

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EDUARDO BESANA, JR., DEFENDANT AND APPELLANT.

G.R. No. L-26191. May 19, 1975

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appellant was found guilty of murder and sentenced to suffer the penalty of life imprisonment to indemnify the heirs of Arsenio Besas in the amount of P6,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.

In the evening of February 3, 1964 at about 6 o'clock, Romeo Graboso and the victim Arsenio Besas were walking along the railway tracks towards the gate of Central Santos Lopez which was about 40 meters away. Both of them were residents of barrio Tabuc Suba, municipality of Barotac Nuevo, Iloilo, of which barrio, Besas was barrio captain. They had just come from a visit to the house of Graboso's cousin, Alberto Libo-on, a resident of nearby barrio Salihid (Central Santos Lopez) of the same municipality. Besas merely accompanied his friend Graboso on the visit and both were unarmed.

Unknown to them, appellant, a policeman of Barotac Nuevo who had been appointed as such only on January 1, 1964 at the age of 24, and his companion, a fellow policeman named Antonio Bayugos, were walking in the same area on patrol. They were on their way to barrio Salihid to the house of one Exaltacion Bedia who had been a victim of a robbery committed at her residence the night before. The two police officers spotted the victim and his companion walking towards them while still at some distance. Suspicious of the two men, the police officers took cover behind a rice paddy and waited for them to come closer.

At a distance of about seven meters from the police officers, the victim and his companion were taken aback by the shouted command of halt that rent the night air followed almost simultaneously by a gunshot. Graboso froze in his tracks and raised his hands. Unfortunately, Besas panicked and ran away.

Appellant who was wearing civilian clothes at the time, came out from behind a rice paddy together with his fellow policeman. Both were armed with carbines. Bayugos who was in uniform had his gun pointed at Graboso, while appellant immediately started chasing the victim and firing at him. Graboso uttered this protest to Bayugos: "We did not commit any fault." The latter's reply: "Dont's move or else I will shoot you." Thus, for a full five minutes, Graboso remained motionless with his hands in the air. A total of seven shots were fired by appellant before he ceased firing at the running figure of Besas; whereupon, Graboso, who personally knows appellant and his companion, addressed these words to the former: "That is Pare Arce, he has no fault." Appellant answered: "He was already hit." Besas was a few meters away sitting on the ground. He had been hit twice in the leg. Soon thereafter, Mariano Barrido, Chief Security Guard of the Central Santos Lopez, arrived. The four of them — Graboso, Bayugos, Barrido, and appellant — lifted the victim and placed him on a jeep to be brought to the hospital. Only Barrido stayed behind. The victim died at about 7:00 p.m. on the way to the hospital from the injuries he had received.

Appellant claims self-defense. According to him, on the night in question, he was with Pat. Bayugos on guard duty at Bangga Central. Because of a reported robbery in the house of one Exaltacion Bedia located at barrio Salihid, Barotac Nuevo, they were on foot on their way to the said barrio to conduct an investigation. They met two men also on foot who turned out to be Graboso and the deceased. As soon as they met, the deceased ran away. Whereupon Pat. Bayugos fired a shot in the air and identified themselves thus: "These are policemen." At the same time, appellant gave chase. Appellant fired three warning shots and identified himself as a policeman. Instead of surrendering, the deceased sought cover behind a rice paddy. Appellant, who was lying flat on the ground, shouted his identity by saying: "I am a policeman." There was no response. So appellant ran towards another rice paddy nearer the place where deceased was hiding and fired in that direction after which appellant shouted the command "You stand up." Instead of obeying, appellant heard two shots coming from the direction of the deceased. So, at a distance of about six to seven meters, appellant fired his automatic carbine at the deceased. It was then that the deceased shouted that he was wounded in the leg.

To bolster his plea of self-defense, appellant presented a .22 caliber revolver, Serial No. 731591 (Exh. 1) which was allegedly found by Pat. Bayugos the morning after the incident, at approximately the same place where the deceased was sitting down on the ground with two gunshot wounds in his right leg.

Having pleaded self-defense, appellant necessarily admits having shot and killed the deceased. The burden of proof is thereby shifted to him to establish that he was justified in doing so. It was for the appellant to prove that the following circumstances concur: "First, unlawful aggression; second, reasonable necessity of the means employed to prevent or repel it; and third, lack of sufficient provocation on the part of the person defending himself. The evidence of record shows that appellant was not attacked by either the deceased or his companion, Romeo Graboso. It has not even been established that the deceased carried any firearm or even a deadly weapon on the night in question. So there was not even any imminent danger of such an attack. True enough that appellant presented a .22 caliber revolver, Serial No. 731591(Exh. 1) as the firearm which deceased allegedly fired at him. However, appellant's claim was correctly disregarded by the trial court. The area where the deceased was found sitting down already wounded is an open rice field. The ground was dry because the palay was already harvested. The same night, right after the shooting, several persons, some of them officers of the law, conducted a thorough research of the area using torches for illumination. They did not find any weapon. Instead, it was only the next morning that Pat. Bayugos, appellant's companion on that eventful evening, claimed to have found the said firearm. (Exh. 1). Aside from the fact that the victim's wife testified that her husband did not own any firearm, this case developed an unusual twist which belied appellant's plea. A witness for the defense, Panfilo Bayoneta, testified that he found the firearm in question (Exh. 1) in the toilet of a dance hall at barrio Adwit in the evening of January 24, 1964 and that he surrendered the same to appellant, a municipal policeman. From the evidence of record, therefore, appellant was the last one in possession of the firearm. There is no explanation whatsoever as to how the firearm in question, if at all, came into the possession of the deceased.

Having ruled that the element of unlawful aggression does not exist, it necessarily follows that the second and third requisites of self-defense cannot also be present.[1]

In classifying the offense as murder, the Solicitor General argues that the deceased Arsenio Besas was unarmed when the fatal shots were fired by the appellant and the injuries were inflicted from behind while Besas was fleeing from the assailant.

We believe that the appellant must be held liable for the killing of Arsenio Besas, but that the offense is only homicide. There is absolutely no indication in the record that the appellant was purposely in search of Besas, and the bare facts proven at the trial are not inconsistent with the inference that the meeting was casual. Much less can the proof warrant the theory that the appellant had a previous determination to kill Besas, and the facts proven are

likewise not inconsistent with the conclusion that appellant fired at his victim impulsively. Nor can we suppose that appellant knew beforehand that the deceased was unarmed. The fact that the injuries of the victim were inflicted from behind as the latter was running away does not necessarily establish treachery where it does not appear that appellant purposely chose to employ such means of attack so that there would be no risk to himself from any defense which the offended party might make.[2] Upon the whole, we are not prepared to rule that the qualifying circumstance of treachery was present.

The fact that appellant was one of those who brought the deceased to the hospital after the commission of the offense, and the further circumstance that he proceeded to the municipal building where he was placed under arrest entitles him to the mitigating circumstance of voluntary surrender.[3]

Appellant is guilty of homicide for which the law prescribes the punishment of reclusion temporal (Article 249 Revised Penal Code). In view of the mitigating circumstance of voluntary surrender not offset by any aggravating circumstance, the appellant must be made to serve imprisonment for not less than 6 years and 1 day of prison mayor nor more than 12 years and 1 day of reclusion temporal.

Moreover, we notice that the decision a quo only awards the amount of P6,000.00 as indemnity. The same should be increased to P12,000.00.[4]

WHEREFORE, as thus modified, the judgment appealed from is hereby affirmed, with costs against the appellant.

Judgment affirmed with modifications. So ordered.

Fernando, Chairman, Barredo, Antonio, and Aquino, JJ., concur.

[1] People vs. Yuman 61 Phil. 786

[2] People vs. Tumaob 83 Phil. 742

[3] Art. 13, par. 7, K.P.C.; People vs. Hanasan 29 SCRA 534

[4] People vs. Pantoja, L-18793, October 11, 1968

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