

We sustain the findings of the trial court that the plea of self-defense claimed by the accused-appellant cannot be believed. For one thing, the number of wounds sustained by the deceased, twenty five (25) in all, eight (8) wounds inflicted in front and seventeen (17) at the back, strongly belie the assertion of self-defense. The nature and number of wounds inflicted by an assailant has been constantly and unremittingly considered an important indicia which disprove a plea of self-defense. In *People vs. Panganiban*,^[2] this Court exhaustively underscored Our previous rulings exemplifying the bearings of multiple wounds vis- a- vis the plea of self-defense, to wit: "In the Gonzales case, the then Justice Torres considering the ten (10) wounds inflicted on the deceased correctly characterizes the allegation of self-defense as 'incredible because it is improbable.' In *People vs. Constantino*, this Court, thru Justice Bengzon, had to reject the plea of self-defense which in his opinion was 'belied and negated' by the 'nature, number and location of the decedent's wounds.' *People vs. Somera*, speaks to the same effect thus: 'The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix. Upon the other hand, such wounds are indicative of aggression and of the participation therein of appellant x x x.' In another opinion of this Court in *People vs. Mendoza*, it was persuasively stressed: 'Finally, the number of wounds on the body of the deceased, and their location as registered in the autopsy report, expose the inherent weakness of the claim of self-defense. There were in all fifteen wounds, one in the neck, two in the abdomen, seven in the chest and the others in the various parts of the arms.'"

Appellant Simeon Ganut, testifying as to the manner how he inflicted the twenty-five wounds on the victim Salvador Malaqui, declared as follows:

"Atty. Flores:

Q. And how did you hack Salvador Malaqui?

A. Whenever he rushed towards me, sir, I could reach him and hack also like this. (Witness with his right hand on top of his left shoulder swung it forward).

Q. Is that the only position you have in hacking Malaqui?

A. Yes, sir.

COURT:

Q. You mean to say you were never able to stand up?

A. No, Your Honor."^[3]

On cross-examination by the fiscal, Simeon Ganut reiterated his stance:^[4]

"FISCAL:

Q. You stated previously that when you were hacked already, you were in a sitting position, kneeling with your right leg and then the left leg stretched forward and all the time you were in that position when you said that the deceased Malaqui was hacking you for several times, did I get you right?

A. I was in a sitting position, sir.

Q. The question is: when you started hacking this Malaqui, you were always in a kneeling position?

A. Yes, sir.

Q. And you were in that position all the time when you were parrying?

COURT:

He said that."

Accused-appellant having admitted that he was the author of the death of the deceased, it is incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance 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.^[5]

The foremost requirement of self-defense in order to be appreciated is unlawful aggression which is a sudden, unprovoked attack. The person attacked must face a real threat to his life, safety or rights and the peril must be imminent or actual. If no unlawful aggression attributable to the victim is established, there can be no self-defense, either complete or incomplete.

The version of the defense, as previously related earlier, stresses the point that after the accused allegedly tried to pacify the deceased, saying "What are you doing my son?" that was the time when he (the deceased) took his seat and then hacked the accused. (tsn, p. 61, Sept. 9, 1971). Such version is difficult to believe in the light of human behavior and experience for a person who intends to commit unlawful aggression would not take his seat first and thereafter inflict injury at the foot or leg of his adversary. If it was the intention of the deceased to attack the accused, the former would not have taken a lower position by sitting down. He would have attacked a vulnerable portion of the body of his adversary as his immediate target instead of hitting just the leg of the accused.

We cannot accept the claim of the appellant that his injury on the leg was inflicted by the deceased Salvador Malaqui. According to the accused, he was in a sitting position when he was wounded on the left leg (tsn, p. 50, Sept. 9, 1971). However, the scar of the incised wound allegedly inflicted by the deceased is an elongated one, five inches in length, located on the left leg, upper third, anterior aspect (tsn, p. 20, *ibid.*), hence, the wound would not have been inflicted in such a position considering that the accused himself testified that the bolo thrust came from downward. The testimony of Dr. Federico Campos on this point is deserving of greater probity when he

declared that from the position and nature of the wound, it is possible that the accused holding a bolo with his right hand may have inflicted the wound on the left leg. (tsn, p. 20, *ibid.*) The testimony of the doctor confirms the claim of the witnesses Antonio Vista and Nelson Malaqui that in hacking the deceased the second time, the appellant hit his left leg instead (tsn, p. 12, June 8, 1971; p. 14, July 27, 1971).

Again, the findings of the lower court as to the infliction of the wound on the left leg of the accused himself must be respected and affirmed considering that said court had the opportunity to observe the behavior and deportment of the witnesses. It is well-settled that when there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from.[6]

With respect to the attendance of the qualifying circumstance of treachery which the trial court appreciated in convicting the accused of the crime of murder, We do not agree with the lower court's holding that: "The medical certificate, x x x indeed shows wounds 4 and 13 x x x on the left side of the body of Salvador x x x thus, the deceased Malaqui at the onset of the sudden attack by accused Ganut had no inkling of the aggression because in the first place he was talking to Ciano Lagutan, and secondly, the attacks were from his back and conceivably all the wounds at the back were inflicted after Malaqui fell to the floor at the initial aggression of accused Ganut; thus, the Court is convinced that there was treachery in the commission of the crime qualifying the killing to murder." [7]

In order that treachery may be appreciated, it must be established beyond reasonable doubt. The attendance of treachery as a qualifying circumstance is founded upon the concurrence of two (2) conditions, to wit: (1) the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; [8] and (2) that such means, method or manner of execution was deliberately or consciously chosen. [9] There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make. (Article 14, No. 16, Revised Penal Code).

In the case at bar, although the attack was sudden and unexpected, evidence do not disclose that accused-appellant did plan or made a preparation to hurt the victim in such a manner as to insure the commission of the crime to make it impossible or hard for the victim to defend himself or retaliate. "Mere suddenness of an attack is not enough to constitute the qualifying circumstance of treachery where it does not appear that the accused had consciously chosen the method of attack directly and specially to facilitate the perpetration of homicide without risk to himself arising from the defense that the victim might offer. As indicated in *People vs. Tumaob* (83 Phil. 738, 742) the qualifying circumstance of treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. [10]

We find no evidence or circumstance shown by the prosecution that the accused Ganut knew, much less expected, the coming of the deceased Salvador Malaqui to the kitchen where the preparations for the coming wedding were being made. In fact the evidence of the prosecution show that it was immediately after Salvador Malaqui had requested that "kilawen" be made that infuriated the accused Simeon Ganut to strike the deceased with his bolo. Accused-appellant, therefore, was not afforded sufficient opportunity to deliberate and consciously adopt a method of attack which would directly and specially facilitate the killing of his victim without risk to himself or make it impossible or hard for the victim to defend himself or retaliate.

As to the aggravating circumstances of evident cruelty and outraging or scoffing at the person or corpse, We agree with the trial court that the evidence is insufficient to justify an affirmative finding.

We rule that the proper crime committed by the accused is homicide, punishable by reclusion temporal under Article 249 of the Revised Penal Code, the same to be imposed in its medium period. Applying the Indeterminate Sentence Law, the accused-appellant should be sentenced to suffer an indeterminate penalty of from ten (10) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

WHEREFORE, the decision appealed from is hereby modified in that the accused-appellant Simeon Ganut is hereby found guilty of homicide and sentenced to suffer an indeterminate penalty of from ten (10) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. The rest of the appealed decision is hereby affirmed.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Exhibit A for the prosecution, folder of exhibits.

[2] 22 SCRA 817.

[3] TSN, p. 53, September 9, 1971.

[4] Ibid., p. 62.

[5] People vs. Atienza, G.R. No. L-39777, August 31, 1982; People vs. Hisugan, G.R. No. L-38687, August 31, 1982; both cases citing People vs. Ansoyon, 75 Phil. 772.

[6] People vs. Morcina, 77 SCRA 238 citing People vs. Tial-on, 112 Phil. 546.

[7] Records, p. 90.

[8] People vs. Casalme, 17 SCRA 717; People vs. Ramos, 20 SCRA 1109; People vs. Penzon, 44 Phil. 234.

[9] People vs. Dadis, 18 SCRA 699; People vs. Clemente, 21 SCRA 261.

[10] People vs. Gadiano, G.R. No. L-31818, July 30, 1982, citing People vs. Cabiling, 74 SCRA 285, 302-303, and also People vs. Latorre, 74 SCRA 106.

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