

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALA MARUHOM, DEFENDANT-APPELLANT.*G.R. No. L-28691. September 28, 1984*

Ponente: CUEVAS, J.

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Appeal interposed by BALA MARUHOM from the de-cision of the then Court of First Instance of Lanao del Sur in Criminal Case No. 2940, convicting him of MURDER and sentencing him to Reclusion Perpetua; to indemnify the heirs of the deceased Mansongayan Osmeña in the amount of P6,000.00; and to pay the costs.

At about 6:30 in the morning of January 6, 1966, victim Mansongayan Osmeña together with his wife Umpia Mansongayan and daughter Baulinang Ansao, arrived at Gapao Balindong, Taraka, Lanao del Sur, where they intend to take a launch for their trip to Marawi City. At Gapao Balindong, they found a launch docked at the bank of Taraka River near the mosque known as Boboc-Racman.[1] Mansongayan Osmeña boarded the launch through the prow[2] while his wife and daughter were yet at the river bank. Entering the door of the passenger compartment of the launch, the victim was called by accused Maruhom who was then at the roof top of the launch telling the former "Mansongayan, wait for me, I want to talk to you".[3] Os-meña apparently did not hear the first call of the accused. Hence accused called him again. This time Osmeña stepped backward from the door and looked up-ward. It was at that juncture - while victim was looking upward - when accused Maruhom, who was then at the edge of the roof top of the launch overlooking the victim about 2 feet from the latter, right then and there fired at the victim with his (accused) licensed Caliber 38 Revolver, hitting the victim at the left temporal aspect of his head.[4] Victim was not able to move to avoid the shot being unaware that he would be fired upon. Osmeña fell on the floor of the launch. Accused then jumped from the roof top of the launch to the bank of the river and proceeded to-wards the direction of his house nearby.[5]

Umpia Mansongayan, wife of the victim, first shouted for help. Sensing however her husband to be dead already, she thereafter immediately proceeded to the 77th PC Company detachment at Lumasa, Taraka, Lanao del Sur, which was about a kilometer away from the place, and reported the shooting incident to Captain Carlos Lademora, the Commanding Officer of the said detachment.[6]

Meanwhile, Dr. Dominador Celemin, the Municipal Health Officer of Lumba-Malayo, Lanao del Sur conducted a physical examination of the victim (no autopsy was conducted since it was refused by the relatives of the victim) and thereafter prepared and submitted a Medico Legal Necropsy Report[7] containing his findings, to wit:

"Wound, gunshot (entrance) roughly oval in shape, with a vertical diameter of 0.7 cm. surrounded by a contuse-ab-raded collar, 0.3 cm. in width almost evenly (sic) distributed around the gun-shot wound and a horizontal diameter of .06 cm. located at the left temporal aspect of the head, at the level of a line drawn from the tip at the level of a line drawn from the tip (sic) of he (sic) left eyebrow the upper base of the left eyebrow to the upper base (root or insertion) of the left ear, 2.5 cm. from the tip of the eyebrow and 6 cm. from the upper insertion of the ear, 3.5 cm. from the lateral fis-sure of the left eye and 8 cm. from the tip of the lobe,

left ear. There was no exit wound noted. Opening of the skull and probing of the wound were refused."

After receiving the report of the shooting in-cident, Captain Lademora organized a group made up of men from his PC outfit and thereafter proceeded to the place where the crime was committed.[8] On their way, they first passed by the house of the victim and viewed his cadaver.[9] From there, they proceeded to the accused's place. They, however, failed to get in touch with the accused who, by that time had al-ready gone into hiding in the swampy and forested area around the lake in his place. Captain Lademora then ordered the entire area, cordoned to forestall accused's escape.[10] Soldiers were stationed in different strategic sections of the swamp from 9:00 o'clock in the morning of January 6, 1966 until Satur-day midnight of January 10, 1966. While cordoning the supposed hideout of the accused, shouts were made ask-ing the accused to surrender but to no avail. After three (3) days and three nights of continuous siege by the PC authorities, however, accused finally gave up but without the gun used in the shooting of Mansonga-yan Osmeña alleging that it was lost in the swamp.[11] From there, accused was brought by Captain Lademora and his group to the Provincial Headquarters at Camp Keithly where he was detained and later transferred to the Provincial Jail.

Appellant setup self-defense as ground for acquittal. His evidence shows that earlier in the morning of January 6, 1966, while he was then seated on a bench facing the rear of the launch[12] with Pakunum, Capitan Bacolod and one Rinabor, the victim boarded the launch through the front portion there-of. Victim patted him at the back and asked him for his shotgun and dagger.[13] Accused replied by telling the victim he no longer had the shotgun and the dagger because they were already surrendered to the PC.[14] Angered by the reply, the victim drew his gun arid fired at the accused. The gun, however, failed to explode and before the victim could fire again, accused whirled towards his left to face him. Accused then drew his gun and fired at the victim, felling the victim by a single shot.[15] Thereafter, he jumped to the bank of the river and ran towards upstream intending to take a boat at the mouth of the Taraka River for Marawi City in order to surrender to the authorities. Unfortunately, however, no motorboat was available in the said place at the time so he hid himself among the thick bushes at Paniora.[16] Al-though he knew there was a PC Station in Lumawas, muni-cipality of Taraka, he did not proceed to the said camp for fear that he might be killed by the relatives of the victim.[17] He was forced to stay among the thick bushes at Paniora for three nights and two days trying to avoid the relatives of the victim who were hunting him. On the third night, he proceeded to the house of a certain Lumba at Karamat in Malayo, Lanao del Sur where he sent for the then Vice-Governor Cala-ca of Lanao del Norte. Not long thereafter, Vice-Governor Calaca arrived with Mayor Palawan of Tamparan, Lanao del Sur, to whom he intimated his desire to surrender. They then sent for Captain Lademora and together, they proceeded to the residence of former Sena-tor Alonto in Marawi City where PC Commander Major Jimmy Bankil took custody of him.[18]

Appellant seeks the reversal of the judgment complained of on the ground that the trial court alle-gedly erred: 1) in giving weight to the testimonies of Umpia Mansongayan and Baulinang Ansao, wife and daugh-ter respectively, of the deceased; 2) in disregarding the testimony of the defense witnesses none of whom bear any relation to the accused; and 3) in failing to acquit accused despite the presence of legitimate self-defense. He also contend that the court a quo was in error 1) in finding that treachery attended the commission of the offense; and lastly, 2) in not crediting the accused with the mitigating circums-tance of voluntary surrender.

As will be noted, the main issue in this appeal is whether or not appellant really acted in self-defense in firing at the victim that brought about the death of the latter.

In impugning the judgment of conviction against him, appellant argues that the trial court was in error in giving credence to the testimony of the deceased's wife, Umpia Mansongayan and his daughter Bau-linang Ansao. Appellant contends that being related to the deceased, they are necessarily partial and biased in favor of the prosecution and the court should not have relied on their statement. Such contention is, however, erroneous. Mere

relationship that the two aforementioned witnesses bore to the deceased is no sufficient ground to disqualify them and render their testimony incredible.[19] The fact that there may be other persons who may have witnessed the shooting but were not made witnesses does not by itself alone render their testimony inadmissible. Neither can the prosecution be faulted for its inability to present said eyewitnesses who may not be willing to undertake the risky plight of testifying for fear of reprisal from the accused's camp.

Having admitted killing the victim in self-defense, the issue of credibility of the two aforementioned prosecution's witnesses becomes pointless. Appellant has now the burden of proving his self-defense by clear and convincing evidence.[20] He must rely on the strength of his evidence and not on the weakness of the prosecution's.[21] In order that self-defense may succeed, there must be unlawful aggression. This unlawful aggression, per the defense theory, consists of the victim's pointing his gun at the appellant in an attempt to fire at the latter. The gun, however, did not fire and a second similar attempt was made. Again the gun did not fire. It was at that precise moment when the appellant fired at the victim, hitting the latter. The flaw in that story, however, is the total lack of any concrete and convincing evidence positively showing existence of the said gun. What happened to the gun, who picked it up, what was done with it, and to whom was it given, do not appear explained by the defense evidence. Not even any of the appellant's alleged eyewitnesses, namely: Capitan Bacolod, a provincial guard at that time; Bandrang Pakunum, and Gibon Batugan, was able to shed light on the whereabouts of that gun thus casting much doubt as to whether victim really had a gun when fired upon by the appellant. Batugan described and referred to that gun as an automatic pistol[22] whereas, Pakunum stated it was a revolver.[23] The uncontroverted fact, however, is that no gun was ever recovered from the place where the shooting occurred. Such being the case, unlawful aggression on the part of the victim could hardly be said to have existed.

What is more telling is the location of the gun-shot wound sustained by the victim.... which is on the left temporal aspect of the head. If appellant's story is true, then being face to face with the victim, We see no reason how the latter could have been hit on the left side of his head. Indeed, the location of gunshot wound sustained by the victim vividly attests to the veracity of the prosecution's claim that the victim was fired upon and hit when he looked back towards his left upon being called by the appellant.

What compounded doubts as to the authenticity of appellant's self-defense theory, is his failure to plead and/or invoke the same before any of the apprehending and/or investigating officers or any authority for that matter. He should have come out brave as a lion, and told the authorities that he killed the victim merely to defend himself. But such was not the case. Right after the shooting, appellant went into hiding such that he could not be located at his place of residence nor in other places where he used to be. Plight is incompatible with his self-defense.[24] Running away from the scene of the crime is an indication of guilt.[25]

Appellant's motivation in having delivered the works in the manner he did upon the victim, finishing him off in the process, is not too hard to divine. He and the victim had been at loggerheads for no less than a decade.[26] The ill-will between them started when the victim lost his gun, his dagger and other valuable possessions for which losses, he was blaming herein appellant. Since then, a no-love-lost relationship developed and existed between them. That brought them to opposite political camps supporting adverse candidates. But what finally hurt appellant, was the victim's proclamation of Diampuan Daranginan, his nephew, as Sultan of Masiu thus rivaling and practically rendering at naught appellant's previous proclamation of his brother-in-law, Datu Kasar, also as Sultan of Masiu. Despite the intervention of influential and recognized Muslim leaders, and attempts to patch-up their differences, victim and appellant remained at opposite ends, wanting to eliminate one another. In his testimony at the stand, appellant not merely admitted the existence of a grudge between him and the deceased but was vocal and emphatic in his assertion that the deceased is bent on killing him.[27]

Against that backdrop and with the victim being unarmed when he boarded the launch on his fatal trip to Marawi City, it is not hard to understand why a single shot was enough to send him to his final resting place.

Appellant argues that the court a quo was in error in finding that the killing was qualified by treachery.[28] He claims that the meeting between him and the victim being a casual one, and that appellant called the victim twice before shooting him such that the victim saw him before being fired at, no treachery exists. This contention is erroneous. The attack upon the victim being sudden and unexpected indicates that the killing was treacherous.[29] The circumstances under which appellant killed the victim rendered him immune from any retaliatory attack that the victim may make upon being fired at. Despite being enemies, there is however, no evidence of any preconceived plan on the part of appellant. Evident premeditation under such circumstance may not be appreciated against him.[30]

On the issue of voluntary surrender, the trial court rightly ruled that the same may not be considered in favor of the appellant. The evidence in support of said finding is not merely persuasive but conclusive. Captain Lademora cannot be said to be partial in favor of the prosecution. His cordoning appellant's hideout, futile attempts to have the appellant immediately apprehended and the final apprehension and arrest of the appellant as testified to by him, hardly appear to be motivated by any dubious or evil consideration.

It is true, accused-appellant gave himself up to the authorities. But it is equally true that he did so only because his capture and arrest was at the moment, already a foregone conclusion. His hideout being already pinpointed with all avenues of escape being foreclosed, plus hunger and harmful onslaught of the elements must have compelled appellant to give himself up having no other alternative at the time. That is not the kind of surrender which should entitle him to a mitigation of criminal liability. It was not voluntary rather it was a compelled or involuntary one.

Convicting the accused-appellant, the trial court ordered him to indemnify the heirs of the late Mansongayan Osmeña merely in the amount of P6,000.00. That should now be increased to P30,000.00.

WHEREFORE, and except as thus modified, the judgment appealed from is hereby **AFFIRMED**. With costs against appellant.

SO ORDERED.

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

Concepcion, Jr., and Gurrero, JJ., on leave.

[1] TSN, Hearing of January 27, 1966, pp. 51-52; January 28, 1966, page 82.

[2] TSN, Hearing of January 28, 1966, page 87.

[3] Page 89, TSN, January 28, 1966.

[4] TSN, Hearing of January 27, 1966, Pages 56-60, 121-129.

[5] Pages 434-444, TSN, July 26, 1967.

[6] TSN, Hearing of January 27, 1966, Pages 61-62, 64; February 16, 1967, Page 116.

[7] Exhibit "A".

[8] Page 23, TSN, Hearing of January 27, 1966.

[9] Page 24, Ibid.

- [10] Page 26, Ibid.
- [11] Page 27, Ibid.
- [12] Pages 137, 182, TSN, dela Cruz, August 28, 1967.
- [13] Pages 137, 138, TSN, dela Cruz, August 28, 1967.
- [14] TSN, dela Cruz, Pages 137, 138, 256, TSN, August 28, 1967.
- [15] TSN, Pages 137-138, 257-260, 185, 189, TSN, August 28, 1967.
- [16] TSN, Page 440, TSN, August 28, 1967.
- [17] Page 449, TSN, August 28, 1967.
- [18] Pages 440, 447-448, August 28, 1967.
- [19] Section 18, Rule 130, Rules of Court; PP vs. Oquiño, 122 SCRA 797; PP vs. Gacho, 124 SCRA 671; PP vs. Demetrio, 124 SCRA 914.
- [20] PP vs. Hisugan, 116 SCRA 370.
- [21] PP vs. Atienza, 116 SCRA 379.
- [22] Page 257, TSN, January 26, 1967.
- [23] Page 186, TSN, January 26, 1967.
- [24] PP vs. Garachico, 113 SCRA 131.
- [25] PP vs. Pajenado, 69 SCRA 172.
- [26] Page 45, TSN, August 29, 1967.
- [27] Page 46, TSN, August 29, 1967.
- [28] Pages 47-52, Appellant's Brief.
- [29] PP vs. Ursal, 121 SCRA 410; PP vs. Macasabwang, 121 SCRA 713; PP vs. Pospos, 123 SCRA 557.
- [30] PP vs. Toledo, 123 SCRA 545.

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