

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO CALANTOC, DEFENDANT-APPELLANT.

G.R. NO. L-27892. January 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of Domingo Calantoc y Hermoso from the decision of the Court of First Instance of Nueva Ecija, finding him guilty of murder, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Isidro Francisco in the sum of six thousand pesos and to pay the costs (Criminal Case No. 168-G).

The only issue raised by the appellant is that the trial court erred in rejecting his plea of self-defense. To resolve that issue, it is necessary to contrapose his version against the prosecution's version as to how he killed Isidro Francisco.

As to the antecedents and details of the killing, the evidence leaves much to be desired in the way of completeness and comprehensibility. Certain loose ends and contradictions were not clarified. As usual, the witnesses did not evince total candor and veracity. Some portions of their testimonies were manifestly tailored to suit their ulterior motivations.

The evidence for the prosecution discloses that at around eight o'clock in the morning of October 31, 1964 Isidro Francisco (Dedong), a forty-six year old farmer, residing at Bibiclat, Aliaga, was in Sitio Guisit, municipality of Quezon, Nueva Ecija. He was going to the town of Sto. Domingo about four kilometers away. Walking alongside Isidro Francisco was Arsenio Niuda. Following him, about nine meters behind, was his twenty-one year old son, Melchor Francisco (Mely). Hilario Valino and Rolando Verano were walking alongside Melchor Francisco. The group was proceeding to Sto. Domingo to borrow palay.

Suddenly, Domingo Calantoc appeared on the scene, behind the group. He was walking briskly. As soon as he passed Melchor Francisco, Calantoc, with a bolo (Exh. D), stabbed Isidro Francisco on the head. The blow caused Isidro to assume a stooping posture. In that position Calantoc repeatedly stabbed him to death.

Melchor Francisco tried to help his father but Calantoc turned around and faced him. He and his companions fled.

Shortly after the killing, Doctor Lydia F. Lahom, the municipal health officer, performed an autopsy on the cadaver of Isidro Francisco. Her findings were as follows:

- "1. Incised wound – 5 inches long, 1/2 inch wide at back of neck.
2. Incised wound – 5 inches long, 1/2 inch wide above left ear.
3. Incised wound – 5 inches long and 1/2 inch wide on right forehead just above right eyebrow.
4. Crossed incised wound – 2 inches and 3-1/2 inches long on vertex of head."

Doctor Lahom opined that profuse bleeding from the wounds caused the victim's death (Exh. A). She issued a

certificate of death stating that Francisco died of multiple incised wounds on the head and neck (Exh. E). As shown in the photographs (Exh. B, B-1, C to C-3), the wound on the nape, the wound above the left ear lobe and the wound on the crown of the head were on the back, left side. The frontal wound or gash on the temple began above the right eyebrow and almost touched the right ear.

On the other hand, Calantoc, to support his plea of self-defense, gave the following version:

In the morning of the incident he left his house at Sitio Tabing Ilog, FERIA, Quezon in order to get palay at Sto. Domingo. While he was in the middle part of his farm, he was allegedly waylaid by Isidro Francisco and his son, Melchor. Melchor fired a shot at him and hit him near his right armpit. At that instant, Isidro Francisco turned and faced Calantoc and supposedly "put his right hand in his pocket" but before Isidro could draw out his hand, Calantoc stabbed him.

It is not disputed that Calantoc was wounded. He was treated by Doctor Lahom at the health center at about ten o'clock in the morning of October 31, 1964. He had a bleeding gunshot wound on the right side of his back. He was later rushed to the hospital. A medical certificate issued by Doctor H. S. Cajucom of the Nueva Ecija Provincial Hospital states that Calantoc sustained a "gunshot wound, entrance axillary line, right below scapula, no exit" and that a bullet was found in the right side of his thorax (Exh. 1). The wound was eight inches below the shoulder. From the position of the wound Doctor Cajucom concluded that the assailant "was at the back of Domingo Calantoc and on the right side." The slug was not extracted from Calantoc's body. To do so would endanger his life. Calantoc stayed for nine days in the hospital.

Even if appellant's version should be accepted as correct, his plea of self-defense cannot be sustained. Isidro Francisco did not commit any unlawful aggression against him. The alleged act of the victim in placing his hand in his pocket, as if he was going to draw out something, cannot be characterized as unlawful aggression. It did not imperil Calantoc's life.

That alleged maneuver of Isidro Francisco may be regarded as a reflex action, impelled by the instinct of self-preservation and immediately induced by Calantoc's hostile intention about which Melchor Francisco had alerted his father. Under the circumstances, it was not an overt act of aggression. It was rather an initial step to repel an imminent aggression.

The trial court, in rejecting Calantoc's plea of self-defense, relied on the ruling in *U. S. vs. Carrero*, 9 Phil. 544 that "a threat even if made with a weapon or the belief that a person was about to be attacked, is not sufficient, but that it is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression." In the Carrero case the accused invoked self-defense. He claimed that he struck the victim because the latter, "after insulting the accused, thrust his hand into his pocket as if for the purpose of drawing a dagger or a pocketknife". It was held that there was no self-defense because there was no unlawful aggression.

It is noteworthy that Niuda and Valino, who were present at the scene of the stabbing, did not mention in their testimonies the alleged act imputed by Calantoc to the victim.

Calantoc in his sworn statement was asked as to why Melchor Francisco shot him. He said that there was no motive but he just heard Melchor shouting to his father at the same time that he fired at Calantoc. His exact words are as follows:

"T. Ano naman ang dahilan at binaril ka ni Mely Francisco? - S. Wala po akong nalalaman na dahilan basta't narinig ko na lamang po na humiyaw ang Tatang sabay putok sa akin. (No. 7, Exh. 2).

T. Matapos kang mabaril ni Mely Francisco ay ano naman ang iyong ginawa kung mayroon man? - S. Tinaga

ko po si Dedong Francisco." (No. 8, Exh. 2).

The implications of Calantoc's answer are quite revealing. His answer implies that, at the moment that he was going to assault Isidro Francisco, the son Melchor Francisco shouted a warning to his father and simultaneously with that warning, he fired at Calantoc. He shot Calantoc because the latter, as observed by the Solicitor General, was the aggressor. It was Melchor Francisco who, being aware of Calantoc's sanguinary design, endeavored to defend his father Isidro against the imminent aggression to be committed by Calantoc.

Valino, a nephew of Calantoc, his mother being Calantoc's sister, testified for the defense. He was standing between Melchor Francisco and Verano on the occasion of the incident. He was an eyewitness. Like prosecution witness Niuda, he did not confirm his uncle's theory of self-defense. He declared that his uncle was following the group of Isidro Francisco in Sitio Guisit. When Calantoc overtook Melchor Francisco, Valino "heard a shout and a simultaneous boling". He said that "the hacking of Isidro Francisco was simultaneous to (with) the shot". That version is consistent with Calantoc's aforementioned declaration that Melchor Francisco shouted a warning call to his father and then shot Calantoc in order to frustrate the assault that Calantoc was obviously going to commit against Isidro Francisco.

Valino in his sworn statement to Sergeant F. Ramos of the Quezon police force a few hours after the killing declared:

"T. Gaano ka kalayo noong iyong makita na binaril si Dominador Calantoc ni Mely Francisco noong tagain ni Dominador (Domingo) Calantoc si Dedong Francisco? - S. Merong lamang pong dalawang metro ang layo ko.

T. Papaanong nataga ni Domingo Calantoc si Dedong Francisco? - S. Noon pong pumutok ang baril ay sabay baling si Dedong Francisco kasunod ang taga sa kaniyang mukha." (p. 7, Record).

That declaration means that the first wound inflicted on Isidro Francisco was the gash on his right temple (Exh. B-1). The blow caused him to stoop or bend. While in that position, Calantoc stabbed him on the back at the left side of his head and neck (Exh. C-1, C-2 and C-3).

Valino's testimony was in a way corroborated by Calantoc. The appellant testified that Isidro Francisco "was in front" and Melchor Francisco was behind Calantoc when he shot Calantoc and when the latter stabbed Isidro Francisco. Isidro turned around and faced Calantoc and at that instant Calantoc stabbed him. So, as already noted, the first wound inflicted by Calantoc on the victim was the wound on the right temple. Calantoc clarified that, after the first blow, Isidro Francisco "walked". "His position was a little stooping". He "was already staggering and helpless". While in that condition, Calantoc struck him "downward" and "backward". Apparently, those blows produced the three wounds on the back of the victim's head and nape.

Even from Calantoc's version, it is evident that he was the aggressor. His act of arming himself with a bolo and following and overtaking the group of Isidro Francisco shows that he had formed the resolution of liquidating Isidro. It was not necessary for Isidro to provoke him. The gunshot wound did not deter him from assaulting Isidro Francisco with unabated fury. After he was shot by Melchor Francisco, he saw Melchor "ran away". He instinctively knew that he was no longer in danger of being attacked by Melchor. He then concentrated his aggression on Isidro Francisco.

Inasmuch as there was no unlawful aggression, there could be no self-defense (Art. 11[1], Revised Penal Code). The trial court did not err in disbelieving Calantoc's puerile claim that he acted in self-defense.

It correctly rationalized that the killing should be characterized as murder attended with treachery (alevosia), the qualifying circumstance alleged in the information. Calantoc perpetrated a deliberate, surprise assault on Isidro Francisco. Because of the suddenness of the attack, the victim had no chance to defend himself. (See par. 16, Art.

14, Revised Penal Code).

There being no mitigating nor aggravating circumstances, the appellant was properly sentenced to reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

The indemnity of six thousand pesos fixed by the trial court should be raised to twelve thousand pesos.

WHEREFORE, the judgment of the trial court is affirmed with the modification that the indemnity payable to the heirs of Isidro Francisco should be increased to twelve thousand pesos. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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