

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMILIO URBISTONDO AND RAYMUNDO (MUNDO) URBISTONDO,
DEFENDANTS-APPELLANTS.**

G.R. Nos. L-45407-08. September 28, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal from the decision of the then Circuit Criminal Court of Rizal in Criminal Case Nos. 1507-08, for murder and frustrated murder, finding the accused-brothers Emilio Urbistondo and Raymundo Urbistondo both guilty beyond reasonable doubt of the crime of murder as charged in the information and sentencing each of them to suffer the supreme penalty of death; to indemnify the heirs of the victim the amount of P10,000.00, to pay moral damages in the amount of P6,000.00 and another P6,000.00 as exemplary damages, and to pay the costs. For the crime of frustrated murder, the trial court found them also guilty beyond reasonable doubt and sentenced each of them to suffer the indeterminate penalty of from ten (10) years and one (1) day of reclusion temporal, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, and to pay the costs.

Prosecution evidence shows that about eight o'clock in the evening of January 30, 1971 at Amaya, Tanza, Cavite, in front of the residence of Caridad Batayola, Augusto G. Perea was conversing with Mary, sister-in-law of Emilio Urbistondo. Emilio arrived and got angry upon seeing them (Augusto and Mary) talking with each other because Emilio did not approve of Augusta's courtship of Mary. There was an exchange of words between the two, after which Emilio challenged Augusto to a fight but the latter refused. When Augusto was about to leave, Emilio suddenly boxed him but then some bystanders intervened and pacified the two protagonists who separated and left. Not long after, Emilio, accompanied by his brothers Antonio and Raymundo, returned to the place of the incident. Like-wise, Augusto also appeared and, later, his father Venancio, who asked Emilio what the fight was all about. Venancio received no reply. Instead, Emilio suddenly stabbed Augusto. This was followed by Raymundo who hit Augusto with an ice pick, while Antonio hacked him with a sharp-bladed instrument.

When Augusto fell to the ground mortally wounded, the Urbistondo brothers assaulted Venancio - Antonio hacking him with a sharp-bladed instrument; Emilio stabbing him (Venancio) on his left leg; and Raymundo hitting him with an ice pick.

All of these incidents were witnessed by Caridad Batayola, the owner of the house and by the other victim, Venancio Perea.

Augusto was brought to the hospital but even then he died shortly upon arrival due to the several wounds he sustained. Venancio Perea was also taken to the hospital and were it not for the timely medical attention given him, he would have died also. He was operated on his left leg and was treated on the lacerated wounds on his buttocks.

After the incident, Emilio, Antonio and Raymundo left their respective residences. Antonio was arrested by the

police in Wawa, Nasugbu, Batangas in June 1973. However, he died on May 19, 1977 during the pendency of this appeal.

Raymundo was arrested in Iba, Batangas where he went into hiding for about four (4) years.

Emilio hid in a friend's house in Rosario, Cavite and then left for Samar where he stayed for one year. Thereafter, he transferred to Camarines Norte and returned to Cavite in 1974 upon learning that his brother Antonio had already been arrested.

Appellant Emilio Urbistondo claims self-defense, while appellant Raymundo Urbistondo denied participation in the incident with alibi as his defense.

Emilio testified that about eight o'clock in the evening of January 31, 1971, while he was closing his sari-sari store located in the ground floor of the house of Caridad Batayola, he heard a sound coming from the kitchen door. He looked at the door and saw a man with a knife and whose face was partly covered by a handkerchief. He embraced the intruder until they struggled and fought for the possession of the knife. He succeeded in wresting the knife but then the masked man ran away, got a piece of wood inside the store and hit him on his hand and arm. He fought back and stabbed the intruder who ran away again. At that juncture, Caridad Batayola shouted from upstairs of the house calling Venancio Perea who lived nearby that his son Augusto was hitting Emilio. Venancio arrived, tried to wrest the knife from him and failing, hit him on his head with a bottle. He fought back and stabbed Venancio who, thereupon, ran away.

He did not know who the masked man was until he heard Caridad shouting to Venancio. Afraid that they would take revenge, he left the place and went to his mother's residence about 300 yards away. He met his brothers, Antonio and Raymundo, and told them what had happened to him at the store. He then left for Rosario, Cavite where he stayed for two days and then proceeded to his in-laws' place in Samar. After stay-ing for three months in Samar, he transferred to Bicol where he engaged in a business for a living. After two years he returned to Cavite and surrendered to the Philippine Constabulary authorities upon learning of the arrest of his brothers and the filing of a case against him.

Raymundo Urbistondo denied participation in the incident and declared that he was at his residence when at about nine o'clock in the evening, Emilio arrived telling him what had happened at the store. After Emilio had warned him of the revenge which the Pereas might take against them, he left and stayed in a neighbor's house until the following morning. He returned to his house and for a month no peace officer went to him, much less was a charge filed against him. Thereafter, left for Iba, Batangas to earn a living and stayed there until he was arrested by the PC authorities.

In its decision of October 21, 1976, the trial court ruled:

"Summing up the evidence on record the Court could only deduce that there was conspiracy in the commission of the crimes of murder and frustrated murder, because although there is no direct proof of conspiracy between the accused brothers, the simultaneous presence of both at the scene of the crime, armed respectively, with a bolo, a knife and an ice pick, the circumstance that forthwith there-after the accused boarded a banca which was there ready for the gateway, leave no room for doubt as to the existence of unity of action and purpose between them.

"The court wonders why accused Emilio Urbistondo was very much against the victim Augusto Perea's courting the former's sister-in-law. If ever there is someone who would be strict with the girl it should be her parents and not a mere brother-in-law. And with this actuation of the accused he has only manifested his jealousy because of his desire to win the heart of the sister of his wife.

"There are two aggravating circumstances present in the commission of the crimes which are treachery and evident premeditation. Treachery qualifies the crime to murder with evident premeditation as a generic aggravating circumstance. The killing of the victim and the stabbings made were sudden and unexpected and said victim was not in a position to defend himself (People vs. Aguilar, 88 Phil. 693)." (pp. 109-110, Rollo)

In disregarding the averred self-defense of Emilio Urbistondo, the Court found it strange that after the stabbing he did not surrender to the authorities. On the contrary, he left his residence after he had thrown away the weapon used in stabbing the victims. This is not the behavior of one who killed another in self-defense (People vs. Pelago, 24 SCRA 1027). Immediately after the incident, Emilio went to Rosario, Cavite and after two days he left for Samar and stayed there for three months. He then transferred to Bicol. It was only after he had learned of the arrest of his brother Antonio that he decided to surrender to the authorities. The claim of self-defense of Emilio was also overruled for lack of sufficient proof. The trial court did not give credence to his testimony and instead gave full faith and credit to the testimonies of prosecution witnesses Caridad Batayola and Venancio Perea.

Well settled is the rule in this jurisdiction that one who rests his case in self-defense must prove the same by clear and convincing evidence, and in doing so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if it were weak, it could not be disbelieved after the accused himself admitted the killing.

Equally untenable is appellant Raymundo Urbistondo's defense that he had not participated in the killing of Augusto Perea and in the wounding of Venancio. He claimed that he was at his residence that evening of the incident when Emilio arrived telling him what had happened at the store. Aside from the circumstance that his claim was belied by the positive testimonies of prosecution eye-witnesses, the same is not sufficiently corroborated. What is more, he left his residence for Batangas and stayed there until he was arrested by the peace officers.

It is clear from the evidence that appellants confederated and acted in concert in the commission of the charges filed against them. They are, therefore, equally criminally liable for the offense of murder and frustrated murder because of the qualified circumstance of treachery.

WHEREFORE, the appealed decision is **AFFIRMED** with the modification that in the case of murder, for lack of the necessary votes, the penalty is reduced to reclusion perpetua and indemnity increased to P30,000.00.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Abad Santos, Melencio Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

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

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