

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO LINGATONG, DEFENDANT-APPELLANT.

G.R. No. L-34019. January 29, 1990

Ponente: PARAS, J.

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PARAS, J.:

An information dated May 11, 1970 was filed against accused Reynaldo Lingatong with the then Court of First Instance (now Regional Trial Court) of Surigao del Norte for the crime of murder, committed as follows:

"That on or about the 6th day of March 1970, in the Municipality of Tubod, Province of Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, the said accused Reynaldo Lingatong with intent to kill, taking advantage of the preoccupation of Eugenio Jamero, who was defending himself from the assault of accused's brother Pedro Lingatong, sidled behind Eugenio Jamero and did, then and there willfully, feloniously and unlawfully, stab said Eugenio Jamero hitting and inflicting a penetrating stab wound in the abdomen; and immediately fled from the scene of the crime, which injury caused the death of Eugenio Jamero thereafter.

Contrary to Article 248 with the qualifying circumstance of treachery." (p. 7, Rollo)

The accused pleaded not guilty to the crime charged, and after due trial, the lower court found him guilty beyond reasonable doubt, in a Decision[*] dated May 24, 1971, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, this Court hereby finds the accused, REYNALDO LINGATONG, GUILTY beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, and imposes upon the said accused the penalty of Reclusion Perpetua, together with all the accessories prescribed by law.

The said accused is hereby ordered to indemnify the heirs of the deceased Eugenio Jamero in the amount of Twelve Thousand Pesos (P12,000.00), without subsidiary imprisonment, however, in case of insolvency, and to pay the costs.

The sharp-edge bolo (Exhibit "C") is hereby ordered forfeited in favor of the government.

IT IS SO ORDERED." (p. 13, Decision; p. 21, Rollo)

From the above judgment, Reynaldo Lingatong appealed to the Court of Appeals. The case, however, was forwarded to this Honorable Court because of the nature of the penalty imposed.

The facts, as summarized by the Solicitor General, are as follows:

"In the evening of March 6, 1970, there was a PTA dance held at the school building of Capaya-an, Lubod, Surigao del Norte (pp. 25, 44 & 72, t.s.n., Vol. I). The deceased Eugenio Jamero was acting as M.C. or announcer (p. 26, t.s.n., *ibid.*). At about 11:00 o'clock, when refreshments were being served, Eugenio Jamero went outside to the veranda bringing with him a cup of coffee (p. 27, t.s.n., *ibid.*). He went near Dominador Bisande, and they shared the cup of coffee. While they were sipping coffee from the same cup being held by

Jamero, Pedro Lingatong came out from the dance hall challenging everybody to a fight. He was walking in a zigzag manner, and he bumped Eugenio Jamero who admonished him that if he had some quarrel with anybody, he should do it outside and not in the dance hall. Angered by the remark of Jamero, Pedro Lingatong forthwith picked up a bottle of Kulafu wine from a wine stand nearby and with it, he hit Eugenio Jamero on the right eyebrow (pp. 28-29, t.s.n., *ibid*). In retaliation, Jamero threw the cup that he was holding at Pedro Lingatong, who in turn was hit on the right eyebrow. Then the two started grappling with each other. All of a sudden, the appellant Reynaldo Lingatong came from behind Jamero, drew his bolo, and thrust it on the side of Eugenio Jamero (p. 30, t.s.n., *ibid*). The bolo was described to be eight inches in length and two fingers in width (Exhibit C, p. 31, t.s.n., *ibid*); and the stabbing was sudden (p. 33, t.s.n., *ibid*). Immediately after the appellant had stabbed Eugenio Jamero, he walked away (pp. 34-35, t.s.n., *ibid*).

Pedro Lingatong and Eugenio Jamero continued grappling with each other, but when the latter felt the pain of his wound, he cried for help (p. 36, t.s.n., *ibid*). In response, Nemesio Jamero a policeman of Tubod, repaired to the scene and took a statement of the victim which was presented as a dying declaration, Exhibit D (pp. 37, 40-41, t.s.n., *ibid*). In said Exhibit D, which was smeared with blood, Exhibits D-1 & D-2 (p. 24, rec.), Eugenio Jamero named Naldo Lingatong (the appellant) as his assailant (p. 77, t.s.n., *ibid*). Nemesio Jamero, the policeman who took the statement, tried to ask the victim other questions, but the latter could not answer him anymore (pp. 80-81, t.s.n., *ibid*).

Eugenio Jamero was then carried to the gate of the schoolhouse where they waited for a jeep wherein they brought him to the municipal building for treatment, but he died on the way (pp. 41-42, t.s.n., *ibid*).

The postmortem examination of the victim dated March 7, 1970, Exhibit A, states the following findings:

External Examination:

"Contusion with abrasion supra and orbital region right;

Internal Examination:

"Stab wound 1 1/2 inches in width penetrating the peritoneum into the abdominal cavity directed upward and inward hitting the anterior surface of the right lobe of the liver."

"Cause of Death:

"Shock secondary to blood loss." (p. 25, rec.).

According to Dr. Vicente del Carmen, Rural Health Physician of Tubod, Surigao del Norte, who examined the body of the victim, the stab wound was caused by a sharp-pointed (p. 17, t.s.n., Vol. I), single-bladed weapon, and the wound was inflicted diagonally with the sharp edge going downward (p. 19, t.s.n., *ibid*). The assailant could either have been at the back or in front of the victim (p. 20, t.s.n., *ibid*). (pp. 3-5, Brief for the Appellee; p. 57, Rollo)

Appellant now assigns the following assignments of error.

He alleges that the lower court erred:

1. In holding that the appellant, Reynaldo Lingatong, did not act in defense of a relative in stabbing the deceased but upon a fanciful and irrational exercise of the principle of defending a relative;
2. In holding that the crime committed is murder and not homicide;
3. In holding that the penalty imposable is reclusion perpetua even with the mitigating circumstance of voluntary surrender, and no aggravating circumstance to offset it. (pp. 1-2, Brief for the Appellant; p. 41, Rollo)

Anent the first assigned error, appellant seeks to establish his plea of defense of relative through the testimonies of his brother Pedro Lingatong and Patrocinio Tadulan, a cousin-in-law.

Patrocinio Tadulan testified that the victim was bigger than Pedro Lingatong. That contention is however in direct conflict with the testimony of Pat. Nemesio Jamero, a disinterested witness, who testified that "Pedro Lingatong is big and tall while Jamero is short and has a partly paralyzed hand." (p. 56, t.s.n., Vol. 1)

As for Pedro Lingatong, he was found deliberately lying when, on cross-examination, he testified as follows:

" Fiscal Losada: (propounding questions)

"Q:

You just stepped out from the dance hall when you were confronted by Eugenio Jamero?

"A.

Yes, sir.

"Q:

In other words you were walking or standing still?

"A.

I was standing, sir.

"Q:

And without any provocation on your part he just shouted at you?

"A.

Yes, sir.

"Q:

And after throwing a cup at you and after boxing him you started grappling with each other?

"A.

I look and bended down". (pp. 196-197, t.s.n., Vol. III).

"Q:

And you were in this situation without nobody breaking you?.

"A.

Nobody, sir.

"Q:

Not even a policeman?

"A.

There was no policeman, sir, because I have not seen him.

"Q:

Do you know Patrolman Nemesio Jamero of Tubod?

"A.

Yes, sir.

"Q:

You did not see him that night while you were grappling each other?

"A.

No, sir.

"Q:

You did not even see him after you were separated from each other?

"A.

No, sir.

"Q:

You were investigated in connection with this case?

"A.

Yes, sir.

"Q:

In fact you executed an affidavit on March 9, 1970?

"A.

Yes, sir." (pp. 198-199, t.s.n., *ibid*).

"Q:

Now, calling your attention to question No. 4 which reads: 'At the time, was there unusual happening you have witness', and you answered, which answer is indicated in No. 5, which reads: 'There was, sir, and it was this that will follow: That while I was sitting on the table at the porch of the school-building where the affair was held to buy cigarettes as there were cigarettes for sale on said table, at a sudden I was thrown with a cup by Eugenio Jamero and I was hit on my forehead at the left side. I immediately held him and while struggling against each other, Patrolman Nemesio Jamero got near and stopped us by holding our hands and we were pacified. I was then brought by Constantino Jamero to our house.'

"Q:

Was this question asked of you and was that particular answer given by you?

"A:

Yes, sir." (pp. 202-204, t.s.n., Vol. III)

(pp. 7-8, Brief for the Plaintiff-Appellee)

Prosecution witnesses Dominador Bisande and Eustacio Vertodazo, on the other hand, testified that it was Pedro Lingatong, and not the victim, who was the unlawful aggressor by his act of clubbing Eugenio Jamero with a kulafu bottle on the right eyebrow, and their testimonies in this regard is borne out by the post-mortem examination findings that the victim suffered a "contusion with abrasion on the right orbital region." (pp. 8-9, Brief for the Appellee, p. 57, Rollo)

There was no reasonable necessity for the means employed by the appellant in defending his brother Pedro Lingatong. Record does not show that while Pedro and Eugenio were still grappling with each other, that the latter was armed. As a matter of fact, there was no necessity of defending Pedro at all since the life of Pedro Lingatong was not in danger.

Appellant cites as his second assigned error, the finding of the lower court that the crime committed is murder and not homicide. Suffice it to state in this regard that the qualifying circumstance of treachery is present in the case at bar, for the appellant stabbed the victim while the latter was grappling with another, thus rendering him practically helpless and unable to put up any defense.

Lastly, the appellant assails the lower court for holding that the penalty is reclusion perpetua even with the mitigating circumstance of voluntary surrender, and no aggravating circumstance to offset it.

The lower court erred in holding that voluntary surrender was present. Aside from the self-serving testimony of the appellant and his brother Pedro that they "surrendered" (pp. 208 & 216, t.s.n., Vol. III), no competent evidence exists to show that the appellant surrendered to the authorities. On the contrary, as per appellant's own admission in his sworn statement, Exhs. I & I-1, he was "arrested by the agent of the law because he thrust Eugenio Jamero with a small sharp pointed bolo" (pp. 17 & 18, rec.), and in his testimony in open court, he admitted that he was fetched from his house by Sgt. Clarito Navarro and Pat. Nemesio Jamero (p. 216, t.s.n., *ibid*). In order that voluntary surrender may be appreciated, "it is necessary that the same be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his

guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture" (People vs. Sakam, 61 Phil., 27, 34; and People vs. Namoc, L-11827, November 23, 1959). There being neither aggravating nor mitigating circumstance attending the crime, the penalty should, therefore be in its medium period, that is, reclusion perpetua.

PREMISES CONSIDERED, the decision of the trial court dated May 24, 1971 is hereby **AFFIRMED** in all respects, with costs against the appellant with the modification that the indemnity in favor of the heirs of the deceased Eugenio Jamero be increased to P30,000.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Constante L. de Peralta

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