

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LIBERATO PASCO, JR., DEFENDANT-APPELLANT.***G.R. No. L-45715. June 24, 1985*

Ponente: CONCEPCION, JR., J.

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Appeal from the decision of the Court of First Instance of Zamboanga del Norte finding the appellants guilty of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law; to indemnify the heirs of their victims in the amount of P37,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

It appears that in the afternoon of September 13, 1974, Aproniano Ladera, also known as Aniano Ladera, Leo Maylon, Careso Ladera, Elias Tagbacaula, and about 30 others were planting corn in the cornfield of Aproniano Ladera located at Barrio Linabo, Polanco, Zamboanga del Norte. At about 4:00 o'clock in the afternoon the four named persons stopped working and crossed the river to Barrio Dilawa, Piñan, Zamboanga del Norte to have some refreshments. They went to the store of one Baby Romacho where they bought a small bottle (pocket-size) of rum which they drank in the store. After consuming the contents of the bottle, they went to the store of Rosalinda Indong where they bought another small bottle of rum. While they were drinking, the accused Liberato Pasco, Jr. arrived. They offered him a drink, and after drinking the glass of rum, Liberato Pasco, Jr. left.

At about 8:00 o'clock in the evening, Aproniano Ladera, Careso Ladera, Leo Maylon, and Elias Tagbacaula left for home. They had a torch, locally called a "tingkarol", made from an empty bottle of rum filled with kerosene. They followed one another with Aproniano Ladera in the lead, followed by Careso Ladera, then Leo Maylon, and finally, Elias Tagbacaula at the rear.

At about this same time, Liberato Pasco, Jr. and Pablo Lacay stopped in the house of Indalecio Caidic, some 180 meters from the river crossing, on the pretext of lighting their cigarettes. Pablo Lacay was armed with a double-bladed hunting knife, while Liberato Pasco, Jr. was armed with a small bolo, called a "pisao", which they were holding in their hands. Pablo Lacay inquired from Indalecio Caidic if Aproniano Ladera and his companions had already passed by, and when Caidic answered that they had not, Pablo Lacay and Liberato Pasco, Jr. hurriedly left towards the river crossing. Not long thereafter, Aproniano Ladera and his companions passed by the house of Indalecio Caidic and gave him the customary greeting, saying: "We are passing by, Do." [1]

When Aproniano Ladera and his companions reached the Layawan River, they found the waters rising so that they removed their trousers and wound them around their necks to keep them dry. Careso Ladera, with the "tingkarol", then took the lead. When he was almost at the middle of the river, and Elias Tagbacaula, who was at the rear, was about 5 meters from the shore, Liberato Pasco, Jr. and Pablo Lacay suddenly emerged from the bushes growing in an island in the middle of the river, and attacked them. Liberato Pasco, Jr. first stabbed Leo Maylon, but the latter was not hit. Liberato Pasco, Jr. then turned on Aproniano Ladera, but the blow was parried. Then, Pasco stabbed Careso Ladera, hitting him at the chest below the right nipple. Pablo Lacay, on the other

hand, stabbed Elias Tagbacaula below the left nipple, leaving the knife embedded on his chest. Thereafter, Liberato Pasco, Jr. and Pablo Lacay ran away towards the Piñan side of the river. Aproniano Ladera and Leo Maylon, also went home, leaving Careso Ladera and Elias Tagbacaula where they fell. They went to the house of Elias Tagbacaula and informed his wife of the incident. From there, they proceeded to the house of Luciano Agad, barrio captain of Linabo, to report the attack on them.[2]

Luciano Agad was reluctant at first to act on the complaint because the incident took place at the Dilawa side of the river, but relented when informed that the barrio captain of Dilawa, Felix Celecios, was no longer residing in Dilawa. Barrio captain Luciano Agad and two ICHDF members then accompanied Aproniano Ladera and Leo Maylon to the river. They brought along with them "petromax" lamps to light their way.

At the river, they found the floating bodies of Careso Ladera and Elias Tagbacaula snagged in a knee-deep portion, near the Dilawa side. The trousers of Careso Ladera was still tied around his neck, and underneath his body, they found the "tingkarol" which Careso Ladera was carrying when they were crossing the river. Luciano Agad and his companions moved the bodies of the victims to the Linabo side of the river so that they would not be carried away by the rising waters of the river and placed the "tingkarol" beside the body of Careso Ladera.

In the morning, Luciano Agad reported the incident to the police authorities of Piñan and Chief of Police Francisco Jamoralin and two policemen and Dr. Carmencita Pangasian, Rural Health Physician of Piñan, went with Barrio Captain Luciano Agad to the Layawan River.[3]

Dr. Pangasian conducted a post-mortem examination on the cadavers and found that Careso Ladera suffered a "stab wound, about 2 1/2 inches in diameter located about 5 inches below the right nipple measuring about 6 inches deep penetrating the liver," and an "abrasion about 1 inch in diameter located at the anterior leg." The cause of death was "cardiorespiratory failure secondary to severe internal hemorrhage." [4] She also found that Elias Tagbacaula, sustained a "stab wound about 2 inches in diameter by 7 inches deep located at the epigastric area." A double-bladed hunting knife, without a handle, is still stuck in the body. The cause of death was "cardiorespiratory failure secondary to severe internal hemorrhage of the abdominal aorta." [5]

As a consequence, Liberato Pasco, Jr. and Pablo Lacay were separately charged with murder, in two separate informations, before the Court of First Instance of Zamboanga del Norte, docketed therein as Crim. Case Nos. 1296 and 1297, respectively. Liberato Pasco, Jr. was charged with the killing of Careso Ladera, while Pablo Lacay was charged with the murder of Elias Tagbacaula. As these two cases occurred at the same time and place and involved the same witnesses for the prosecution, they were tried jointly, after which judgment was rendered as aforesaid. From this judgment, both accused appealed.

The defendant-appellant, Liberato Pasco, Jr. admitted having killed not only Careso Ladera, as charged in the information, but also Elias Tagbacaula. He claims, however, that he acted in self-defense.

Liberato Pasco, Jr. declared that at about 7:00 o'clock in the evening of September 13, 1974, while he was resting in his house after a hard day's work sawing logs, his neighbor, Pablo Lacay came to him, asking his help in looking for some missing carabaos. He armed himself with a hunting knife and went with Pablo Lacay who was armed with a small bolo. But, before he left, he told his younger sister, Rosalinda, to leave some food for him. He and Pablo Lacay followed the trail towards Linabo. On their way, they met some men, but he could not recognize them as it was very dark. Upon reaching the Layawan River, they over-took the men who took Pablo Lacay's carabaos. Pablo Lacay was able to get back his carabaos. However, two of the men attacked him so that he stabbed them in return.[6]

The trial court, however, ruled that the accused Liberato Pasco, Jr. had failed to establish the elements of

self-defense which would exculpate him.

We agree. In order that the plea of self-defense can prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the defendant's life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the said attack. The uncorroborated testimony of Liberato Pasco, Jr. regarding the attack upon him is, as follows:

"q

After meeting that man where did you proceed?

a We reached the river and while in that river we overtook persons who were bringing carabaos and one of the persons attacked me so I stabbed him.

q How did that person attack you?

a He attacked me by thrushing himself towards me and I backstepped but he continued approaching me so I stabbed him.

q Do you know that man who attacked you?

a I don't know him.

q Why did you stab him?

a Because he was forcing himself to attack me so I stabbed him.

q Was that in the river?

a In the stones in the water of the river.

q

What happened next?

a After that another man attacked me and stabbed me with a scythe hitting me on my leg and in that instance I also stabbed him.

q Why did you stab him?

a Because he attacked me first.

q You said you were hit on the legs, can you show that part of your body which was hit to the court?

a Yes Sir (pointing to a round scar just perpendicular to the knee at the left leg).

COURT:

Place on record that the scar is round.

MEJORADA:

q Which portion of the scythe hit your leg?

a The tip of the scythe.

q At the time when you were stabbed or hacked with a scythe what were you doing?

a When I was hacked I parried that with my hunting knife and in return I also thrust my hunting knife and the person was hit.

q You said you were attacked, were you not moving at the time you were attacked and if you were moving to what direction were you moving?

a I backstepped.

COURT:

Interrupting —

q Which of the two persons continued attacking you?

a The second person.

q When the second person continued attacking you was he already stabbed or not yet?

a He was not yet stabbed.

q After he was stabbed did he continue attacking you?

a No more.

q How about you, what did you do after stabbing two persons?

a I went home.

q

After you were attacked by the first man and followed by the second man, did you hear any voice?

a Yes, I heard a voice saying 'Pusila Nian, kay nasamad na ako' meaning Shot him Nian, because I'm already wounded.'

q When you heard somebody shouted did you see any gun?

a I did not see because it was dark.

q At the time you were attacked by those two persons where was Pablo Lacay, your companion"

a I did not see him.

q After the stabbing incident where did you see him again?

a I saw him already at a distance pulling his two carabaos and one offspring.

q Now what did you tell him?

a I told him let us hurry because I stabbed two persons."[7]

Such testimony, even if true, does not make a case of self-defense. For unlawful aggression to be present in self-defense, there must be an actual sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.

Besides, it appears that the deceased Careso Ladera was unarmed at the time so that the use of the knife is unjustified. There is a hint that a gun was carried at the time in view of the testimony of the accused that he had allegedly heard the person he had stabbed say: "Pusila, Nian, kay nasamad na ako," but, as could be inferred from his testimony, the gun was carried by one "Nian" and not by the deceased Careso Ladera. The appellant also stated that he was stabbed with a scythe. This scythe, however, was wielded by the second person he had allegedly stabbed (Elias Tagbacula) and not by Careso Ladera.

Counsel for the appellants assails the trial court for giving credence to the testimony of the prosecution witnesses which he claims to be incredible, unbelievable, and improbable. The rule, however, is that once the defendant in a criminal case has admitted that he killed a human being, the burden of proof is on him to establish the existence of a circumstance which may relieve him from responsibility. To prove justification, the defendant must rely on the strength of his own evidence and not on the weakness of that of the prosecution.

The accused-appellant, Pablo Lacay, on the other hand, while admitting that he was at the scene of the crime when it was committed, denied having participated in the killing of Elias Tagbacula, as testified to by two eyewitnesses, Aproniano Ladera and Leo Maylon. His testimony is that in the evening of September 13, 1974, he found his three (3) carabaos, which were pastured near the barrio hall of Dilawa, Piñan, Zamboanga del Norte, missing. When he could not find them in the neighborhood, he enlisted the help of his neighbor Liberato Pasco, Jr., in looking for them. They followed a trail leading to the hinterlands. On their way, they met one Amador Gahuman who informed them that he (Gahuman) had encountered four (4) persons, two of whom were riding on

two carabaos, and two others walking on foot, going towards the river. They hurried towards the river and were able to overtake the men in the middle of the river. But, he could not recognize the men as it was very dark. He retrieved his carabaos and pulled them home. After crossing the river, he heard his companion, Liberato Pasco, Jr., from behind, urging him to walk faster as he (Pasco) had stabbed a person.[8]

The bare denial of the accused, however, is not sufficient to overcome the positive testimonies of Aproniano Ladera and Leo Maylon that the accused Pablo Lacay was the one who stabbed the deceased Elias Tagbacaula. We have scrutinized the testimonies of the said witnesses with care and do not find any plausible ground to disbelieve them, not only because the trial court, which had the opportunity to observe their demeanor and the manner they testified, found out that they were reliable witnesses, a conclusion supported by the evidence of record, but also because the said witnesses had no reason to testify falsely against him. Besides, the trial court stated that he had observed both accused Pablo Lacay and Liberato Pasco, Jr. during the trial and reached the conclusion that only Pablo Lacay, because of his build and physique, could have inflicted the wound sustained by the late Elias Tagbacaula. Said the court:

"x x x Another fact which negates the denial of Pablo Lacay in the commission of the crime is the fact that the knife or dagger which was used in stabbing Elias Tagbacaula was driven so hard into the body of the victim that it took all the strength of the Chief of Police of Piñan Zamboanga del Norte, Francisco Jamarolin, a very big muscular man to pull out the dagger from the breast of the victim, indicating that the point of said knife must have lodged in the back bone of the victim which indicated an extra-ordinary amount of strength to have driven it to that extent. Only Pablo Lacay and not Liberato Pasco, Jr. could have done that.

"The Court has watched both accused, Pablo Lacay and Liberato Pasco, Jr. and the Court is convinced that Liberato Pasco, Jr. could not have driven the dagger into the victim, Elias Tagbacaula, to that extent, while Pablo Lacay has the body and strength as to drive the knife and hit the bone of the victim making it difficult to pull out the knife so that when he attempted to pull the knife out, he was able to pull out the handle and not the knife itself from the body of the victim. Pablo Lacay is well built, muscular and tall man. He has the strength to inflict the wound suffered by Elias Tagbacaula.

The trial court correctly found that the crimes committed are murder, qualified by treachery since the victims and their companions were waylaid as they were crossing the river by the two accused who had hidden themselves in the bushes growing in the island in the middle of the river. The attack was sudden and unexpected, giving the victims no chance to defend themselves.

However, it erred in finding that evident premeditation was present in the commission of the offenses it appearing that the execution of the criminal acts was not preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. The period, from the time Liberato Pasco, Jr. saw Aproniano Ladera and his companions, drinking in the store of Rosalinda Indong at about 7:30 o'clock in the evening up to about 8:00 o'clock in the same evening when the killing took place, cannot be considered sufficient time for the two accused to have coolly deliberated on a decision to kill their victims.

But, it appears that the offenses were committed in an uninhabited place which was purposely sought and chosen by the two accused to accomplish their evil design. There being an aggravating circumstance, which is offset by the mitigating circumstance of voluntary surrender, the penalty imposed upon the accused-appellants, is proper.

WHEREFORE, the judgment appealed from should be, as it is hereby AFFIRMED. With costs against the appellants.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] tsn of June 17, 1976, pp. 111-113, 115, 116.

[2] tsn of Jan. 22, 1975, pp. 10-15.

[3] tsn of April 15, 1975, pp. 46-50.

[4] Exh. A, Crim. Case No. 1296.

[5] Exh. A, Crim, Case No. 1297; see also tsn of Jan. 22, 1975, pp. 1-7.

[6] tsn of Dec. 22, 1975, pp. 36-41.

[7] Id., pp. 38-40.

[8] tsn of Nov. 11, 1975, pp. 84-87.

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