

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PATROCINIO DOFILEZ, ACCUSED-APPELLANT.

G.R. No. L-35103. July 25, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of the decision rendered by the defunct Court of First Instance of Davao Oriental in Criminal Case No. 214 which imposed the death penalty on PATROCINIO DOFILEZ.

In the court a quo an information for double murder was filed against Dofilez worded as follows:

"That on or about July 12, 1969, in the Municipality of San Isidro, Province of Davao Oriental, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a firearm, with treachery and evident premeditation, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shot with said weapon Cecilio Gonzales and Mamerta Gonzales Y Aneslag, thereby inflicting upon them mortal gunshot wounds which caused their instant death." (Expediente, p. 21.)

The accused pleaded "not guilty" when he was arraigned on May 19, 1970, and after trial he was sentenced "with the maximum penalty of DEATH and to indemnify the heirs of the victims Cecilio Gonzales and Mamerta Gonzales the amount of TWENTY FOUR THOUSAND (P24,000.00) PESOS and to pay the costs." (Id., p. 91.)

The People's version of the facts is as follows:

"The deceased spouses Cecilio Gonzales and Mamerta Gonzales were caretakers of the property belonging to Felixberto Catada situated in barrio Bagsac, San Isidro, Davao Oriental. (tsn., p. 32, Jan. 5, 1971).

At about two o'clock in the afternoon of July 12, 1969, as their 15 year-old daughter, Evangeline, was taking a bath in an artesian well inside the premises of said property, in company with Felisa Matabalan, a teacher, who was washing clothes thereat, the accused Patrocinio Dofilez and his wife Anita arrived at the place. (tsn., pp. 8-11, Jan. 5, 1971).

Patrocinio carried a carbine which he placed against the wire fence as he washed his feet. (tsn., pp. 1-13, id.). While he was washing his feet, the deceased Cecilio Gonzales arrived and inquired from his daughter Evangeline if she knew where her elder brother was. (tsn., pp. 12-13, id.): Upon seeing Cecilio, the accused told him in a loud voice: 'You tell your wife not to utter obscene words.' (tsn., p. 13, id.). Overhearing the remark, Mamerta Gonzales, who was nearby making charcoal, replied: 'What is that? I am here, you are in hell.' (Tsn., pp. 14-15, id.).

Suddenly, Patrocinio aimed his gun at Cecilio and fired, hitting the latter in the chest (tsn., pp. 15, 17-18, id.). Cecilio drew out his bolo and tried to go after the accused who ran away followed by his wife Anita (tsn., p. 18, id.).

Brandishing his bolo in all directions, Cecilio accidentally hit both Anita and his wife Mamerta with it, and then fell to the ground (tsn., pp. 18-19, id.). Mamerta then ran to the side of her husband, and, upon seeing him

gasping for breath, embraced him and began to cry (tsn., p. 20, id.). Whereupon, the accused returned and fired several shots at Mamerta, and, re-marking "Will you do it again?" continued firing at her until she was dead (tsn, pp. 20-21, id.). Evangeline then approached the accused and begged him to stop. But the accused pointed his gun at her; Evangeline ran away out of fear (tsn, p. 21, id.). Thereafter, the accused surrendered himself to the authorities before whom he admitted having killed the Gonzales couple with his carbine (tsn, p. 64, id.; Exh. L, p. 3, Rec.).

Dr. Lily Abad, Municipal Health Officer of San Isidro, performed an autopsy examination on the bodies of the victims and found seven gunshot wounds and one lacerated wound on Mamerta Gonzales and two gunshot wounds on the body of Cecilio Gonzales, one in his right chest and the other in his right foot (tsn, p. 81, id.). " (Appellee's Brief, pp. 2-4.)

The appellant admitted that he killed the Gonzales spouses but he "professes self-defense, to save himself and the life of his wife from the unlawful aggression of the deceased couple." (Appellant's Brief, p. 2.)

The appellant claims that the trial court committed several errors which may be categorized as follows: (1) in denying a motion for reconsideration or new trial; (2) in appreciating the evidence; and (3) in finding the accused guilty instead of acquitting him for justified self-defense.

The decision of the trial court was promulgated on September 17, 1971. In a Motion dated October 1, 1971, counsel for the accused asked the court "to exercise its judicial discretion in granting a new trial, or allowing the accused the recall or presentation of witnesses in support of the instant motion before the same be finally resolved." (Expediente, p. 97.)

The accused asked for a new trial because of (a) "serious doubts on the credibility of the prosecution witnesses" and (b) "errors of law have been committed." (Id., p. 92.)

The trial court heard the Motion on October 15, 1971, and denied it in an Order dated October 16, 1971. The court denied the Motion for the following reasons: (1) it was not accompanied by an affidavit of merit; (2) the movant failed to cite any errors of law or irregularities during the trial; and (3) it was not shown that newly discovered evidence could be introduced. (Id., pp. 104-105.)

The accused, again thru his counsel, filed on October 18, 1971, a Supplemental Motion with the same prayer. The court set it for hearing on November 18, 1971, but on that day counsel for the accused failed to appear. The court denied the Supplemental Motion.

For the reasons stated by the trial court, it committed no reversible error in denying the two motions of the accused.

Every system of law recognizes self-defense as a justifying circumstance. But for self-defense to be validly invoked the following must concur: 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. And it is well-settled that:

"Once the defendant in a criminal case has admitted that he killed a human being, the burden is on him to establish the presence of any circumstance which may relieve him from responsibility or mitigate the offense committed. To prove justification, the defendant must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing.

"Self-defense is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it." (J Aquino, The Revised Penal Code, pp. 120-121 [1976].)

There were only three witnesses for the defense: the appellant himself, his wife, and Dr. Augusto Resurreccion.

Dr. Resurreccion was called to testify on the wounds of Anita Dofilez who was brought to the Mati Baptist Hospital on July 12, 1969. By his own admission it was not he but Dr. Austriberta Jacob who treated Anita; he was merely the supervising physician. The documents issued by the hospital which were identified by Dr. Resurreccion show that Anita sustained five hacking wounds: three on the head and two on the arms. There is no dispute on the appellant's claim that his wife sustained wounds on the day he shot and killed the Gonzales spouses.

The appellant's version of the incident which contains some arguments is as follows:

"The accused-appellant Patrocinio Dofilez is the fishpond overseer of one Antonio Estioco whose fishpond is located at Owason, San Isidro, Davao Oriental. Bagsak, the place where the incident took place, is another barrio of San Isidro, Davao Oriental, where residents of Owason used to pass through in going to Lupon, Davao Oriental. Although, there is no evidence that the artesian well at Bagsak where the shooting took place was not usually passed by the residents of Owason in going to Lupon, yet the trial court made its own unfounded presumption that 'one must go there purposely and with some intention.' (Decision, p. 15). The unfounded presumption, unfortunately, was against the accused.

"In the afternoon of July 12, 1969, accused-appellant and his wife, Anita Bitoon, were on their way to Lupon from Owason where they reside. There being no responsible person at Owason to be left with the carbine entrusted to accused-appellant in his capacity as fishpond overseer, he took along with them as was customary said firearm. Arriving at the artesian well at Bagsak where they had used to pass, and which happened to be near the house of the deceased couple, accused-appellant put down his carbine and started to wash his feet. These acts of the accused-appellant upon arrival of putting down his gun and of washing his feet were both testified to by prosecution witnesses Evangeline Gonzales and Felisa Ma-tabalan, and established as facts by the trial court, (Decision, pp. 5 & 9). How the incident, shooting, or fight started has become the controversy and issue of the case. The prosecution through its witnesses tried to show that the accused-appellant went to Bag-sak purposely to kill the deceased couple, while the accused-appellant on the other hand professes self-defense, to save himself and the life of his wife from the unlawful aggression of the deceased couple. At any rate, when the incident finally ended, the facts show that Cecilio Gonzales was found dead with a gunshot wound on his right chest, at his right heel, and another on his right foot, lateral aspect; Mamerta Gonzales, dead with several gunshot wounds on her right shoulder and arm, with one lacerated wound on the right side of her back (p. 85, t. s. n. - Mosqueda); Anita Bitoon Dofilez, found unconscious with wounds on her forearm, head, hands, and shoulder (p. 234, t.s.n. - Mosqueda); while accused-appellant surrendered to the authorities his carbine still containing one live bullet (Testimony Sgt. Catalino Ramos)." (Appellant's Brief, pp. 1-3.)

It is manifest from the foregoing that whether or not the appellant acted in self-defense when he shot and killed the Gonzales spouses is a question of fact.

The trial court heard the testimony of several persons who were at the scene of the shooting and saw what happened. On the part of the prosecution the following testified: Evangeline Gonzales, daughter of the deceased spouses; Felisa Matabalan, a school teacher; and Silvestra Anislag, a neighbor of the deceased spouses. Those who testified for the defense have already been mentioned above.

The trial court found the prosecution witnesses to be more credible than those of the defense and there is nothing in the record which will justify a reversal of its finding especially because under the circumstances the burden of proof had shifted from the prosecution to the defense.

The appellant claims that he had "to save himself and the life of his wife from the unlawful aggression of the deceased couple." (Appellant's Brief, p. 2.) But were the deceased spouses the aggressors? The record is bereft of

any evidence to show that the Gonzales spouses were the aggressors. On the contrary there is every reason to suppose that it was the other way around.

The evidence for the prosecution shows that the appellant and his wife resented a rumor said to have been circulated by Mamerta Gonzales to the effect that the appellant was having sexual relations with Eva, the daughter of Anita Dofilez by her previous husband, and for which reason Anita was reported to have said, "We will not surrender until when there will be someone who will be dead here in Bagsak." (TSN, p. 140.) In the light of this fact, the deceased Gonzales spouses could not have been the aggressors.

In *U.S. vs. Laurel*, 22 Phil. 252 (1912), Exequiel Castillo and Jose Laurel engaged in combat. Each accused the other of having commenced the assault. The Supreme Court said:

"In the presence of this marked contradiction, and being compelled to inquire into the truth of the matter, we are forced to think that the person who would consider himself aggrieved at the kiss given the girl Concepcion Lat, in the street and in the presence of several witnesses, would undoubtedly be Exequiel Castillo, the suitor of the girl, and it would appear to be a reasonable conclusion that he himself, highly offended at the oldness of Jose Laurel, was the person who wished to demand explanation of the offense." (At p. 263.)

Applying the Laurel case to the present one, the Dofilez spouses who felt aggrieved must have been the aggressors.

The appellant points to the fact that his wife sustained bolo wounds and from this circumstance it is suggested that the deceased Gonzales spouses were the aggressors. This suggestion is shattered by the fact that even Mamerta Gonzales sustained bolo wounds inflicted by her husband. The explanation is that after Cecilio had been shot he tried to go after the appellant, flailing his bolo in the process but weakened by his wounds he hit not only Anita Dofilez but also his own wife.

In the light of the foregoing, the appellant's claim of self-defense is not impressed with merit and the only other matter which has to be considered is whether the crime committed is simple homicide or murder.

The information alleges treachery and evident premeditation as qualifying circumstances. The appellant denies their existence. We hold that there was treachery because the attack on the Gonzales spouses was sudden and they had no opportunity to defend themselves or to seek cover. There was also evident premeditation because, as Thelma Nangan testified, there was a threat to kill even before July 12, 1969. (TSN, pp. 171-174.)

The appellant is guilty of double murder because the victims were killed with different bursts of fire from his gun and not from a single shot.

Under the circumstances it would be appropriate to impose two death penalties on the appellant but for lack of the necessary number of votes, two reclusion perpetua are imposed instead.

WHEREFORE, the judgment under review is hereby modified in that Patrocinio Dofilez shall suffer the penalty of two (2) reclusion perpetua and ordered to indemnify the heirs of the deceased spouses the amount of Sixty (P60,000.00) Thousand Pesos and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Makasiar, J., see partial dissent.

PARTIAL DISSENT

MAKASIAR, J.:

The appellant should be convicted only of one homicide and one murder, both mitigated by obfuscation and voluntary surrender.

In the case of the deceased Cecilio Gonzales, neither treachery nor evident premeditation was established. It is not shown that the appellant decided to kill Cecilio Gonzales before going to the Gonzales premises with the carbine, when he arrived at such decision, and the duration to reflect thereon until its execution. The mere fact that he was armed with a carbine, does not demonstrate that he already was determined to kill the victim Cecilio Gonzales before arriving at the Gonzales premises that fateful afternoon of July 12, 1969. Such fact may indicate merely that he intended to use the carbine for defense of himself and his wife in case Cecilio Gonzales should assault them or should become violent. This is emphasized by the fact that upon reaching the Gonzales premises, he placed the carbine against the wire fence and proceeded to wash his feet at the artesian well of the Gonzaleses in the presence of the Gonzales's 15-year-old daughter Evangeline and a school teacher, Felisa Mata-balan, who were respectively bathing and washing clothes by the artesian well. The fact that the attack was sudden does not necessarily mean that it was treacherous, because, as stated before, appellant placed the carbine against the fence and, while washing his feet, he just admonished the deceased Cecilio Gonzales "to tell his wife not to utter obscene words." Upon hearing the admonition addressed by appellant to her husband Cecilio Gonzales, Mamerta angrily replied, "What is that? I'm here. You are in hell." This further angered appellant. Mamerta Gonzales, wife of the victim Cecilio, was reputedly the source of the gossip that appellant was having carnal intercourse with the daughter of his wife Anita by a previous husband, which gossip obfuscated appellant.

With respect to the shooting of Mamerta Gonzales, there is no evident premeditation, because after the appellant shot. Cecilio, he ran away, followed by his wife Anita. But Cecilio, although mortally wounded, pursued both of them, brandishing his bolo and in the process, wounded both his wife Mamerta and Anita. The sight of his wife being attacked by the deceased Cecilio with his bolo, caused appellant to turn back and to fire repeatedly at the wounded Mamerta, who was then crying while embracing her injured husband, who fell to the ground as he pursued appellant and his wife Anita.

Treachery qualified the killing of Mamerta who could not defend herself as she embraced her dying husband even as her eyes were blinded by the tears streaming down her cheeks.

As aforesaid, both homicide and murder are mitigated by obfuscation and voluntary surrender.

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