

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MODESTO BOSTON AND JOVENCIO BOSTON,
ACCUSED-APPELLANTS.***G.R. No. L-41302. March 15, 1982*

Ponente: CONCEPCION, JR., J.

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APPEAL of the accused Modesto Boston and Jovencio Boston from the judgment of the Court of First Instance of Davao finding them guilty of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law, and ordering them to indemnify the heirs of the late Eduardo Boston Lunario in the amount of P12,000.00, and to pay the costs.

The inculpatory facts show that at about 3:30 o'clock in the afternoon of April 15, 1972, while Laureana Boston Vda. de Lunario was in Sitio Bilabid, Barrio San Jose, Samal, Davao, to buy fish for their viand, she saw the appellant Jovencio Boston, who was standing in the balcony of the house of Cresimo Cial, about a hundred meters away from her, suddenly hurl a bottle of dynamite (a soft drink bottle containing chemicals oftentimes used by fishermen for fishing) at her son, Eduardo Boston Lunario, who was then passing by the house of the said Cresimo Cial on his way home to San Jose from Tagum, Davao. The bottle of dynamite exploded near the feet of Eduardo and stunned him, causing Eduardo to fall groggily to the ground. Moments later, Eduardo rose unsteadily to his feet ("nagsararsay") and ran towards the seashore, at times stumbling due to the effects of the blast, pursued by the herein appellants who were armed with a Muslim bolo called "barong" (or "badong"), a "kris", and a knife. Upon overtaking Eduardo, the appellants took turns in hacking him even after he was already dead.[1]

It appears that previous to the incident complained of, Laureana Boston de Lunario, the mother of the deceased had a misunderstanding with the appellants about a debt which Laureana failed to pay upon demand and she was boxed by the appellant Modesto Boston in the ear, as a result of which Laureana filed a case against the appellant Modesto Boston with the Municipal Court.[2] Although this case was amicably settled and Laureana had forgiven her nephew, the appellant Modesto Boston did not forgive her and vowed to kill her or any member of her family saying: "I myself could not allow what they had done to us. My heart is bleeding about it. The moment we could see anyone of them, I will throw dynamite at them." [3]

Meanwhile, Matarol Delfin, barrio captain of San Jose, and Eduardo Boston, uncle of the appellants and barrio councilman of San Jose, upon hearing the explosion, went out of the house of Matarol Delfin to investigate. Upon getting down, they saw the appellants chasing the deceased Eduardo Lunario. Eduardo Boston tried to stop the appellant Jovencio Boston, but the latter thrust a bolo at him.[4] Matarol Delfin also ordered the appellants to stop but the appellant Modesto Boston warned him: "Do not come near. You might be hurt." [5]

After killing Eduardo Lunario, the appellants dragged his body to the house of Modesto Boston and left it in front of the house. The appellant Modesto Boston then went up his house, while the appellant Jovencio Boston went to the house of Cresimo Cial. Eduardo Boston told his nephews to surrender, but they refused saying that they are

still looking for the relatives of the deceased.[6] Jovencio Boston, still flushed with the killing, even challenged the relatives of the deceased, saying: "Any relatives may come out." [7] Matarol Delfin also told the appellants to surrender, saying: "You please surrender. Will you not pity him when he is already dead?" but, the appellants replied: "Tio, we will surrender, but do not come near us." [8]

Moment later, PC Sgt. Emilio Abellon who was spend-ing his leave in San Jose and was similarly attracted by the loud explosion, arrived at the scene and saw the ap-pellant Jovencio Boston holding a knife in his right hand, followed at a short distance by the appellant Modesto Boston. Sgt. Abellon identified himself to be a peace officer and ordered the appellants to surrender. They complied and Sgt. Abellon immediately placed them under arrest and later turned them over to the Chief of Police of Peñaplata.[9]

Antonio Lunario, who came with his mother Laureana to Bilabid and who ran to Peñaplata to summon help after seeing his brother, Eduardo, fall when the dynamite thrown by Jovencio Boston exploded near him, returned to Bilabid with Pat. Rodrigo Capuno and Patrolmen Custodio and Pagay. The appellants, however, were no longer there, having been arrested by Sgt. Abellon and taken to Peñaplata earlier. Pat. Capuno prepared a sketch of the scene of the crime.[10] He found a hole on the ground with burnt grasses, probably caused by the dynamite explosion. He also saw blood at the spot where the witnesses said the deceased was killed after being overtaken by the appellants, as well as the "drag marks" on the sand when the body of the deceased was dragged to the front of the house of Modesto Boston and where the deceased lay when Pat. Capuno found him. Later on, the doctor, the Chief of Police and the Mayor arrived, and the doctor conducted an examination of the cadaver.[11]

Dr. Gregorio Adamos, Municipal Health Officer of Samal, who conducted the post-mortem examination, found that the deceased suffered the following lesions:

- "1. Incised wound, vertex thru middle portion of the forehead, penetra-ting the brain;
- "2. Incised wound, vertex to right temporal region;
- "3. Incised wound, right forehead to middle portion of right ear;
- "4. Incised wound, right shoulder;
- "5. Incised wound, forearm near the right elbow;
- "6. Stab wound, chest right at level of last rib penetrating the chest cavity;
- "7. Lacerated wound, medial side of right thigh, three inches above the knee (outlet of shrapnel);
- "8. Lacerated wound, lower third of thigh external side, right;
- "9. Lacerated wound, leg right upper third external side; and
- "10. Contusion with abrasion elbow left external side." [12]

Dr. Adamos declared that Wound Nos. 7 and 8, above, were caused by shrapnel or dynamite fragments, and that the deceased died from multiple wounds.[13]

As a consequence, Modesto Boston and Jovencio Boston were charged with the killing of Eduardo Lunario before the Court of First Instance of Davao. After trial, Modesto Boston and Jovencio Boston were found guilty as charged and sentenced as aforesaid.

The appellants maintain that Jovencio Boston alone is accountable for the death of Eduardo Lunario and assail the trial court for giving full faith and credence to the testimony of the witnesses for the prosecution instead of their testimony which are more logical and consistent with human nature and common experience.

Modesto Boston declared that in the afternoon of April 15, 1972, he went to sitio Binuni, barrio San Jose, Samal, to buy corn grits for his family's consumption. While there, he heard a dynamite explosion. He paid no attention to it and continued with what he was then doing. But, when he learned that the explosion came from some-where in sitio Bilabid, where his house was, he hurried home. Upon arriving at his house, he saw the dead body of his cousin, Eduardo Lunario, lying about a meter away from the balcony of his house. He asked the people around who killed Eduardo, and his brother Jovencio Boston answered that he did. Jovencio Boston was standing near the house of Roman Boston and had blood stains in his hands and shirt. When Sgt. Abellon arrived, he shouted to Jovencio to surrender and his brother surrendered to Sgt. Abellon with his "kris".[14] Sgt. Abellon also brought him along although he told Sgt. Abellon that he had nothing to do with the crime. Sgt. Abellon assured him that he was taken along for protective custody so that the brother of the deceased will not harm him.[15]

Jovencio Boston, upon the other hand, declared that he killed Eduardo Lunario in self-defense. The trial court summarized his testimony as follows:

"x x x On April 15, 1972, he went fishing at sea by sitio Bilabid, barrio San Jose, Samal. He fished for Octopus. After fishing, he went to the house of his brother-in-law, Cresimo Cial, at the shore of sitio Bilabid, where his mother, brother and Cresimo Cial, and two others were. Upon arrival, he ate, but while eating, he was called by his cou-sin, 'Nonoy' Lunario (apparently the deceased) who said, 'It is you I am looking for' and boxed him. He ran back to the house and Lunario went home. After a while, Lunario returned. Boston said he was at the door and he observed Lunario with an 'indian pana' (a dart), so he got inside the house. Lunario told him to care out, and when he looked at him, he (Lunario) shot a dart, which hit the side of the door. Lunario shot at the accused with his darts four (4) times. Two of the darts stuck to the door, and one fell down.

"Lunario shouted, 'You come out Vencio, otherwise all of you will be killed as I am going to dynamite the house.' When he peeped, he saw Lunario holding a dynamite. Then, there was an explosion. After the explosion, he peeped out again. He did not see Lunario anymore. So he went down and ran to the house of his brother Modesto. He wanted to save the people inside Cial's house from getting involved. He took a bolo with him to defend himself. Lunario chased him and when he looked back, Lunario was already nearing him, so he faced Lunario. This was near the house of Modesto. He said that aside from the bolo, he also had a knife (kris) which he held with his left hand. In his right was the bolo. Lunario rushed at him and made a thrust with his knife. He parried it with his bolo and he in turn stabbed with his kris Lunario on the stomach, followed with a hack with his bolo to Lunario's forehead which whirled Lunario. He then delivered a second stab to the stomach and a hack to the side of the head of Lunario who, before he fell to the ground, attempted to give the accused a flying kick and he (accused) hacked Lunario on his leg and Lunario fell down to the ground.

"The accused accomplished this 'feat' without a single injury and despite the fact that, as he claims, he has some physical defects consisting of a withered left shoulder, such that he could not fully raise his left arm; and his right leg is very much smaller than his left leg, so that he limped when he walked or ran."[16]

This Court has continually ruled that the matter of assigning values to the testimony of witnesses is best performed by the trial court because they, unlike appellate judges, can weigh such testimony in the light of the demeanor, conduct, and attitude of the witnesses at the trial. Here, We find no cogent reason to set aside the findings of the trial court.

The appellants' claim that Jovencio Boston alone is accountable for the death of Eduardo Lunario and that Modesto Boston did not participate in the commission of the offense is belied by the testimony of Laureana Boston Vda. de Lunario, Eduardo Boston, uncle of the appellants, and Barrio Captain Matarol Delfin who categorically declared that the two appellants actively participated in the killing of Eduardo Lunario.

The alibi of Modesto Boston is further belied by the testimony of his co-appellant Jovencio Boston who testified that he struck the deceased only five (5) times.[17] Since the deceased was found to have sustained ten (10)

wounds, seven (7) of which were caused by a sharp-bladed instrument and Jovencio Boston only hit the deceased five (5) times, there is merit in the testimony of the prosecution witnesses that Modesto Boston participated in the assault of Eduardo Lunario. How else could the other incised wounds have been inflicted on the body of Eduardo Lunario?

Besides, the alibi of Modesto Boston is negated by appellants' admission, in their brief, that Modesto Boston was also in the house of Cresimo Cial when the assault commenced. The appellants stated the following:

"One outstanding fact - accused Boston brothers were together with their parent, brother, sisters; brother-in-law, Cresimo Cial and nieces at the moment of the alleged throwing of dynamite by the accused - remains undisputed and as a matter of fact, admitted by both prosecution and defense." [18]

Furthermore, the alibi of Modesto Boston does not satisfy the rule to establish an alibi. The 400 meters distance between the place where the appellant Modesto Boston claimed to be and where the crime was committed, [19] is such that it does not rule out the possibility of this appellant being at the place of the crime when the killing took place. It is not enough to prove that the defendant was somewhere else when the crime was committed, but must demonstrate that it was physically impossible for him to be at the scene of the crime at the time it was committed. [20]

We also find no merit in the claim of Jovencio Boston that he killed Eduardo Lunario in self-defense. The plea of self-defense is proper if the circumstances attending the commission of the offense are such that all three requisites, namely: unlawful aggression, reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself, are present. It is also the established doctrine that the burden of proof to show the presence of such requisites is on the accused which can be satisfied only by evidence sufficient, satisfactory, and convincing in character.

Here, the evidence presented by Jovencio Boston to sustain his plea of self-defense is improbable and full of inconsistencies as to be accorded full faith and credit.

Thus, he declared that he was eating in the house of Cresimo Cial when the deceased allegedly called him saying: "It is you that I am looking for," after which the deceased boxed him. [21] On cross-examination, however, he declared that he was not eating but going towards the house of Cresimo Cial when the deceased boxed him. His testimony reads, as follows:

"Q You also alleged that you were boxed by Nonoy Lunario while in the house of Mr. Cial?

A I was boxed in between the house of Emilio Cial and Cresimo Cial because at that time when he called me, I was walking towards him when he called me." [22]

Besides, if he was allegedly boxed by the deceased, there should have been some sign of an injury sustained by him as a result of that boxing incident. But, there is none. This boxing incident is obviously concocted.

The story about the deceased shooting the appellant with darts is also incredible. Jovencio Boston declared that he was at the door of the house of Cresimo Cial when the deceased returned. Upon seeing the deceased with an "indian pana" (slingshot and darts) he went inside the house. The deceased then told him to come out and when he peeped through the door, the deceased shot him with darts three times, two of which stuck at the door. As the trial court aptly put it, "We do not believe Lunario was so simple minded to be firing all those darts at a closed door. It was completely insane to do so, which goes to show that the story was made up." Besides, the appellants could have presented in court those darts which the deceased allegedly shot him with, or the slingshot used by the deceased.

The claim that it was the deceased who threw the dynamite at the appellant is also unworthy of belief. According

to the appellant, the deceased was 13 meters away from the house of Cresimo Cial when he threw the dynamite.[23] At that distance, the dynamite could have easily reached the house of Cresimo Cial and exploded there. And yet, the dynamite exploded on the ground 5 meters away from the house of the said Cresimo Cial.[24]

One other circumstance that renders the version of the appellants unworthy of merit is the fact that the appellant Jovencio Boston was unscathed after the alleged bolo fight with the deceased although the said appellant has some physical defects, walks with a limp, and has a withered left shoulder, such that he can not raise his left arm.[25]

Finally, the said appellant failed to explain the bloodstained "drag marks" on the ground which Pat. Rodrigo Capuno found at the scene of the crime.[26]

It results that the trial court did not err in accepting the version of the prosecution as worthy of belief and in concluding that the guilt of the appellants have been proven beyond reasonable doubt.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellants.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur. Aquino, J., see concurrence below.

[1] pp. 12-14, t.s.n., November 23, 1973.

[2] Id., pp. 15-16.

[3] tsn of Jan. 11, 1974, p. 12.

[4] Id., pp. 6; 32.

[5] Id., p. 54.

[6] Id., p. 38.

[7] Id., p. 39.

[8] Id., p. 56.

[9] tsn of March 6, 1974, pp. 5-6.

[10] Exhibit D.

[11] tsn of March 7, 1974, pp. 7-9.

[12] Exhibit A-1.

[13] tsn of Nov. 23, 1973, pp. 6-7.

[14] tsn of July 18, 1974, pp. 5-7.

[15] Id., pp. 16-17.

[16] Original Record, pp. 105-107.

[17] tsn of Oct. 31, 1974, p. 23.

[18] Appellants' Brief, p. 7.

[19] tsn of July 18, 1974, p. 15.

[20] People vs. Dorico, G.R. No. L-31568, November 29, 1973, 54 SCRA 172.

[21] tsn of Oct. 31, 1974, p. 7.

[22] Id., p. 17.

[23] Id., p. 28.

[24] Id., p. 19.

[25] Id., p. 5.

[26] See Sketch, Exhibit D.

CONCURRING OPINION

AQUINO, J.:

I concur. The guilt of the two accused, the brothers Modesto, 33, and Jovencio, 28, both surnamed Boston, for the assassination of their first cousin, Eduardo Boston Lunario, was proven beyond reasonable doubt by the testimonies of the eye-witnesses, their paternal aunt Laureana Boston, their paternal uncle Eduardo Boston and their maternal relative Matarol Delfin, the barrio captain.

The motive for the killing was the grudge harbored by Modesto against his aunt Laureana who charged him with physical injuries and who had failed to pay Modesto the sum of P1.30 as the price of the fish which he had sold to her.

The close relatives of the accused would not have testified against them if the said relatives were not telling the truth.

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