

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALVADOR BADING; REMOLLO, ESTROPIO
APIONG; REMOLLO, EUGENIO BERINGUEL, INIEGO
EYENG; REMOLLO, AND GAUDIOSO TOBOSO, DEFE...**

G.R. No. L-31330. June 29, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is an appeal from the decision of the former Court of First Instance of Leyte, at Tacloban City, convicting the above-named appellants of the crime of Murder and imposing upon them the penalty of reclusion perpetua and ordering them to indemnify, jointly and severally, the heirs of the deceased, Jesus Urgel, in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; the accused to be credited with one-half (1/2) of the period under which they have suffered preventive imprisonment; and to pay the costs.[1]

The facts as proven by the evidence of the prosecution, quoting from the People's brief, are as follows:

"About 7:00 o'clock in the evening of February 9, 1964, the deceased, Jesus Urgel, and his wife, Gorgonia, were walking along the provincial road on their way home to Bo. Talisayan, Bugho, Leyte from their farm in Bo. Sta. Cruz (pp. 2-4, 10, t.s.n., May 30, 1966). While passing the poblacion and upon nearing the house of appellant Gaudioso Toboso, the five (5) appellants, namely, Salvador "Bading" Remollo, Estropio "Apiong" Remollo, Eugenio Beringuel, Iniego "Eyeng" Remollo and Gaudioso Toboso, accosted the deceased. (pp. 4, 10, id.; p. 20, t.s.n., July 20, 1966). Three of the appellants - Apiong Remollo, Bading Remollo and Eyeng Remollo - went in front of the deceased while two of them - Eugenio Beringuel and Gaudioso Toboso - went behind him (pp. 5, 6, 10, 11, t.s.n., May 30, 1966). Apiong Remollo asked cigarette from the deceased, and while the latter was getting cigarette from his left shirt pocket with his right hand - his left hand was then holding a flashlight - Gaudioso Toboso hacked him with a long bolo (pp. 5, 11, 16, id.; pp. 21-22, t.s.n., July 20, 1966). The deceased staggered towards the three appellants in front of him, and all the five appellants helped one another in slashing him with their bolos and scythe - Beringuel was armed with a scythe while the rest, with bolos (pp. 5-6, 11-14, 16, t.s.n., May 30, 1966; pp. 21-22, 34, t.s.n., July 20, 1966; pp. 40-41, t.s.n., July 29, 1966). Jesus Urgel ran towards the house of Yoyo Barcelo about 25 to 30 meters away but he fell down in the yard and died (pp. 6-7, t.s.n., May 30, 1966; pp. 22, t.s.n., July 20, 1966). He sustained 19 wounds (p. 5, t.s.n., Dec. 20, 1965; Exhibits "A" and "A-1").

"The incident took place about 5 or 6 meters away from the house of Gaudioso Toboso; and 9 or 10 meters away from the dwelling of Bading Remollo and about 8 meters away from Beringuel's residence (pp. 22-23, t.s.n., July 20, 1966; p. 40, t.s.n., July 29, 1966).

"Aside from the light that emanated from the five-battery flashlight which the deceased focused on the appellants, the place was also illuminated by the light coming from the open window of Yoyo Barcelo's house, radiated by his petromax lamp (pp. 6-7, t.s.n., May 30, 1966); and also the light of the "lamparillas" in the houses of the three appellants (p. 23, t.s.n., July 20, 1966).

"Gorgonia Urgel, wife of the deceased, immediately reported the incident to the police authorities of Bugho, Leyte and Pat. Arcadio Llanes of the local police force accompanied her to the scene of the crime and made an on the spot inspection (pp. 16-17, t.s.n., May 30, 1966)."[2]

Except Salvador "Bading" Remollo who pleaded self-defense, the rest of the appellants deny participation in the killing of the deceased, and put up the defense of alibi.

Appellant Gaudioso Toboso's alibi is that he was sick with fever and headache that night of the incident, and so, he never went out of his house. For corroboration, one Benigna Galindo, testified that she passed the night in Gaudioso's house because she could not catch up with the trip going home. She came from a brother's house in a neighboring barrio, just about two kilometers distant, and so, for the first time, she slept in Gaudioso's house that night.

At once, we see weakness in Benigna's testimony, for why did she prefer to sleep in another man's house to going back to her brother's house just about two kilometers away, specially as Gaudioso was at the time, down with fever and headache? That she played nurse to the sick man at the very first time she ever slept in the former's house all the more exposes the weakness of her testimony.

On the other hand, Pat. Jovencio Cayunda, testifying for the defense, declared that immediately after the incident, he and other policeman rushed to the scene of the crime and made inquiries in the neighborhood. When asked, Gaudioso allegedly told the policeman that he only heard, not saw, the incident, because his house was just five or six meters away, because his stomach was aching, as in fact, he was pressing something over his stomach with both hands, and alleged that he could go only to the sala of his house (pp. 19-20, t.s.n., January 8, 1969).

The contradicting testimonies as above shown, so glaring in their inconsistency, render both of them unworthy of credence. If Gaudioso was able to go to the sala, he could have at least looked out of the window and witnessed that some relatives of his were involved in the affray. Instead, he would appear so unconcerned, that he did not endeavor to see anything of the incident as he claimed.

What totally wrecks Gaudioso's alibi is his having been positively identified as the one who delivered the first slashing blow with a bolo, inflicted from behind the victim.[3] He, however, tried to discredit the two state witnesses, Jesus Luania and Antonio Lumbré, with supposed improper motive on their part, Gaudioso alleging that while he was a policeman, he disarmed and arrested, respectively, the two aforementioned witnesses. The wife of the victim, Mrs. Urgel, who also positively identified Gaudioso as the first to strike at her deceased husband, was not shown to be with any motive to testify against said appellant. Neither was her brother-in-law, Marcelo shown to have such kind of motive. Gaudioso gave as one more reason for his inclusion among the accused, his being not from Abuyog, and did not help thereat. By this hollow and flimsy reason, the futility of his defense of alibi becomes all the more manifest and evident.

As to the other appellants, their alibi had absolutely no corroboration. Moreover, their supposed whereabouts during the incident were such that it was not physically impossible for them to be present at the place where the crime was committed, at the time of its perpetration. This fact would make their alibi wholly unavailing and futile, specially in the face of their having been identified as having taken actual part in the slaying of the hapless victim.

Most potent in establishing the participation of all the appellant is the fact that immediately after the slaying of her husband, Mrs. Urgel reported the incident to the police authorities, naming the appellants herein as the assailants, even giving in detail the participation of each.

Going now to appellant Salvador "Bading" Remollo's self-defense plea, the version he gave is simply unconvincing in itself, and becomes more so with the testimony of the state witnesses as to his participation in the

killing which simply excludes the theory of self-defense. Salvador's version is as follows, quoting from appellant's brief:

"... on that afternoon of February 9, 1964 while he was in the cockpit of Bugho, former barrio of Abuyog, Leyte, now Municipality of Javier, Leyte, he (Salvador) placed bets with Jesus Urgel and Marcelo Urgel (brothers). During the cockfights, he (Remollo) won three times against the Urgel brothers in the sum of P13.00 And because he was alone, the Urgels grabbed the P13.00 from him and challenged him to a fight, but he ran and was chased by the Urgels to the house of Gaudioso Toboso; stayed there for some few minutes until the Urgel brothers were gone. But before they left the vicinity of the house of Gaudioso Toboso's house, they shouted at him that they would go to his house on that night and fight him there. So that right that very afternoon, he left the house of Gaudioso and went directly to his own house and told his wife and 4 children that they would leave immediately for the poblacion of the town of Javier, planned to stay that night in the house of his mother-in-law. When they were about to reach the house of Gaudioso Toboso at about 7:00 o'clock that evening, February 9, 1964, they were met by the victim Jesus Urgel who said: "Now is the time!" and Jesus Urgel slashed him (Salvador) with his long bolo, which Jesus had with him to ambush Salvador Remollo. That the latter parried the attack of the former with the pillows Salvador was carrying (Exhs. '3' and '3-a') from his house in their exodus to the house of his mother-in-law in town. At the instance of the attack, he immediately told his wife with their children to run away, with him also running, but he stumbled over a coconut log, and glancing at his adversary Jesus Urgel pursuing him, as he was in a kneeling position from stumbling; his left leg was in squatting position, Jesus Urgel overtook him and slashed him from behind that he was hit by the bolo of Jesus Urgel at his right thigh. Then, in self-defense, he instantly drew his long bolo, swang it backward and hit Jesus Urgel; then he stood up and ran behind the coconut tree, but before he could reach it, Jesus Urgel with his bolo hit him again twice at his buttocks; that he had no other alternative than face his adversary (Jesus Urgel) and fought it out with him in a struggle of 'self-defense' or 'self-preservation,' slashing the victim in the different parts of his body until he was killed, and he surrendered to the police authorities of Javier, Leyte." [4]

The inherent incredibility of the self-defense version is apparent. In spite of the vantage point in which the deceased placed himself in wait to stage an ambush as claimed, and the restriction of movement on the part of the appellant Salvador because he was holding three pillows with one hand, and a lamp with the other, as also alleged by appellant Salvador, it was the deceased who got killed and Salvador was practically unscathed. Although he claimed to have sustained superficial cuts, the trial court found these wounds to be self-inflicted, in which finding, We agree, considering that they were located in parts of his body - the buttocks and the thighs - where the injury could be least dangerously hurting, as in fact, they did not even have to be treated by a doctor or a nurse. [5]

Why the deceased would still go after Salvador even after depriving the latter of his (Salvador's) winnings from the deceased in the cockpit is beyond logic or reason. It is Salvador who has reason to hold a deep grudge against the deceased and to wish to take revenge. And why should the deceased choose to fight Salvador as he angrily threatened, in the latter's house, as further testified to by said appellant? From these incredible facts, Salvador is clearly shown to be untruthful in giving his testimony and is, therefore, not deserving of credit. His self-defense plea would thus be unavailing in the face of the legal requirement that the evidence of self-defense must be clear and convincing, for the burden of proof is shifted to the accused after admitting authorship of the killing.

The infliction of as many as nineteen wounds on the deceased attests to his being the victim of aggression, not the illegal aggressor as he must have to be, if self-defense is to prosper as the justifying circumstance which the accused is invoking for his exculpation. The exceedingly numerous wounds inflicted on the deceased also attest to the number of assailants as not limited to only one, as Salvador claims to have been the only one who took part in the killing, not even to only two or three, but to all the five herein appellants who were all identified as having inflicted injuries on the defenseless victim.

We agree in the trial court's rejection of the presence of any aggravating circumstance, such as cruelty, evident premeditation, nighttime and abuse of superior strength, the last two being considered absorbed by treachery which is clearly present to qualify the killing to murder.

WHEREFORE, finding the appealed decision to be in accordance with law and the evidence, We affirm the same, in toto, with costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] p. 2, Appellee's Brief, p. 127, Rollo.

[2] pp. 2-4, Appellee's Brief, *ibid*.

[3] *People vs. Mationg*, 113 SCRA 167; *People vs. Demate*, 113 SCRA 355; *People vs. Gandao*, 111 SCRA 298; *People vs. Salameda*, 111 SCRA 407.

[4] pp. 2-3, Appellant's Brief, p. 84, Rollo.

[5] pp. 57-58, *t.s.n.*, February 27, 1967.

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