

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON BARCENA, ACCUSED-APPELLANT.

G.R. No. L-34202. June 30, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of the judgment rendered in Criminal Case No. 12, 009 of the defunct Court of First Instance of Davao del Norte.

RAMON BARCENA was accused of the crime of robbery with homicide said to have been committed as follows:

"That on or about January 31, 1966, in the Municipality of Asuncion, Province of Davao del Norte, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, armed with a bolo, with intent of gain and by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously take and carry away P400.00 from Anunas Braem after said accused attacked, assaulted and hacked said Anunas Braem, thereby inflicting wounds upon the latter, which caused his death."

In a decision dated August 17, 1971, the following sentence was pronounced:

"In the light of all the foregoing, the Court is convinced that the accused, Barcena Ramon, is guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized under Article 294 of the Revised Penal Code, with the attendance of the aggravating circumstances of treachery and that the act was committed with grave abuse of confidence, the accused and the deceased being close friends, for which he is hereby sentenced to the extreme penalty of death by electrocution, to indemnify the heirs of his victim, Anunas Braem, in the amount of P12,000.00, to suffer all the accessory penalties of the law, and to pay the costs."

Ramon Barcena speaking through his counsel de oficio, Senator Tecla San Andres-Ziga, admits having killed Anunas Braem but insists that he did so in defense of his wife. He denies the robbery.

The People's version of the facts is as follows:

"It is undisputed that at about noontime on January 31, 1966, in the municipality of Asuncion (now New Corella), province of Davao del Norte, the accused Barcena Ramon boloed Anonas Braem, inflicting upon the latter multiple wounds which caused his death (pp. 8-10, t.s.n., testimony of accused Barcena Ramon, Feb. 4, 1971; Exhibit "A", pp. 7-8, rec.). Postmortem examination of the body of the deceased conducted by Dr. Felicidad Baltazar showed that he sustained the following wounds:

'd. Physical injuries.—

'1. Wounds, incised, about 7 inches long, gasping from the left cheek bone to the middle of the lower jaw cutting the facial muscles and bones.

'2. Wounds, incised gasping, about 6 inches long, extending from the right cheek bone to the right angle of the jaw cutting thru the facial muscle and bones.

'3. Wounds incised, about 4 inches long, just below the left ear lobe cutting across the left ramus of the lower jaw, the neck and facial muscles.

'4. Wound, incised, 5 inches long, cutting across neck, at the level of the 2nd cervical vertebra, severing the big blood vessel and nerves of the neck and the cervical spinal cord.

'5. Wound, incised, across the lower 3rd of the external surface of the right arm, 3 1/2 inches long, bone deep.'

(pp. 7-8, rec.)'

The circumstances antecedent to and surrounding the death of Anonas Braem were established by the prosecution through the testimonies of witnesses Francisco Bedaña, Warisam Braem, Ines Tizon Braem, Sgt. Francisco Piccio, and Ogarinan Macatindog.

Francisco Bedaña testified that the deceased Anonas Braem was an employee of the logging company of Ogarinan Macatindog (p. 6, t.s.n., Aug. 7, 1970); that at about 8:00 or 9:00 o'clock in the morning of January 31, 1966, he and the deceased started from Barrio Cabidanan, New Corella, for Barrio Macgum, same municipality (pp. 9-10, id.), and that along the way, he dropped at his house while the deceased continued on his way alone (p. 11, id.); that sometime later that same day, he learned from one Enrico that Anonas Braem had been killed by the accused Barcena Ramon (p. 12, id.); that he immediately went to the house of Barcena to verify said information, and on his way thereto, he met the accused with blood on the body and with a bolo in the right hand and pistol in the left hand (pp. 15 & 20, id.), who told him (witness) that he 'figured in an accident by hacking Anonas', (pp. 13-15, id.); that witness immediately informed Ines Tizon Braem, wife of the deceased, of what the accused had told him, and Ines went to the police station in New Corella to report the matter (pp. 16-17, id.); and that he accompanied the policemen to the house of the accused, where they saw the dead body of Anonas Braem in the balcony (pp. 17-18, id.).

Warisam Braem, a cousin of the deceased Anonas Braem, declared that he knew said deceased to be the paymaster of his uncle Ogarinan Macatindog in the latter's logging enterprise in Upper Macgum, New Corella; that on January 31, 1966, he was with Ines Tizon Braem, wife of the deceased, in Bo. Cadianan, when the latter gave P400.00 to her husband (the deceased Anonas Braem) for the payment of the laborers in the logging camp; that the deceased left for said camp at about 8:00 o'clock that morning (pp. 24-26, id.); that later that day, witness was informed by one Francisco Dayang that the deceased Anonas Braem had been bolloed and so he told Ines, wife of the deceased, to go to New Corella and report the matter (pp. 27-28, id.); that Ines was not able to call a policeman, so that he and Ines went to the house of the barrio captain to ask for rural police assistance but which unfortunately, was not given them (pp. 28-29, id.); that at about 3:00 o'clock in the morning of the following day, he and Ines went to the house of the accused and they saw the slain body of the deceased in the balcony of the house; that they watched over the body of the deceased until 9:00 o'clock the following day when some policemen arrived (pp. 29-31, id.); that the policemen searched the pockets of the deceased but found only a match, a pocketbook, and cigarettes, but no money; that before the police officers left, they told Ines and him to bury the deceased (pp. 31-32, id.); and that it was for that reason that they buried the deceased without the benefit of an autopsy examination (p. 33, id.).

Ines Tizon Braem, wife of the deceased Anonas Braem, testified that her deceased husband was the foreman of the logging business of Macatindog in Barrio Macgum, New Corella; that on January 31, 1966, she and her husband, together with Francisco Bedaña and the latter's wife, and Warisam Braem, were in Barrio Cabidanan; that at about 8:30 o'clock that morning, her husband proceeded to the logging camp of Macatindog carrying P400.00 for the payment of the salaries of the workers in the camp; that she was left behind to prepare the food for the workers (pp. 5-8, t.s.n., Aug. 28, 1970); that at about 2:30 o'clock that same afternoon, she was informed

by Francisco Bedaña that her husband had been killed by the accused Barcena Ramon, and so she immediately reported the matter to the Office of the Chief of Police in New Corella, and she was assured that policemen would go to Macgum to investigate the matter (pp. 8-11, id.); that upon her return to Macgum, she and Warisam Braem proceeded to the house of the accused, arriving thereat at about twelve midnight, and there they found the body of her deceased husband; that they stayed in the house of the accused until policemen arrived the following day; that all that the policemen found in the body of her husband were 40 centavos and a small pocketbook which they gave to her (pp. 12-15, id.); that her husband was buried at about four o'clock in the afternoon of February 1, 1966, or a day after the incident, without his remains having been examined by a doctor (p. 16, id.); that because no autopsy examination was performed on the body of her deceased husband, she complained to the Philippine Constabulary, which assured her that a doctor would make an autopsy examination (p. 17, id.).

Francisco Piccio, a sergeant of the Philippine Constabulary then stationed at Tagum, Davao del Norte, declared that he investigated the incident upon complaint of the wife of the deceased, whose statement he took; that he also interviewed the accused in the Office of the Chief of Police of New Corella, but the latter refused to give a written statement, giving the reason that he had already been investigated by the chief of police of New Corella (pp. 41-44, id.); that upon his request, the Municipal Health Officer of New Corella exhumed and examined the body of the deceased; and that he was the one who filed the charge against the accused for robbery with homicide (pp. 45-49, id.).

Ogarinan Macatindog, last witness for the prosecution, testified that the deceased was his nephew; that the latter was then in charge of his logging operation in Macgum, and that he also used to pay the wages of the laborer in his (Macatindog's) logging camp (pp. 50-51, id.); that on that fateful day of January 31, 1966, he gave the deceased P400.00 for the payment of the salaries of the workers in the camp and an additional P150.00 for his personal subsistence (p. 52, id.); that he did not know nor did he investigate what happened to the P400.00 that he gave to the deceased (pp. 52-53, id.); and that it was only the wife of the deceased who informed him that her husband had money with him when he was killed but that said money was not found in the body of her deceased husband after his murder (p. 54, id.).

On its part, the defense presented the accused Barcena Ramon and witnesses Celestino Mangrobong and Melecia Lechida Ramon. According to the accused, he left his house in Magcum, New Corella, Davao del Norte, at about 7:00 o'clock in the morning of January 31, 1966, for his farm; that he gathered and piled burnt tree branches up to about 11:00 o'clock that morning, when he went home and then proceeded to the river to take a bath and catch fish (p. 5, t.s.n., Feb. 4, 1971); that the river is only about fifty meters from his house (p. 6, id.); that while he was in the river, he heard his wife shouting for help and so he hurried home, passing by the kitchen; that he then saw Anonas Braem in the balcony of their house, holding his wife by the neck and pointing a gun at her; that he immediately picked up a bolo from the table and hacked the deceased and because the latter fought back, he hacked him several times (pp. 6-10, id.); that his wife was able to run away when he was hacking the deceased (p. 10, id.); that when the deceased was already dead, he picked up the dead man's revolver and proceeded to the house of town councilor Mangrubong (pp. 11-12, id.); that on the way, he met Francisco Bedaña, and he told Bedaña that he had met with an accident and that he had killed Anonas; that he then continued on his way to the house of Mangrubong and surrendered himself, as well as his bolo and the revolver of the deceased, to the latter (pp. 10-15, id.); that upon Mangrobong's instruction, he also went to the barrio captain and informed the latter that he had killed the deceased Anonas Braem (pp. 16-17, id.); and that the barrio captain brought him to the municipal building in New Corella, where he surrendered to the Chief of Police and signed an affidavit before the latter (p. 37, id.).

Celestino Mangrubong testified that about 12:30 o'clock in the afternoon of January 31, 1966, he was informed by

the mother of the accused Barcena Ramon that the latter had killed Anonas Braem; that on the same day, the accused surrendered a gun and a bolo to him, and also admitted having killed the deceased; and that he and the accused then went to Barrio Captain Juan Dorada, to whom they surrendered the bolo and the gun (pp. 55-57, id.).

Melecia Lechida Ramon testified that she is the wife of the accused Barcena Ramon; that at about 11:00 o'clock on January 31, 1966, her husband returned to their house from work, after which he went to river to fish; that while her husband was in the river, the deceased Anonas Braem came up to the balcony of their house (pp. 73-75, id.); that when she told the deceased that her husband was in the river catching fish, the latter told her that he would like to 'use' her; that when she refused, the deceased held her dress at the level of the neck and pointed a pistol at her; that she then shouted for help (pp. 75-76, id.); that she did not, however, become aware of the arrival of her husband until the latter had started boling the deceased; that when her husband was hacking the deceased, she hurriedly got her children and then left their house and sought refuge in the house of her mother-in-law; and that she then informed her mother-in-law that her husband had met with an accident (pp. 78-79, id.)." (Brief pp. 3-12.)

The People concede that there was no robbery for the following reasons:

"First: Assuming that the prosecution had sufficiently established that the deceased was carrying P400.00 on the day he was killed (pp. 24-26, t.s.n., August 7, 1970; pp. 5-8, t.s.n., August 28, 1970), and that said amount was not recovered from his dead body (pp. 31-32, t.s.n., August 7, 1970; p. 15, t.s.n., August 28, 1970), yet there is no direct and positive evidence to prove that appellant appropriated or took said money before or after killing said deceased.

"Second: While the appellant admitted that he learned from some people that the deceased used to pay the laborers of the logging camp in Macgum, New Corella (p. 36, t.s.n., Feb. 4, 1971), there is no evidence showing that at the time he killed the deceased, appellant knew that the latter was carrying the amount of P400.00.

"Third: Appellant killed the deceased in the balcony of his (appellant's) own house (pp. 55-56, t.s.n., testimony of Warisam Braem, Aug. 7, 1970, p. 10, t.s.n., Feb. 4, 1971), which was just about 50 meters from the road going to the logging camp (pp. 62-63, t.s.n., Aug. 7, 1970; p. 35, t.s.n. Feb. 4, 1971). If appellant had really wanted to rob the deceased, he could just have waylaid him on the road and thereby avoid identification. Why, then, did he kill the deceased in his (appellant's) own house? Why, indeed, was the deceased in the house of the appellant at all at the time he was killed by the latter? The prosecution has totally failed to introduce any evidence to explain this important point.

"Fourth: It was only the morning following the murder that the police came and searched the remains of the deceased in the house of appellant (p. 31, t.s.n., Aug. 7, 1970; p. 11, t.s.n., Aug. 28, 1970). Before their arrival at said house, however, the wife of the deceased and Warisam Braem had already been watching over the body of the dead man since 12:00 o'clock midnight that same day (p. 12, t.s.n., August 28, 1970). And there is no evidence that after killing the deceased, appellant searched and robbed his lifeless body. On the other hand, the fact that soon after killing deceased, appellant was seen by prosecution witness Francisco Bedaña going to the house of Councilor Mangrobong to surrender, with blood on his body and still holding the bolo he had used in killing the deceased as well as the gun of the latter, (pp. 13-15, t.s.n., Aug. 7, 1970), indicates that the appellant, after killing the deceased, did not tarry long to search or rob the body of his victim.

"Fifth: Significantly, the trial court failed to point out or particularize in its decision the act of robbery supposedly committed by appellant, specifically his having taken the missing P400.00 from the deceased. Said Court confined itself to the statement that 'after being disabled, it was easy to divest him [deceased] of the P400.00 he was carrying to pay the wages of the laborers in the mountain' (p. 68, rec.). And indeed it could not have said more, since there is, as we have observed, no positive and conclusive proof that appellant took any

money from the deceased." (Brief, pp. 12-15.)

The appellant's claim of defense of his wife is, however, disputed. The People submits that "appellant is guilty beyond reasonable doubt of the crime of homicide, attended by the aggravating circumstance of treachery as well as by the mitigating circumstance of voluntary surrender." (Brief, pp. 19-20.)

Considering that the appellant did not rob the deceased, the remaining question is whether the killing was justified because he claims that it was "in defense of the honor of his wife who was threatened with a gun by victim Anonas Braem upon the refusal of Barcena's wife to have sexual intercourse with the victim, as he asked when he suddenly appeared in the house of Barcena that fateful morning of January 31, 1966, after learning that the husband Barcena was out in the river." (Brief, p. 16.)

None of the prosecution witnesses actually saw the killing. Those who gave direct evidence on it were none other than the appellant and his wife whose testimony although not necessarily completely untruthful is certainly self-serving.

It is elementary that the defense to the effect that the accused killed under justifiable circumstances must be proved as fact. In this case the claim of defense is supported by nothing more than the naked assertions of the appellant and his wife. Upon the other hand, there are circumstances which the trial court correctly mentioned which belie the claim. It said:

"The story of the attempted rape leading to the assault appears to be unbelievable.

"In the first place, both the accused and his wife, immediately after the incident, never claimed that the accused killed Anunas because he attempted to abuse his wife. If it is true that the cause of the killing was the attempted rape, the natural reaction of a normal person would be to justify his act by saying that he killed Anunas for trying to abuse his wife.

"In the second place, the attempt was supposed to be in the balcony—a space without walls and the time was 11 o'clock noon. No one would attempt to abuse a married woman under the circumstances, especially considering that the wife of the accused had informed the deceased that her husband was in the river only 40 meters away and who, therefore, might arrive any time. Furthermore, the children were playing in the room. There is no evidence that the deceased was a sex maniac who was inclined to satisfy his lust in so open and vulgar a manner, like a dog or a cock. Moreover, when the wife allegedly shouted for help, the children continued playing in the room nearby. Children, even of tender age, will run to the succor of their mother when they hear her calling for help.

"In the third place, the version on the hacking is incredible. The accused is said to have delivered the bolo blows at the door, but inside the room, when the deceased and the wife of the accused were at the balcony outside of the door, the latter leaning on the wall. According to the accused, the deceased did not see him coming from the kitchen, although they were facing each other. He said he hacked the deceased at the left cheek and when he turned, he hacked him on the right cheek, then he hacked him on the right arm causing him to drop his revolver. It was at this juncture that the wife passed between the combatants, bent low, entered the door, and went to the room to gather her brood, who were still playing, and brought them to her mother-in-law's house. The accused continued hacking the deceased again and again until he died." (Decision, pp. 5-6.)

The trial court found that the appellant attacked the deceased "treacherously and suddenly." This conclusion is well-founded for according to the appellant himself:

"FISCAL:

Q

You walked slowly towards the victim and hacked him?

A

Yes, sir, I walked slowly so that he will not notice me and then I hacked him.

Q

Where was he hit for the first time?

A

Here, sir. (Witness indicating his left cheek)." (TSN, Feb. 4, 1971, pp. 25-26.)

.....

"FISCAL:

Q

And you said that from the time that you proceeded to the kitchen up to the time you delivered the first blow or hack, Anonas did not notice you?

ATTY. SUELTO:

The witness would be incompetent, Your Honor.

FISCAL:

I am on cross examination.

COURT:

Witness may answer.

WITNESS:

A He did not notice me." (Ibid, pp. 27-28.)

In *People vs. Ordiales*, L-30956, Nov. 23, 1971, 42 SCRA 238, this Court said:

"The sudden and unexpected shooting of the victim with a carbine constituted treachery. Authorities are clear that even when an attack or aggression is made face to face, treachery or *alevosia* is nevertheless present when the attack is sudden and unexpected to the point of incapacitating the victim to repel or escape." (At pp. 243-244, citing *People vs. Noble*, 77 Phil. 93; *People vs. Pulido, et al.* L-2447, 4 March 1950; *People vs. Martinez Godinez*, 106 Phil. 597.)

The trial court said there was grave abuse of confidence because the accused and the deceased were close friends. The trial court erred because the accused denied the close friendship and assuming there was such, there is no showing that it was used to facilitate the commission of the crime.

The People correctly stated that the appellant's crime is simple homicide aggravated by treachery but mitigated by voluntary surrender.

WHEREFORE, the judgment of the court a quo is hereby modified in respect only of the crime and penalty imposed in that the appellant is hereby convicted of the crime of homicide and sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum; it is affirmed in all other respects. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion Jr., Guerrero, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur.

De Castro, J., on sick leave.

Melencio-Herrera and Vasquez, JJ., are on official trip abroad.

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