

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO LIBARDO, ACCUSED-APPELLANT.

G.R. No. L-33638. February 20, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Bohol, ALFREDO LIBARDO was accused of double murder in Criminal Case No. 5007, said to have been committed in the following manner:

"That on the 25th day of January, 1969, in the municipality of Inabanga, province of Bohol, Philippines, the above-named accused, with the attendant circumstances of evident premeditation, treachery, taking advantage of superior strength and intent to kill, did then and there wilfully, unlawfully and feloniously attack and shoot Exequio Torres and Ismael Melicor with the use of a Thompson Submachine gun, thereby inflicting upon the bodies of said two persons multiple fatal gunshot wounds which caused the two victims' instantaneous death, to the damage and prejudice of the heirs of the two decedents; the said crime having been committed with the following additional aggravating circumstances: that advantage was taken by the offender of his public position as municipal patrolman and that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission when the offender continued to pump bullets to the two victims even when the latter were lying and dying on the ground." (Expediente, p. 235.)

Subsequently the case was transferred to the defunct Circuit Criminal Court where it was assigned Criminal Case No. CCC-XIV- 63-Bohol. (Id., p. 271.)

In a decision dated April 29, 1971, the trial court pronounced the following judgment:

"WHEREFORE, in the light of the foregoing, the Court finds accused ALFREDO LIBARDO guilty beyond reasonable doubt of the crime of DOUBLE MURDER as charged in the information, and appreciating in his favor the mitigating circumstance of voluntary surrender which offsets the aggravating circumstance of treachery, but in view of the pre-sence of another aggravating circumstance that the accused took advantage of his public position as a municipal policeman of Inabanga, Bohol, he is hereby sentenced to suffer the maximum penalty of DEATH, to pay the heirs of the deceased Exequio Torres and Ismael Melicor each the sum of P12,000 plus the additional amount of P5,000, as actual and moral damages, with all the accessory penalties of the law, and to pay the costs." (Id. p. 529.)

LIBARDO filed a notice of appeal and before Us he claims that the trial court committed the following errors:

"I THE LOWER COURT ERRED IN GIVING FAITH AND CREDIT TO THE TESTIMONIES OF PROSECUTION WITNESSES, AND DISREGARDING THE TESTIMONIES OF DEFENSE WITNESSES WHICH WERE INSTEAD MORE PLAUSIBLE, CREDIBLE, COHERENT, AND NATURAL TO ESTABLISH THE FACT OF SELF-DEFENSE INVOKED BY THE ACCUSED; AND

"II THE LOWER COURT ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF THE ACCUSED, AND IN NOT ACQUITTING HIM." (Brief, p. 1.)

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

"In the year 1968, the late Exequio Torres was the elected president of the Inabanga Labor Union (ILU) in Bohol province (pp. 52, 54, 75, t. s. n., Sanchez). The accused Alfredo Libardo was a policeman (under suspension because of this case) of the Municipality of Inabanga (pp. 4-6, t.s.n., Camomot). Then engaged in 'moonlighting' activities on the labor front, Pat. Libardo even went to the extent of trying to wrest the presidency or leadership of the ILU from Exequio Torres. These activities of the accused manifested themselves in several incidents, as follows:

On December 17, 1968, when Marcelo Cenerpida was in a banca by the river in Inabanga, he was accosted told by the accused: 'I will be the one to carry on the leadership of the Inabanga Labor Union' (p. 53, t.s.n., Sanchez). That same day, Cenerpida informed ILU President Exequio Torres about what the accused had told him, and Torres in turn reported the incident to the PC, specifically to Sgt. Palgam. Sgt. Palgam brought the accused to Torres for confrontation, and in the presence of the latter, told the accused that he had no right to take over the presidency of the ILU because it was an elective position (pp. 53-54, t.s.n., id.).

Also, sometime during the first week of January, 1969, when ILU treasurer Marcelo Cenerpida and the deceased Exequio Torres went to the store of Flaviano Meneses to collect payment in behalf of the ILU for the loading and unloading of Meneses' cargoes, the accused Libardo, in police uniform, armed with a Thompson submachinegun similar to the firearm Exh. "J", and accompanied by a bodyguard, came and asked them for his share, and when they gave him P6.00, he refused to receive it and insisted that he be given more. Afraid that something might happen to Cenerpida and Torres because of the belligerent attitude of the accused, Flaviano Meneses' younger brother Poldo asked them to stay in the house longer and not to leave yet (pp. 54-55, t.s.n., id.).

Finally, on January 24, 1969, when Cenerpida gave the accused Libardo the P3.00 that the deceased Torres asked him to give to the latter, the accused again refused to receive the money, even got angry, and, addressing his (the accused's) companion, said: 'Ding, you get the magazine' (referring to the magazine of his Thompson submachinegun), and added: 'I will kill this now' (obviously referring to Exequio Torres). Frightened, Cenerpida immediately left and requested one of the laborers to inform Torres about the threat of the accused to kill him (Torres) (p. 56, t. s. n., Id.).

At about 8:30 o'clock in the morning of January 25, 1969, Flaviana Cenita, a public school teacher, went to the public market in Inabanga to buy food. In the fish section of the market, she met Exequio Torres and Ismael Melicor, both wearing T-shirts, and talked to them for a while, after which Torres and Melicor proceeded to the pingpong table nearby (pp. 11-12, t.s.n., Id.).

That same morning, Mamerto Petalcorin, a 50-year-old laborer, was also inside the same market to buy fish. From the market, he happened to follow Exequio Torres and Ismael Melicor at a distance of ten (10) meters as the two emerged from the market (pp. 2-3, t.s.n., Cadiz).

On her way home after buying fish, Flaviana Cenita saw the accused Pat. Alfredo Libardo standing near the door of the restaurant of Anunciacion Alima facing the market. She noticed that the accused, who was alone, was wearing a T-shirt and khaki pants and holding a Thompson submachinegun (Exhibit J) (pp. 12-13, 22, t.s.n., Sanchez).

At about the same time, Carina Cenita, sister of Flaviana Cenita and also a public school teacher, was in their house which is just about eighty meters from the public market, that day being a Saturday so that Carina had no school (pp. 24-25, t. s.n., id.)

Suddenly, successive shots rang in the air. Mamerto Petalcorin, who was still near the market, saw the accused Pat. Alfredo Libardo fire his gun at Exequio Torres and Ismael Melicor, who both fell dead, and Petalcorin clearly recognized the firearm of the accused as a Thompson submachinegun (pp. 3-5, t. s. n., Cadiz). Seized

with fear, Petalcorin hid behind a pillar near the market (p. 6, t.s.n., id.).

Flaviana Cenita, who was walking home when she heard the successive shots, turned towards the direction of the firing and saw the accused still standing and holding his Thompson submachinegun in port arm. Then she saw the accused walk slowly towards the fallen bodies of Exequio Torres and Ismael Melicor (pp. 12--13, t. s.n., Sanchez). Flaviana was only about 13 meters away from the fallen bodies, which were close to each other, and whom she immediately recognized to be Torres and Melicor, having earlier seen them in T-shirts and talked to them inside the market. Besides, she knew Torres and Melicor because both had been her pupils in the elementary grades. She also knew personally the accused because his wife is her niece (pp. 13-14, t.s.n., id.).

On the other hand, when Carina Cenita heard the successive shots from her house, she looked out of the window and saw the accused approaching his two dead victims, still holding his gun in port arm position. Upon reaching the two dead bodies, he stooped and turned the body of Torres face up, moved three (3) steps backward, and again fired three shots at the corpse of Torres, after which he again approached the dead body of Torres and touched his hand to make sure that he was really dead. Thereafter, the accused slung his Thompson submachinegun on his shoulder, pulled his .45 caliber pistol (Exhibit "4") from his waist, fired two shots with it into the air, and then placed the pistol near the dead body of Torres. Afterwards, he ran back to the store of Alima and from there fled from the scene (pp. 14-15, 26-27, id.).

After the accused had disappeared, Flaviana Cenita saw the wife of Torres approaching the two dead men, and so, she (Flaviana) also ran towards them. The two women then started crying and shouting for help (p. 15, t. s. n., id.). Upon seeing her sister Flaviana and the widow of Torres by the dead victims, Carina Cenita also ran down from her house and approached them (p. 27, t. s. n. , id.).

Both deceased, according to the Cenita sisters, had blood stains on their bodies and shirts. Flaviana Cenita found four (4) empty ammunition shells near the dead body of Torres, while her sister Carina found six (6) empty shells on the right side of the body of the same deceased (pp. 15, 27, 34, t.s.n., id.). Carina also picked up about 12 empty shells not very far from the body of Melicor scattered along the way towards the store of Alima. The sisters later delivered all the empty shells that they had found in the premises to Sgt. Pedro Nucena, the first policeman of Inabanga who arrived at the scene thirty minutes after the shooting (pp. 16-17, 27, t. s. n, id.).

Later, many people came to view the dead bodies. Dr. Candido Aparece, municipal health officer of Inabanga, also arrived and told the members of the family of the two deceased to take their dead bodies to their respective homes (pp. 16, 23, 28, 60-68, t. s. n. , id.). While Dr. Aparece was viewing the dead bodies, Sgt. Nucena blew his whistle, and not long thereafter, Patrolmen Lucio Lacerna and Candido Geraldino arrived (pp. 16, 29, t. s. n., id.).

The assistance of the National Bureau of Investigation was requested by the family of the victims to investigate the case. Upon orders received, the dead bodies of Exequio Torres and Ismael Melicor were exhumed, and Dr. Ceferino Y. Cunanan, regional medico-legal officer of the NBI in Cebu City, made autopsy examinations of said bodies, after which he embodied his findings in the Necropsy Report No. 69-NC-I Exhibit "A" as to the deceased Ismael Melicor and the Exhumation Report Exhibit "C" as to the deceased Exequio Torres (pp. 3-4, t.s.n., id.). Ernesto Lopez, official crime photographer of the NBI, also took pictures of the cadavers of Torres (Exhibits B-1 to B-8) and Melicor (Exhibits A-1 to A-4) upon order and under the supervision of Dr. Cunanan (pp. 4-6, t.s.n., id.). According to Dr. Cunanan, both Torres and Melicor died of multiple gunshot wounds (p. 4, t.s.n., id.). On the basis of the locations of the wounds of the two deceased, Dr. Cunanan concluded that their assailant was at different positions when he shot his two victims (pp. 7-8, t.s.n., id.), particularly in the case of the deceased Melicor, where the assailant was, according to Dr. Cunanan, at the back of the victim and slightly to the left when he fired at the latter. (p. 4, t.s.n., id.).

Atty. Artemio Panganiban, Jr., supervising ballisticsian of the East Visayan Region of the NBI in Cebu City,

examined the Bridgeport Thompson submachinegun, cal. 45, with Serial Number A-012098, Exh. "J"; the .45 cal. auto-matic pistol with Serial No. 2020307, Exh. "4"; and the several empty cartridge cases and two .45 cali-ber jacketed bullets, submitted to him by NBI Senior Agent Sancho K. Chan, Jr., as well as two .45 cali-ber jacketed bullets submitted by Atty. Norito Torres (p. 44, t. s. n., id.). Panganiban declared that upon comparative ballistic examination, aided by blown-up pictures Exhs. "O", "O-1", to "O-3"), he observed that the evidence bullets submitted by NBI Agent Chan (Exhibit "M-1") and Atty. Norito Torres (Exhibit "N-1") had, based on their striations, characteristics similar to the test bullets (Exhibits "K", "K-1" to "K-2") fired from the Thompson submachine-gun Exh. "J", and thereby concluded that the evidence bullets (Exhibits "M-1" and "N-1") were fired from the same gun as the test bullets. Panganiban also made a comparison of the sixteen .45 caliber empty shells submitted to him by NBI Agent Chan (Exhibits "P", "P-1" to "P-15") and the test .45 caliber empty shells (Exhibits "S" and "S-1") fired from the same Thompson submachinegun Exhibit "J", also aided by the blown-up pictures of the same (Exhibits T, T-1, to T-17), and found that both the evidence shells and test shells were all fired from the same Thompson submachine gun Exhibit "J" (pp. 64- 66, t. s. n., id.). Finally, Atty. Panganiban made a ballistic examina-tion of the automatic pistol Exh. "4" which was submitted to him by NBI Agent Chan, and upon comparing the test bullets fired from said pistol and the evidence bullets Exhs. "M-1" and "N-1", he found that they had different characteristics. In short, his conclusion was that the evidence bullets Exhibits "M-1" and "N-1" were not fired from the .45 caliber pistol Exhibit "4" (pp. 48-50, t. s. n., id.). All the foregoing findings were incorporated by Atty. Panganiban in his Ballistic Reports Nos. 17-B-169 (Exhibits "Q" and "Q-1") and 34-B-469 (Exhibit "U") (pp. 48, 66, t.s.n., id.).

Atty. Sancho K. Chan, Jr., Senior Agent at the NBI East Visayan Region, Cebu City, testified that this case was referred to their Office sometime in January, 1969; that their regional director dispatched a team composed of a medico-legal officer, a ballisticsian, and a photographer to Inabanga, Bohol, to investigate the case; that he started his own formal investigation of the case on March 12, 1969, although a criminal complaint against Alfredo Libardo had already been filed in the municipal court and later elevated to the court of first instance (pp. 35-36, t. s. n., id.); that as part of his investigation, he got six Thompson submachineguns from the Inabanga police department for ballistic examination; that he also received the .45 caliber pistol Exhibit "4" and the sixteen .45 caliber empty cartridged Exhibits "P", "P-1", to "P-15" from the PC in Camp Dagohoy, Bohol, and two bullets (Exh. "M-1") from the NBI medico-legal officer, all of which were subjected to ballistic examination (pp. 36-37, t.s.n., id.); that he next interviewed witnesses in connection with the incident and took the written statements of Flaviana Cenita (Exhibit "D-1"), Constancia Cenita (Exhibit "D-2"), Susana Taguinacruz (Exhibit "D-3"), Carina Cenita (Exhibit "D-5"), Marcelina Crispeda (Exhibit "D-4"), Santos Melicor (Exhibit "D-6") and Mamerto Petalcorin (Exhibit "D-7"); and that he submitted a memoran-dum report of his investigation,, together with all other pertinent documents, to the provincial fiscal (pp. 37-38, t.s.n., id.).

During the pendency of the reinvestigation of this case before the fiscal's office, the NBI received reports that the accused policeman Alfredo Libardo, who was out on bail, was then threatening the witnesses against him. Likewise, when NBI Agent Sancho K. Chan, Jr. went to Inabanga to take custody of the guns of its police department, he also learned that there were two other pending warrants of arrest against Libardo in other cases. Hence, Chan requested the muni-cipal judge to issue the corresponding alias warrants of arrest against the accused and accordingly, he arrested Libardo while the latter was in the house of a member of the provincial board and turned him over to the PC at Camp Dagohoy, Bohol, for safe-keeping (Exhibits H, H-1 to H-5) (p. 38, t. s. n., id.).

Teodora Estorba-Torres, 35-year old widow of the deceased Exequio Torres, tes-tified that she and her late husband have six children, the eldest of whom was only eleven years old while the youngest was only one year old at the time of their father's death; that her deceased husband was the sole breadwinner of their family; that her husband was the president of the ILU at the time of his death, and was then earning about P80.00 a week (p. 75, t. s. n., id.); and that although she was employed as a public school teacher about seven months before the death of her husband, she received her first salary only a month after his death (p. 76, t.s.n., id.). Teodora

further testified that she incurred funeral and burial expenses in the total amount of P3,450.00 for her husband's death, and that she contracted the services of Atty. Clarin for the sum of P3,000.00 Atty. Valeriano S. Carillo for P2,000.00 and Atty. Elpidio Baliran for P2,000.00, in addition to other expenses, for the prosecution of this case (p. 76, t. s.n., id.).

Lastly, Florencia Melicor, 40-year-old banana vendor residing in Inabanga, Bohol, testified that her eldest son, the deceased Ismael Melicor, was 22 years old at the time of his death; that prior to his son's death, she was solely dependent of him for support; that he was employed with the ILU earning P5.00 and sometimes P10.00 a day; and that after her son's death, she was forced to sell bananas for a living (p. 81, t. s. n., id.). Florencia also claimed that for funeral expenses, prayer services, and death anniversaries of her deceased son, she spent a total of P1,400.00, as well as the sum of P1,000.00 for the litigation of this case (p. 82, t.s.n., id.). " (Brief, pp. 3-15.)

When a person is accused of killing another person and he inter-poses self-defense to justify the act, the fact of killing is necessarily admitted. So it is in this case. The appellant states in his brief:

"The issue then is not who shot or killed who? For it is admitted, firstly, that the victims were Exequio Torres and Ismael Melicor, and, secondly, that the author of the killing is the herein accused himself. Rather, the only 'Gordian Knot' to be resolved by the Honorable Court, the one and only 'Crux' the defense most respectfully prays the Highest Tribunal to carefully review, is: Whether there was legitimate self-defense on the part of the herein accused as to justify his act or to excuse him altogether from criminal and civil liability." (At pp. 5-6.)

The immediate question in this appeal is whether or not the appellant's claim of self-defense is well-taken. The consequential question, if the answer to the first question is NO, is whether the killing was murder as alleged in the information or only simple homicide.

The law is well-settled that a person who seeks justification for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstances for having admitted wounding or killing his adversary he is criminally liable unless he is able to satisfy the court that he acted in legitimate self-defense. In other words, it is incumbent upon the accused to show that the requisites of self-defense were present.

The Revised Penal Code provides that anyone who acts in defense of his person or rights does not incur any criminal liability provided the following circumstances concur:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it;
3. Lack of sufficient provocation on the part of the person defending himself. (Art. 11, par. 1.)

To prove that he acted in self-defense, the appellant gives the following version of the killing:

"On that fatal day of January 25, 1969 accused was assigned by his superior, Sgt. Pedro Neoceña, to stay on beat in Post No. 1, just in front of the town public market, about 100 meters away from the town presidencia (EXHIBIT Z). Another Policeman, Pat. Lucio Lascuña, was assigned in Post No. 2, a distance of about 200 meters to Post No. 1.

"Accused Alfredo Libardo with a service Thompson (Exhibit J) reported to his assigned Post No. 1 at about 8:00 o'clock that morning of January 25th. At about 9:00 o'clock while thus standing with service Thompson slung over his shoulder, Ismael Melicor, unnoticed and coming from behind, suddenly grabbed the Thompson. A struggle for the possession of the gun followed during which accused Libardo kicked Ismael Melicor and the latter staggered. Almost simultaneously, Exequio Torres who was at a distance of about 5 meters from Libardo drew his .45 calibre pistol (EXHIBIT 4) and fired at accused Libardo who providentially was able to duck. Accused using his Thompson retaliated by firing back, hitting first Exequio Torres, and next Ismael Melicor

who wanted to rush forward at Libardo as if to grab once again the latter's Thompson. The two fell flat on the ground. Then accused Libardo went near Exequio Torres to get Torres' pistol (EXHIBIT 4), and once in possession of it carefully wrapped it with his handkerchief to avoid his (Libardo's) hands being impressed on it.

"At this time when the burst of fire was over, Patrolman Lucio Lascaña, who was on his beat at Post No. 2 as earlier stated, and another Patrolman, Paulino Arcales, appeared. Accused Alfredo Libardo surrendered to them and, instead of going direct to the municipal building, requested that he (Libardo) be brought to the PC Detachment of the adjoining town of Jetafe, about 20 kilometers away, for safety and to avoid retaliatory measures from the Torreses and Melicors. Patrolman Paulino Arcades drove the motorcycle on which accused Libardo backrode towards Jetafe and upon reaching said town, Libardo surrendered himself and his weapon (EXHIBIT J) to PC soldier Torrejos. From Jetafe, Libardo was brought by the PC soldier to Ubay town from where he was fetched by Acting Provincial Commander Domingo Rio to the PC Headquarters at Camp Dagohoy, Tagbilaran City." (Brief, pp. 4-5.)

Upon the other hand, the prosecution's version is that the appellant shot Torres and Melicor with his service sub-machine gun and then he fired his own .45 caliber pistol twice in the air and left it with the dead bodies to make it appear that the gun had been used against him.

It is obvious from the foregoing that the basic issue is the credibility of witnesses. The trial judge who heard the witnesses and observed their demeanor when they testified chose to believe Flaviana Cenita, Carina Cenita and Mamerto Petalcorin. We see no reason to disturb the conclusion of the trial judge.

The appellant states that the Cenita sisters "are the first degree cousins of the wife of the victim Exequio Torres." (Brief, p. 2.) He also says that "Mamerto Petalcorin is also a relative by affinity to the wife of Exequio Torres in that the latter's wife is the first degree [?] of Mamerto's." (Id., p. 8.) He implies that the three witnesses were prejudiced against him. The implication is not well-taken. We quote a portion of the trial court's decision:

"Besides, the Court has carefully studied the conduct and demeanor of the witness both the prosecution and the defense. The prosecution witnesses, like the Cenita sisters, were closely related by affinity to the accused, yet despite the long and exhaustive cross-examination, they re-affirmed what they declared on direct examination. On the contrary, the accused denied having any relationship with the eyewitnesses Flaviana Cenita and Carina Cenita, but on cross-examination he admitted both witnesses and himself had blood relationship. This proves that accused Libardo was not candid to the Court on some important facts which affects his credibility. Moreover, there has been no sufficient evidence adduced by the defense to show that the prosecution witnesses merely invented a story, or presented any cause of bad feeling that would impel the eyewitnesses to testify falsely against the accused and impute on him the grave offense of murder. There had been no friction whatsoever, there had been no misunderstanding, no quarrel with the accused, and for the lack of these, the Court has to give more weight and credence on their testimony because the credibility of the prosecution witnesses has never been impaired. On the contrary, the defense witnesses testified incoherently and their testimonies appear more biased and partial in all respects." (Expediente, pp. 524-525.)

We sustain the trial court's finding that the appellant's evidence does not convincingly prove that he acted in self-defense.

The information alleges the following qualifying circumstances evident premeditation, treachery and superiority.

The evidence for the prosecution shows that the relationship between the appellant and the deceased Torres was not cordial and in fact it can be described as hostile. But this fact does not alone prove that the killing of Torres and Melicor was done with evident premeditation. Absent in the record is evidence of cool thought and reflection on the part of the appellant to kill the two victims over a space of time to arrive at a calm judgment.

That there was treachery in the killing is manifest from the sudden attack with a submachine gun which gave the

victims no chance to defend themselves.

Superiority is absorbed in treachery.

As to the generic aggravating circumstances, We agree with the trial court that abuse of public position can be properly assigned since the appellant was a policeman but not that of vindictiveness. The generic aggravating circumstance is off-set by the mitigating circumstance of voluntary surrender with the result the appellant is guilty of two murders on the whole without any attendant circumstances.

The penalty for murder is reclusion temporal in its maximum period to death. In the light of the foregoing the appropriate penalty for each murder is reclusion perpetua.

WHEREFORE, the judgment of the trial court is modified in that the appellant is sentenced to suffer the penalty of two reclusion perpetua; to pay the heirs of the deceased Exequio Torres and Ismael Melicor each the sum of P30,000.00; and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

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