

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISABELO VICENTE ALIAS INOY, ACCUSED-APPELLANT.

G.R. No. L-31725. February 18, 1986

Ponente: AQUINO, C.J.

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AQUINO, C.J.:

Isabelo Vicente appealed from the decision of the Court of First Instance of Pangasinan dated December 16, 1969, convicting him of murder, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P12,000 to the heirs of Nelson Ramirez. His co-accused, Teofilo de Leon, was acquitted.

Isabelo Vicente, 52, killed Nelson Ramirez, 36, the husband of his niece, Lita Vicente, in the eve-ning of December 7, 1967 in Natividad or Tayug, Panga-sinan. After the killing, Isabelo, accompanied by the mayor, surrendered to the chief of police. He told the chief of police that he had quarrelled with Nelson and that as the latter was going to stab him with a bolo (Exh. 4), he (Isabelo) shot Nelson with a shot-gun (Exh. C) in self-defense (2 tsn Sept. 8, 1969).

Motive for the killing was that Rizalina Vicente, 14, daughter of Isabelo, was an alleged concubine or paramour of Nelson, a fact which naturally angered Isabelo and his family (No. 20 Exh. E-2; 24 tsn Jan. 21, 1969; 13-14 tsn Feb. 19, 1969; 14 tsn Nov. 6, 1968).

The municipal health officer found that Nelson had four wounds caused by gunshots or buckshots; one wound shattered his skull and blew his brains out; the others were found on his left thigh, left shoulder and left ribs (Exh. A and B).

Another autopsy conducted by a hospital physician revealed that Nelson had contusions on the chest, abdomen and extremities, swelling with ecchymosis on the penis and swelling with dislocation of the interphalan-geal joints of the right-hand fingers in addition to the four gunshot wounds already mentioned. The stomach, liver, left kidney, lungs and diaphragm were perforated (Exh. D).

Isabelo was charged with homicide in the municipal court (Exh. 6). Later, an amended complaint for murder was filed against Isabelo, his son Francisco and Teofilo de Leon. The parents, brothers and sisters of Nelson alleged that other persons were involved in the killing of Nelson "under mysterious circumstances" (Exh. I). In the Court of First Instance, only Isabelo and De Leon were charged with murder.

Did Isabelo act in self-defense? He could have proven self-defense during the preliminary investigation, but he did not present any evidence at that stage.

His story was that he arrived in the vicinity of his house at about eight o'clock on that fateful evening of December 7, 1967. He was riding in a calesa driven by his neighbor Teofilo de Leon. He had drunk much basi. He could not drive the calesa because he was intoxicated.

His house was about seven meters from Nelson's house. As the calesa neared their houses, it touched the wire

used as clothesline strung between a caimito tree and a bamboo post of Nelson's house and caused it to snap off. Nelson's house was shaken. He was eating supper at the time. He went down with a flashlight and berated Isabelo.

Then, Nelson got his bolo and chased Isabelo. The latter took refuge in his house followed by Nelson. Isabelo got his shotgun and ran downstairs through the kitchen. Nelson took another route. He reached the ground where he encountered Isabelo near the caimito tree. As Nelson, who was five and a half feet tall, raised his bolo to stab Isabelo who was five feet only, the latter retreated and stumbled over the sugarcane stalks unloaded from the calesa.

Nelson rushed to hack the fallen Isabelo with his bolo but the latter was able to press the trigger of his shotgun, hitting Nelson on the left breast. Isabelo was able to get up. He shot Nelson two more times (3-5 Norada's brief).

A different version was given by Lita Vicente. In her tape-recorded declaration, she said that Isabelo and De Leon did not arrive in the vicinity of their houses and Nelson's house at around eight o'clock in the evening of December 7, 1967.

Isabelo and his son Francisco arrived at around eleven o'clock that evening in the calesa driven by De Leon. They carried the dead body of Nelson and dumped it near the caimito tree between the houses of Isabelo and Nelson. Then, as already noted, Isabelo shot the cadaver of Nelson three times. He later went up the Nelson house, got his bolo and flashlight and placed them near Nelson's body (2-11 tsn Nov. 6, 1968). This version renders incredible the reenactment made by Isabelo as shown in the photographs, Exhibit J to J-17.

We hold that self-defense was not proven in this case. As observed by the trial court Isabelo was not wounded at all. It would be difficult to believe that Nelson, an intelligent man, would have faced Isabelo while the latter was pointing a gun at him. He should have known that a bolo was an inadequate weapon against a shotgun.

The trial court also noted that Isabelo had not explained why Nelson had multiple contusions on his chest, abdomen and extremities and swellings with ecchymosis on his penis and right-hand fingers. Also, it cannot be true that Isabelo frontally shot Nelson. There was no frontal gunshot wound.

However, in the absence of proof as to how Nelson was killed, the killing must be considered as homicide and not murder. The circumstance qualifying the killing as murder must be proven as indubitably as the killing itself (U. S. vs. Sellano, 10 Phil. 498; U. S. Bisandre, 40 Phil. 78).

Isabelo is guilty of homicide with the mitigating circumstance of voluntary surrender to the authorities. The maximum of his indeterminate penalty should be taken from reclusion temporal minimum. The minimum should be taken from prision mayor.

WHEREFORE, the trial court's decision is modified. Isabelo Vicente is convicted of homicide and sentenced to an indeterminate penalty of ten (10) years of prision mayor as minimum to fourteen (14) years of reclusion temporal. He is ordered to pay the heirs of Nelson Ramirez an indemnity of P30,000. Costs de oficio.

SO ORDERED.

Concepcion, Jr., (Chairman), Abad Santos, Escolin, Cuevas, and Alampay, JJ., concur.

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