

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISIDRO ARDISA, DEFENDANT-APPELLANT.

G.R. No. L-29351. January 23, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Automatic review of the decision[1] of the Court of First Instance of Cebu, Branch II, dated May 31, 1968, sentencing the accused, Isidro Ardisa, to death, for the murder of Vicente Alimoren. The sentence reads as follows:

"The Court finds the herein accused, Isidro Ardisa, guilty beyond all reasonable doubt of the crime of murder charged in the information with the attendance of two aggravating circumstances against him, and one mitigating circumstance in his favor. With a prayer therefore for mercy, not only for the accused himself but also for him who now renders this verdict, the Court hereby imposes the penalty provided for by law and sentences the herein accused to death, to pay the heirs of the victim Vicente Alimoren the sum of P6,000.00, and to pay the costs."[2]

The deceased, Vicente Alimoren, was a farmer resident of Barrio Binaliw, Talamban, Cebu City. So with the accused-appellant, Isidro Ardisa. There are two versions of what really happened on that fatal day November 29, 1967, when Vicente Alimoren was hacked to death.

The prosecution sought to establish that at about 4 o'clock on the afternoon of said date, a cow owned by accused Isidro Ardisa, which was being tended by his son, Simplicio Ardisa, got loose while the latter was answering the call of nature, entered the corn fields of Vicente Alimoren and ate his young corn and banana plants. The deceased caught the cow and proceeded to take it to the barrio captain of Binaliw, but Simplicio Ardisa, to prevent the deceased from so doing, reported the matter to his father, accused, Isidro Ardisa, and his mother, Nicasia Villamor, who were then working on their farm nearby. Acting upon the report, accused sent Nicasia, to request for the return of the cow, but the deceased refused to do as bidden, claiming the damage was very great and it was not the first time that the cow strayed into his farm. The deceased suggested, instead, that they meet and talk things over in the house of the barrio captain of Binaliw.

The deceased then moved in the direction of the house of the barrio captain pulling the cow, while Nicasia Villamor pulled back the rope of the animal to prevent the deceased from taking it away. At this juncture, the accused arrived at the place where the two were arguing. Knowing her husband, Nicasia tried to block him from getting near the deceased, but the accused advanced and pulled out his long bolo as the deceased stepped away dragging the cow with him. With his drawn bolo accused followed the deceased and gave him a hacking blow from behind, hitting him on the back of the head. The deceased staggered and he drew his bolo in a reflex action, only to fall to the ground. While the deceased lay flat on his back and his two hands were in tremors, accused hacked him again, cutting off the left wrist and the small finger of the right hand. Accused continued hacking the neck of the deceased until the head was completely severed. Then accused proceeded immediately to the Talamban Police sub-station where he surrendered and reported that he had killed the deceased.

On the other hand, the version of the accused is that on November 29, 1967, at about 4:00 p.m., a calf owned by Isidro Ardisa which was then being pastured by his son, Simplicio, entered the land of Vicente Alimoren. Alimoren caught the calf and proceeded to take the same to the barrio captain of Binaliw. Simplicio reported the matter to his parents, Isidro Ardisa and Nicasia Villamor, who were then working on their farm. The accused sent his wife, Nicasia, to see what the matter was, and with instruction that if the calf destroyed anything in the farm of Alimoren, they would pay for it or repair the damage. Nicasia Villamor went to the place where the calf was and saw that Vicente Alimoren had started going towards Binaliw. Before Nicasia could catch up with Alimoren, the calf broke loose from the hold of the latter and reached for its mother which was then tied. Alimoren tried to catch the calf and since he could not, he decided to get the mother cow and made motions to take the same towards Binaliw. Nicasia Villamor protested, held the rope tied to the mother cow and asked Alimoren why the mother cow should be the one taken to the barrio captain when it had done nothing wrong. Alimoren already infuriated, angrily drew his bolo and brandished it in the direction of Nicasia Villamor to scare her into releasing her hold of the rope. Accused Isidro Ardisa, who followed his wife, arrived and saw Alimoren with bolo in his hand. Ardisa addressed Alimoren, saying: "Don't do that. We will just talk this over." [t.s.n., May 6, 1968, page 73.] The deceased retorted with the challenging words, "Attack, you fool." [Ibid] Thenceforth, the deceased proceeded to attack the accused who retreated backwards to a cliff. The deceased pressed his attack and the accused who was cornered, drew his bolo and defended himself. The accused and the deceased mutually hacked one another and the combat resulted in the death of Vicente Alimoren.

On December 28, 1967, accused Isidro Ardisa was charged with murder in an information[3] which reads thus:

"That on or about the 29th day of November, 1967, at about 4:30 o'clock p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to kill, with evident premeditation and treachery, did then and there suddenly and unexpectedly attack, assault and use personal violence upon the person of One Vicente Alimoren by hacking several times with the use of a long and sharp bolo thereby hitting him on different parts of his body, completely severing his head and left hand, thereby inflicting on said Vicente Alimoren the following injuries, to wit:

POST-MORTEM FINDINGS:

Regional Findings —

Head and Neck — was completely severed from the upper portion of the trunk. The line of incision was not straight but with several incised portions.

Head —

- Brain — Subarachnoid hemorrhages.
- Skull — Fracture, linear, compound, mid-parietal region.
- Wound — incised, 14 cm. x 1.2 cm., mid-parietal region, involving scalp, and parietal bone.
- Wound — incised, 12 cm. x 3.5 cm., left side, face.
- Wound — incised, scalp, 7 cm. x 2 cm., temporal region, left side.

Chest —

1. Wound — incised, 9.5 cm. x 1.3 cm., anterior, chest, below the left clavicle.

Extremities —

- Complete Section, middle 3rd, left forearm.

- Complete Section, middle portion of the right little finger.
- Wound, incised, 20 cm. x 3 cm., right forearm, diagonal.
- Wound, incised 5 cm. x 3 cm., transverse, distal 3rd, lateral, right arm.

CONCLUSION: CAUSE OF DEATH —

Hemorrhages, external, cerebral, due to incised wounds of scalp, complete section of neck and left forearm.

and in consequence thereof the said Vicente Alimoren died instantaneously."

The lower court found accused Isidro Ardisa guilty beyond reasonable doubt of the crime of murder as charged and sentenced him to death. Hence this automatic review of the death sentence in which the accused-appellant assigns as the trial court's errors the following:

- "1. That the lower court erred in not appreciating the existence of facts upon which 'self-defense' may be considered in favor of the accused;
2. That the lower court erred in not holding that the crime, if any, committed by the accused was only Homicide and not Murder;
3. That the lower court erred in imposing the death penalty on the accused."

The first issue to be resolved is whether or not the trial court erred in not appreciating the existence of facts upon which the plea of "self-defense" may be considered in favor of the accused.

Accused-appellant Isidro Ardisa contends that there was unlawful aggression on the part of Vicente Alimoren and the lower court erred in not appreciating the significance of the following facts:

- a] That the deceased was armed with a bolo which he used in hacking towards the direction of Nicasia Villamor when the latter held on to the rope of the mother cow which the former was trying to take with him; [t.s.n., pages 59-60, April 16, 1968, Villamor; t.s.n., page 73, May 6, 1968, accused],
- b] That the deceased was the first to attack with a bolo hack the accused; [Ibid., page 60; t.s.n., page 73, May 6, 1968, accused].
- c] That the accused avoided the pressing attack of the deceased who was apparently determined to eliminate the former. [t.s.n., page 73, May 6, 1968, accused].

The accused claims that there was unlawful aggression on the part of Vicente Alimoren or, to say the least, he gave the accused reasons to believe that he was determined to kill the latter; that the danger to the life of the accused was present because the deceased was armed with a bolo; that it was imminent because the deceased not only had already begun, but had actually commenced hacking the accused; that the deceased would have killed the accused were it not for the agility of the latter in avoiding the offensive moves of the deceased, and that considering that the danger to the life of the accused was real, there was a reasonable necessity for him to use his bolo to repel the attack of the deceased and to defend himself with a means readily accessible to him — his bolo.

Accused went on further to claim that he did not provoke the deceased into attacking him, for in truth, the deceased was already having a verbal clash with his wife, Nicasia Villamor, when he arrived at the scene of the alleged crime; that the deceased was very agitated presumably on account of the escape of the calf from his hands and his inability to recover the same; that this was aggravated by the refusal of Nicasia Villamor to release her hold on the rope of the mother cow which the deceased decided to take in lieu of the calf which broke loose; that the deceased was already in fits of temper when the accused arrived and upon seeing him he attacked the accused

with bolo hacks which the latter was able to avoid.

Accused further continues that he had only a brief exchange of words with the deceased and these were as follows:

Accused — "Don't do that. We will just talk this over."

Deceased — "Attack, you fool." [t.s.n., May 6, 1968.]

After that brief exchange, the deceased proceeded to attack the accused.

Accused, therefore, maintains that the lower court erred in rejecting his plea of self-defense, by relying heavily on the number of wounds which the deceased sustained and the apparent absence of any injury of the accused; that the lower court failed to consider the fact that the accused was very much younger, healthier, bigger and sturdier than the deceased, and these factors would give the accused an advantage, and in an open fight between the two, it was likely that the deceased could be bested by the accused.

Upon the other hand, the prosecution argues that the claim of the accused that he killed the deceased Vicente Alimoren in self-defense is without merit; that the lower court was correct when it rejected accused's plea of self-defense on the ground that while many wounds, mortal and otherwise, were inflicted on the deceased, not even a scratch was suffered by the accused, a situation which negatives self-defense [People vs. Panganiban, et al., L--22476, Feb. 27, 1968; People vs. Somera, 83 Phil. 548; People vs. Mendoza, L-16392, January 30, 1965; People vs. Constantino, L-23558, August 10, 1957]; and that the nature and number of the wounds on the body of the deceased are indicative of a clear aggression on the part of his assailant (People vs. Mendoza, *supra*).

The theory of self-defense cannot be given credence. The claim of the accused that the deceased proceeded to attack the former who retreated backwards to a cliff; that the deceased pressed his attack and appellant had to draw his bolo and defend himself; that when he hacked the deceased for the first time, he hit him on the head; that after the first blow, he retreated and the deceased jumped towards him and made a thrust with his bolo;[4] that he parried the thrust with his own bolo and the small finger of his [deceased] right hand was cut off;[5] that the deceased again tried to hack him but he avoided the blow; that when he hacked the deceased in return the latter placed his left hand over his head and his left wrist was cut off;[6] that despite this predicament the deceased continued hitting him,[7] and that he and the deceased mutually hacked each other, resulting in the latter's death,[8] is highly improbable. It is hard to believe that the deceased, an old man of 55[9] years, sick with ulcer,[10] would still press his attack and continue hacking the appellant[11] after having been seriously injured and had lost his right hand.

Even assuming that when appellant arrived at the scene of the crime, the deceased already had a verbal clash with his wife and that the former with drawn bolo in his hand brandished it towards his wife, it is not far-fetched to conclude that the deceased wanted only to scare her into releasing her hold on the rope of the cow.

It is now well-settled that an accused invoking self-defense, or defense of a relative, must prove his case clearly and convincingly, otherwise conviction would follow from his admission that he killed the victim.[12] For the plea of self-defense to prosper, a defendant must rely on the strength of his own evidence and not on the weakness of that for the prosecution.[13] Besides, the number of wounds on the body of the deceased and their location as shown by the autopsy report, expose the inherent weakness of the claim of self-defense.[14] This has been consistently held by this Court over a span of 60 years.[15]

The other question to determine is whether or not the lower court erred in not holding that the crime, if any, committed by the accused is only homicide and not murder. The defense maintains that the lower court, in holding that there was treachery, relied heavily on the statement of witness Wilfredo Arcayan given to the Police

Department of Cebu City on November 30, 1967 [Exhibit "C"]. The records show, however, that said witness, upon taking the witness stand, failed to articulate the contents of his statement. He merely stated that he made the statements contained in Exhibit "C" before the Police Department and before a number of people. It is to be noted that the said Wilfredo Arcayan later on repudiated his said statement. [See Exhibit "8"]

The defense, also claims that the lower court erred in not considering that both the accused and the deceased were armed with their respective bolos at the time of the incident; that they mutually hacked each other, with the accused having the better part of the contest. The lower court considered the location of the wounds found on the person of the deceased as indicative of the accused's intention to eliminate risk, but it did not consider that the deceased sustained those wounds as a consequence of a full and open fight. As a matter of fact, the accused testified that he delivered his first blow against the deceased after ducking to the ground to avoid being hit and after moving away from the cliff. [t.s.n., page 74, May 4, 1968]

The lower court held that there was evident premeditation because the weapon which the accused used against the deceased was a "pinuti" which, when taken out of one's house, ceases to be a weapon of defense and commences to be an instrument of offense. But it failed to consider that the accused was a farmer who normally carried bolo at his waist; that at the time of the incident he was working on his farm, and that the said bolo, because of its length, was very effective in cutting bamboos.

It is further contended that the lower court failed to consider that the bolo used by the accused was not a "pinuti" when it rejected the testimony of Francisco Medillo [t.s.n., page 48, April 16, 1968] from whom the accused purchased the said bolo. Being a trader in bolos, his testimony should have been given credence, in the absence of other evidence to the contrary.

The defense concludes that had the lower court considered the foregoing facts and circumstances, it would not have held that there was evident premeditation as the killing of the deceased by the accused was not really attended by any circumstance tending to qualify the crime as murder. At most it was only homicide.

The prosecution, on the other hand, maintains that the observation of the lower court is clearly based on the record; that the alleged repudiation by Wilfredo Arcayan of his statement in Exhibit "O" was secured through threat and intimidation exerted by Atty. Antigua, counsel for the defense, despite which both Wilfredo Arcayan and his father, Dionisio Arcayan, reiterated the contents of Exhibit "O" and branded as untrue the contents of Exhibit "8" which are favorable to the appellant; that the crime committed is definitely that of murder, being qualified by the circumstance of treachery, since appellant Isidro Ardisa initially attacked suddenly his victim, Vicente Alimoren, from behind, hitting him at the back of the head and causing him to fall with his back flat on the road; that the deceased was then practically defenseless and helpless, with his hands already in tremors, when appellant unnecessarily hacked and chopped him until his neck and head were severed and his left forearm and right little finger cut off; that there is treachery when the offender employs means, methods or forms in the execution of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make [Art. 14, par. 16, Revised Penal Code; People vs. Tala-on, et al., 58 O.G. 6254]; and that the presence of this circumstance qualified the killing as murder [People vs. Acopio, 58 Phil. 582].

The trial court, in holding that there was treachery, relied heavily on the statement [Exhibit "O"] [16] given to the Police on November 30, 1967, by prosecution witness Wilfredo Arcayan and on the testimony of the latter, thus:

"Q.

What time was that when you were taken to the Police precinct on the following day of the incident?

"A.

11:00 o'clock in the morning.

"Q.

And you demonstrated the incident before the Police officers of Talamban precinct?

"A.

Yes, sir.

"Q.

You also described there the exact reenactment of the incident, the first blow of Isidro Ardisa, where was Vicente Alimoren hit?

"A.

He was hit at the back portion of the head.

"Q.

How about the second blow?

"A.

Here.

Interpreter: Witness pointed to the left temple beside the left ear.

"Q.

Did you see Isidro Ardisa hack Vicente Alimoren for the third time?

"A.

Yes, sir.

"Q.

Where was Vicente Alimoren hit?

"A.

On the neck. [t.s.n., pages 47-48, March 28, 1968, Vol. II, italics supplied.]"

The lower court also held that:

"The crime committed by the accused is definitely murder, and not merely homicide. What qualifies it as such

is the element of treachery present in the killing of the victim, Vicente Alimoren. The latter had his back towards the herein accused and his wife Nicasia as he tugged their cow, which entered his premises and ate his corn seedlings, and told them he was bringing it to the barrio captain so that the matter of their responsibility therefor could be threshed out. It was in that position that the herein accused Isidro Ardisa hacked Vicente Alimoren a little obliquely from behind, hitting the latter first at the back of his head, second, at the left temple, and third, at the neck, causing him to fall down on the ground with a reflex gesture of pulling out his own small bolo, Exh. "L", from the scabbard, Exh. "M", which was tucked at his waist. x x x." [Decision, page 147, rollo, italics supplied]

From the evidence on record, it can be gleaned that the wounds the victim sustained could not be inflicted from behind. This is confirmed by the following autopsy report[17] which shows no wound at the back part of the head:

"xxx xxx xxx

"Head —

- Brain — Subarachnoid hemorrhages.

- Skull — Fracture, linear, compound, mid-parietal region.

- Wound — incised, 14 cm. x 1.2 cm., mid-parietal region, involving scalp, and parietal bone.

- Wound — incised, 12 cm. x 3.5 cm., left side, face.

- Wound — incised, scalp, 7 cm. x 2 cm., temporal region, left side.

“xxx xxx xxx.”

If at the time the victim was hacked, his back was turned to the accused, then, the injuries would not have been mostly if not all, on the left side of his head and face. They would have been instead on the right side. Nothing in the autopsy report says that there was any wound on the back of the head of the victim. The parietal region is on the posterior, or rear, part of the top of the head. Luciano Bontuyan, a prosecution witness testified as follows to show that the wounds at the left side of his head and face were inflicted by one wielding a bolo with his right hand when in front of the victim.

"Q.

Can you also tell the Court what hand did Isidro Ardisa use in hacking?

"A.

I saw that he used his right hand.

"Q.

You are positive about it?

"A.

I cannot be very sure about that, but then I saw him use his right hand." (t.s.n. page 30, March 28, 1968. Vol. II, italics supplied)

We conclude that the assailant and the victim were face to face when the first hacking blow was delivered by the accused. The attack was not treacherous because it gave the victim a chance to ward off the assault and defend

himself,[18] or to step backward. The suddenness of attack does not, of itself, suffice to support a finding of alevosia,[19] even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental.[20] In the circumstances mentioned, it cannot be said with reasonable certainty that treachery attended the commission of the crime,[21] or that the deceased was completely unaware of the attack coming from the appellant. The qualifying circumstance of treachery may not be simply deduced from presumption[22] as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit.[23]

Although the defense did not dispute the findings of the lower court that there was evident premeditation on the part of the accused, the record does not clearly support the existence thereof. To properly appreciate the circumstance of evident premeditation, it is necessary to establish with proof, as clear as the proof of the crime itself, the following circumstances: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to this determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect (*People vs. Leano*, 36 Of. Gaz. No. 53, page 1120). None of the foregoing requisites is present in the case at bar.[24]

Considering the absence of alevosia and/or evident premeditation, the act committed by appellant was not murder but homicide.

As regards the last assigned error that the lower court erred in imposing the death penalty upon the accused, discussion thereof becomes unnecessary in view of the conclusion We have reached that the crime committed by the accused was not murder but homicide which is not a capital offense.

Under the proven facts, the offense of homicide committed by the appellant is aggravated by excessive cruelty which is shown by the deliberate and inhuman cutting off of the left forearm and neck of the deceased. However, this aggravating circumstance is offset by the mitigating circumstance of voluntary surrender. Homicide is punished with reclusion temporal, and in view of the resulting absence of any aggravating or mitigating circumstance because of such offsetting, the penalty prescribed by law for the crime committed should be imposed in its medium period. Applying the Indeterminate Sentence Act, the maximum term of the penalty should be within the range of the medium period of reclusion temporal, while the minimum should be within any range of the penalty one degree lower, which is prision mayor.[25]

IN VIEW OF ALL THE FOREGOING, the judgment of the lower court is hereby modified in the sense that the accused is adjudged guilty of homicide and sentenced to not less than twelve (12) years of prision mayor, as minimum, and not more than seventeen (17) years and four (4) months of reclusion temporal, as maximum. The indemnity payable to the heirs of the deceased, Vicente Alimoren, following established precedent, is hereby increased from P6,000.00 to P12,000.00. Costs against accused-appellant.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Antonio, J., took no part.

[1] Page 21, Rollo.

[2] Decision, pages 37-38, Rollo.

[3] Pages 18-20, Rollo.

[4] T.s.n., page 7, May 6, 1968, Vol. II.

- [5] T.s.n., pages 80-81, May 6, 1968, Vol. II.
- [6] T.s.n., page 69, April 18, 1968, Vol. II.
- [7] T.s.n., page 75, May 6, 1968, Vol. II.
- [8] T.s.n., pp. 69-70, April 18, 1968, Vol. II.
- [9] T.s.n., March 29, 1968.
- [10] T.s.n., March 29, 1968.
- [11] T.s.n., page 75, May 6, 1968, Vol. II.
- [12] People vs. Wong, et al., L-22130-32, April 25, 1968.
- [13] People vs. Navarra, et al., L-25607, October 14, 1968.
- [14] People vs. Mendoza, et al., L-16392, January 30, 1965.
- [15] People vs. Panganiban, et al., L-22476, February 27, 1968.
- [16] Page 115, folder of exhibits.
- [17] Page 112, folder of exhibits.
- [18] People vs. Wong, et al., L-22130, April 25, 1968.
- [19] People vs. Torejas, et al., L-29935, January 31, 1972.
- [20] People vs. Macasilang, L-24546, February 22, 1968.
- [21] People vs. Talaboc, Jr., L-25004, October 31, 1969.
- [22] People vs. Torejas, supra: see also People vs. Ramiscal, 49 Phil. 103 (1926).
- [23] Torejas, supra: see also U.S. vs. Rama, 4 Phil. 231 (1905).
- [24] People vs. Diva, et al., L-22946, April 29, 1968.
- [25] People vs. Parayno, L-24804, July 5, 1968.

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