

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FILOMENO HISUGAN, ACCUSED-APPELLANT.

G.R. No. L-38687. August 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal by Filomeno Hisugan from the decision of the Court of First Instance of Zamboanga del Sur, in Criminal Case No. 584, finding him guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which, reads:

"WHEREFORE, there being neither a mitigating nor an aggravating circumstance, the Court hereby sentences the accused Filomeno Hisugan alias Menong to life imprisonment to be served at the National Penitentiary at Muntinlupa, Rizal, with the accessory penalties prescribed by law, to indemnify the heirs of the victim, Ricardo Jayme, in the sum of Twelve Thousand (P12,000.00) Pesos, to pay moral damages in the sum of Twenty Thousand (P20,000.00) Pesos, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The accused, being a detention prisoner, shall be credited with four-fifths (4/5) of the preventive imprisonment already undergone by him."

As to how the crime was committed, and the events immediately preceding and following the commission thereof, the prosecution's version is presented in the People's Brief as follows:

"On or about May 13, 1971 at about 8:00 o'clock in the morning, Narcisa Jayme and her husband, Ricardo Jayme, who was at the time the barrio captain of Pantad, Dumalinao, Zamboanga del Sur, went to Pagadian City to buy some rice at the market place (p. 115, tsn, February 13, 1973). The rice they bought was carried by one Restituto Teledorio to be brought to a boat while the spouses waited at the 'pantalan' (wharf) (p. 116, *ibid*). At the 'pantalan', while Restituto and Ricardo were convers-ing, suddenly, Filomeno Hisugan appeared and grabbed Ricardo on both shoulders from behind (p. 117, tsn, Feb. 13, 1973; p. 4, tsn, Nov. 7, 1972). He then locked his right hand around Ricardo's neck in a strangle hold and while in this position, stabbed Filomeno (Ricardo) at the stomach with a hunting knife wielded by his (Hisugan's) left hand (pp. 117, 118, 139--142, tsn, Feb. 13, 1972). This was immediately followed by another thrust at the left side of Ricardo's back and the hunting knife got stucked in that wound (p. 117, tsn, Feb. 13, 1973). Ricardo fell on the ground with the hunting knife sticking on his back (p. 119, tsn, Feb. 13, 1973).

"Right after stabbing Ricardo Jayme, Filomeno Hisugan attempted to escape by jumping into the sea and swimming to a boat where two persons were waiting for him (p. 6, tsn, Nov. 7, 1972; p. 120, tsn, Feb. 13, 1973). These persons made an effort to start the engine of the boat but the engine would not work; so Filomeno jumped into the sea again and swam to the direction of another boat (pp. 120, 121, tsn, Feb. 13, 1973).

"Upon being informed of the stabbing incident, Patrolman Monterola went to the scene of the crime at the wharf where he saw Ricardo lying on the ground (pp. 63, 64, tsn, Feb. 8, 1972), whereupon Pat. Monterola ordered the wife of Ricardo and other persons who were present then to bring Ricardo to a hospital (pp. 64, 69,

ibid). Thereafter, Pat. Monterola was informed by Restituto Teledorio that the person responsible for the stabbing of Ricardo Jayme was Filomeno Hisugan; at that time, Filomeno Hisugan was still in the water but was holding on to the rear of a pumpboat (pp. 65, 66, ibid). The policeman then boarded said pumpboat and instructed Filomeno to go up the pumpboat. Filomeno did as instructed (p. 67, ibid). Subsequently, Patrolman Monterola brought Filomeno for investigation to the police headquarters and turned over to Sgt. Delmonte (pp. 68, 69, ibid).

"Thereafter, Patrolman Monterola went to the Sto. Niño Hospital where he saw Ricardo Jayme already dead (P. 69 ibid); thus, the policeman instructed Ricardo's wife and other relatives to bring the victim to the Salas Funeral Parlor (ibid). He accompanied the bereaved family to the funeral parlor after which, he went back to the police headquarters to fetch a government physician (P. 71, ibid); and then, he accompanied the doctor, Doctor Arao, to the funeral parlor, where she examined the body of Ricardo Jayme (p. 72, ibid). As instructed by the doctor, Pat. Monterola pulled out the dagger from the body of Ricardo (pp. 72-73, ibid). He then wrapped the weapon with a piece of paper and brought it to the police headquarters and turned over to the police investigator, Sgt. Delmonte (p. 74, ibid).

"The post mortem certificate issued by Dr. Patrocinio T. Arao reads as follows:

- '1. Wound, stabbed, ½ cm. from 1st lumbar vertebra right side, 5 cm. in length, Depth: 19 cm.
- '2. Wound, stabbed Hypogastric region, left, with omentum coming out from the wound, 5 cm. in length.
- '3. Cause of Death: Internal Hemorrhage' (Exh. 'B', p. 5, Records).

"It appears that on March 19, 1970, Ric and Boy Jayme, sons of the victim Ricardo Jayme, had inflicted bodily injuries on Filomeno Hisugan; his right hand was cut by the said children of Ricardo allegedly without sufficient provocation (pp. 299, 337, tsn, January 9, 1974). Subsequent to said incident, Filomeno Hisugan filed a case for frustrated homicide against Ric and Boy Jayme (ibid).

"Appellant now claims that immediately prior to the stabbing incident subject of this appeal, the deceased Ricardo Jayme and appellant met at the scene of the crime, whereupon the former collared the latter and asked him to withdraw the case against Ricardo's children; otherwise, he would kill appellant (pp. 286, 288, 289, tsn, January 9, 1974). It is alleged that because of Ricardo Jayme's actions, appellant was afraid that he might be killed; thus, when he allegedly saw a knife in a push-cart that was near the place where the two of them were at the time, appellant picked up the knife and thrust it on Ricardo Jayme (p. 288, ibid)."

Upon the other hand, the version of self-defense as developed by appellant during the trial is as follows, quoting also from Appellant's Brief:

"Little or no dispute, exists between the prosecution and the defense, on the following salient facts:

"That in the morning of May 13, 1971, Rogelio Suan and the accused Filomeno Hisugan, arrived at the Santa Lucia Public Market, Pagadian City, on board the fishpond service pumpboat of the former, loaded with 'bangus' fish, from the fishpond at Rebucon, Dumalinao, Zamboanga del Sur, which they sold and disposed of there; that after having sold and disposed of their fish, they proceeded with their pumpboat to the deeper portion of the wharf, for berthing, in the meantime, while the pumpboat would be undergoing a check-up and repair; that thereupon docking at the wharf, accused-appellant alighted from the pumpboat to the wharf, for the purpose of buying an engine part of the pumpboat, to replace a worn-out or broken one, at a store downtown Pagadian City, while his companion, Rogelio Suan, got off the boat, and went into the water, to remove the broken part of the propeller mechanism of the pumpboat; that when the accused was already on the wharf, accused stabbed the deceased, Ricardo Jayme, two times, hitting him on the front part of the body, and at the back; that the second stab was the one which hit the back of the victim, where the knife was lodged, and left there by the accused, when he left the deceased; that accused stayed in water for a short while, after the stabbing; that he went up; that Policeman Romeo Monterola arrived at the scene of the incident, and took

custody of the accused, bringing him to the Police Head-quarters in the municipal building; that the deceased Ricardo Jayme was brought to the Pajares clinic, but died; that Policeman Monterola went to the Pajares clinic, where he saw the deceased; that the deceased was brought to the Funeraria Salas, where the cadaver was examined by Dra. Patrocinio Arao, a government physician; that as a result of the examination of Dra. Arao, she issued the post-mortem findings, Exhibits 'B', 'B-1' and 'B-2', and that it was when the post-mortem examination was conducted, when the knife, Exhibit 'A', was pulled out of the body of the deceased.

"It may also be added that the deceased, Ricardo Jayme, at the time of his death, was the barrio captain of Pantad, Dumalinao, Zamboanga del Sur.

"Statement of Disputed Facts.

Among the facts alleged by the prosecution and vehemently denied and disputed by the defense, are as follows:

- (1) That the accused, with evident premeditation and treachery, attacked the deceased, Ricardo Jayme, resulting in the latter's death;
- (2) That the knife, Exhibit 'A', used in the stabbing, came from the accused;
- (3) That the accused immediately jumped into the sea, from the wharf, after the stabbing, obviously, to escape;
- (4) That the accused came up the wharf, from the sea, to where he immediately jumped, after the stabbing, because he was ordered;
- (5) That both Narcisa Vda. de Jayme, the surviving spouse, and Restituto Teledorio, both prosecution witnesses, were present, at the scene of the incident, when it occurred, in the morning of May 13, 1971, witnessing the accused, stabbing the deceased;
- (6) That the accused is guilty of murder, as charged.

"Ultimate Question in Issue Before the Honorable Court.

"The ultimate question in issue before the Honorable Court, in this appeal, is whether or not, there is competent and sufficient evidence to prove the guilt of the accused, of the crime of murder, as charged. Stated otherwise, the question in issue is whether the accused has made out a case of complete self-defense or whether the killing of the deceased, by the accused is justified, as to entitle him to an acquittal."

Appellant claims that the Court erred (1) in giving credit to the testimonies of prosecution witnesses: Narcisa Vda. de Jayme, Pat. Romeo Monterola and Restituto Teledorio; (2) in finding that the accused, with treachery and pre-meditation attacked, assaulted and stabbed the deceased Ricardo Jayme; and (3) in discrediting the witnesses of the defense.

The refusal of the trial court to give credence to appellant's version of self-defense is the basic and main assignment of error.

We agree with the Court a quo in rejecting the plea of self-defense. Well-settled is the rule that he who admits the infliction of the injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence. If such evidence is of doubtful veracity, and is not clear and convincing, the defense must necessarily fall, for having admitted that he was the author of the death of the deceased, it was incumbent upon appellant, in order to avoid criminal liability, to prove the justifying circumstance claimed by him, without relying on the weakness of that of the prosecution but on the strength of his own evidence, for even if the evidence of the prosecution was weak, it could not be disbelieved after the accused himself had admitted the killing. (People vs. Ansoyon, 75, Phil. 772).

The trial court, discrediting the contention of the defense that the deceased collared the appellant who threatened to finish him unless he drops the case against the sons of the victim, said:

"1. The alleged case against the sons of the victim was filed on March 23, 1970, where the victim in that case was the herein accused. While it may be true, that the victim, as a father, may like to see the case against his sons dismissed, yet considering that he was a barrio captain and as such a responsible barrio official, it is hard to believe that he will take the law into his hands to attain his wish;

"2. After all, the present accused who was the victim in Criminal Case No. 1029 may have as much, if not more, reason to take revenge against those who maltreated him and/or their families;

"3. If it is true that the victim wanted the herein accused to drop the case against his sons at all costs, the victim would not have done the same at the wharf of Pagadian City which is a public place with peace officers around. It would have been easier for him to do it at the fishpond of Mr. Jamelarin in Rebokon, Dumalinao, where this accused works and adjacent to barrio Pantad, Dumalinao, where the victim was the barrio captain and as such wields influence while the accused does not have anyone to run to for help. His chances of succeeding in persuading or even forcing the herein accused to drop the case against his sons was brighter thereat than in Pagadian City;

"4. It is incredible how the victim could have threatened to finish the herein accused when the said victim was not armed at all. This fact was even admitted by the accused and his witnesses; and

"5. Immediately after his arrest and when asked by Patrolman Monterola why he stabbed Ricardo Jayme, the accused answered that he and one of the Jaymes had a previous incident. (See testimony of Romeo Monterola) The accused never said that he was collared by Ricardo Jayme."

To begin with, the unlawful aggression imputed upon the deceased by the appellant, in order to establish his theory of self-defense, is belied by the more natural and credible testimonies of the state witnesses. The trial court found the prosecution witnesses more credible, saying that: "Restituto Teledorio and Narcisa Jayme testified frankly, sincerely and to the point"; that if there were contradictions and inconsistencies in the testimony of Restituto Teledorio, the same are minor and irrelevant and only serve to show that he was not a tutored or rehearsed witness. Thus, the supposed aggression committed by the deceased was his having collared the appellant and saying: "So you are here, if you will not drop that case against my sons, I will finish you." Appellant answered: "Please don't squeeze my neck, I have not done anything wrong." When Jayme would not release his hold on Hisugan, the latter stabbed him with a hunting knife which he took from a pushcart.

This is entirely belied by prosecution witnesses, Restituto Teledorio and Narcisa Jayme who contended that appellant came from behind and stabbed the victim suddenly. When Patrolman Romeo Monterola arrived at the wharf, he saw Jayme lying on the ground, with his wife and son beside him.

The element of unlawful aggression not having been established, appellant's plea of self-defense, or even that of incomplete self-defense, must fall. The other requisite of this justifying circumstance which is that of the reasonable necessity of the means employed to prevent or repel the aggression must, likewise, have to be found wanting. In the first place, there is no evidence that the deceased was even armed at all. Secondly, other than the allegation by appellant that the deceased collared him, there was absolutely no necessity of using the knife against the deceased.

Neither can it be said, from the evidence presented by both parties, that the appellant gave no provocation which is the third and last requisite of the justifying circumstance of self-defense.

Considering that appellant stabbed and killed the deceased not in lawful defense, his liability for the killing, authorship of which he admitted, is beyond doubt. The only question now is whether the stabbing was attended

with treachery as to raise the stabbing to the category of murder as charged, and as found by the trial court.

In the case at bar, Dr. Patrocinio Arao testified that if the assailant was right-handed and face to face with the victim, it is possible that the wound could have been inflicted in the left hypogastric region. However, she added that if the assailant was left-handed, the victim would have sustained the injury when assailant was at his left side or at the back. Considering that prosecution witness Restituto Teledorio was talking with Ricardo Jayme when appellant Filemon Hisugan suddenly appeared from behind him (Ricardo Jayme) and stabbed the latter and, considering further, the admission of appellant that he could not have locked the neck of the deceased with his right arm because "it is already useless" due to previous incidents, it becomes clear that he was holding the instrument used in stabbing the victim in the left hypogastric region with his left hand. Thus, there was treachery when the crime was committed because appellant insured the killing of the victim without risk to himself. (People vs. Velez, 58 SCRA 21).

WHEREFORE, the decision of the Court of First Instance of Zamboanga del Sur, Branch II at Pagadian City, is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

Teehankee, (Chairman), J., no part.

Makasiar, J., on leave.

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