

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO ROSARIO AND SALVADOR ROSARIO, ACCUSED-APPELLANTS.

G.R. No. L-46161. February 25, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Juan Rosario and his two sons, Santiago and Salvador both surnamed, Rosario were charged with the crime of murder in an information filed with the Court of First Instance of Pangasinan.

On arraignment, the accused pleaded not guilty. After a protracted trial, the Court rendered its decision acquitting Juan Rosario of the crime of homicide. His sons, Santiago Rosario and Salvador Rosario were found guilty of the crime of homicide with abuse of superior strength as an aggravating circumstance. Santiago Rosario after having been credited with the mitigating circumstance of voluntary surrender which offset the aggravating circumstance of abuse of superior strength was sentenced to suffer the penalty of EIGHT (8) YEARS, and ONE (1) DAY to TEN (10) YEARS of prision mayor. With the aggravating circumstance of abuse of superior strength and without any mitigating circumstance to offset the same, Salvador Rosario was sentenced to suffer the penalty of TEN (10) YEARS and ONE (10) DAY TO TWELVE (12) YEARS of prision mayor. In addition, Santiago and Salvador were ordered to indemnify the heirs of the deceased Julio Torio in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay one-third (1/3) of the costs.

The record shows that on September 1, 1965 and for sometime prior thereto, the accused were the caretakers of the fishpond of the Vinluan family located in Binmaley, Pangasinan. In the morning of September 1, 1965, Julio Torio was found dead in the fishpond owned by the Vinluan family. He sustained the following injuries:

1.

Incised wound at the left face toward the ear left measuring 12 cms. length (shivering (sic) the whole left ear).

2.

Punctured wound at the right chest protruding between the 3rd and the 4th ribs right lungs.

3.

Punctured wound penetrating the left lobules of the right lobe of the lungs.

4.

Incised wound on the left lower lips 5 cms. length.

5.

Incised wound on the left shoulder measuring 8 cms. length.

6.

Incised wound 8 cms. on the right temporo parietal.

7.

Punctured wound on the left lower epigastrium penetrating the large intestines 7 cms. length and 11.5 cms. depth.

8.

Punctured wound 5 cms. width on the epigastrium and 12 cms. depth.

9.

Incised wound 3 cms. on the lateral right side right thigh.

10.

Incised wound 9 cms. depth and 3 cms. width shivering (cutting) the right hand on the wrist joint.

Santiago admitted having inflicted the aforestated wounds on Julio Torio but claimed that he acted in self-defense. According to him, the incident happened in the following manner:

x x x that morning of September 1, 1965 while he was on the dike North of the "depositohan" he saw Julio Torio on the Eastern dike of the "depositohan" marked as Exhibit I-i. While there, Julio Torio allegedly threw a bottle of "endrine" into the "depositohan". Then he approached Santiago Rosario, dropped the hook and line he had with him, pulled with his left hand the bolo (Exh. C) from his right wrist and thrust it towards the right breast of Santiago Rosario. However, Santiago Rosario retreated, pulled his bolo (Exh. B) with his left hand and with it, he struck and hit Julio Torio, at the back of the head. That was the first blow. Then Santiago Rosario allegedly made a downward and upward circular movement of his bolo (Exh. B) until Julio Torio was hit on the left face, and the left ear of Julio Torio was cut-off. That was the second blow. After that second blow, Julio Torio allegedly kicked Santiago Rosario with his right foot below the waist but Santiago Rosario took hold of the right leg of Julio Torio and hit him for the third time cutting the right hand of Julio Torio, above the wrist and also causing an injury on his right hip. That was the third blow. After that, Julio Torio and Santiago Rosario struggled for the possession of the bolo of Julio Torio (Exh. C) and both fell into the "depositohan" (Exh. I-A). Santiago Rosario was able to get the bolo (Exh. C) from Julio Torio and with his own bolo Exh. B) as well as the bolo (Exh. C) Santiago Rosario hit and struck Julio Torio several times in various parts of his body, until he died. Then he went home and reported the incident to his father Juan Rosario, who advised Santiago Rosario to surrender to the authorities of Binmaley.

Salvador denied any participation in the killing of Julio Torio. His defense was an alibi. According to him, he was fetching water in the early morning of September 1, 1965 and when he arrived at his house he saw his brother

Santiago narrating to Juan Rosario, their father, the incident that transpired between him and Julio Torio which resulted in the latter's death.

The trial court rejected Santiago's version of the incident. The court found the prosecution's version of the incident in consonance with the evidence on record:

x x x at about 6:00 o'clock in the morning of September 1, 1965 Modesto Alipio, Julio Torio and Fidel Ramos were fishing - with the use of hook and line - in the big fishpond of the Vinluan family indicated in the sketch (Exh. I) as Exhibit "I B). The fishes (bangus) in the fishpond were harvested on August 15, 1965 and fishing with hook and line to catch "tilapia" and other fishes from the fishpond, were not prohibited. Modesto Alipio, Julio Torio and Fidel Ramos, were sitting on top of an earthen dike facing North when they were fishing in that pond indicated as Exhibit I-B, in the sketch (Exhibit I). Behind them is a small fishpond called "depositohan" marked (Exh. I-A, in the sketch, Exh. I, which is devoted for the culture and cultivation, of seedlings (bangus fries) preparatory to their being transplanted to the big fishponds. Julio Torio was between Modesto Alipio, 10 meters on his left and Fidel Ramos, 8 meters on his right, on top of that dike running from East to West. Their positions in the sketch, Exh. I, are as follows: Exh. I-C, Modesto Alipio; Exh. I-E, Julio Torio and Exh. I-D, Fidel Ramos.

When Julio Torio, Modesto Alipio and Fidel Ramos already caught 2 fishes each, the accused Santiago Rosario arrived coming from the Western dike of the "depositohan". He passed by Modesto Alipio carrying his bolo, Exh. B and proceeded towards Julio Torio. At the same time, the accused Salvador Rosario came from the Eastern dike of the "depositohan" carrying the bolo, Exh. C, passed behind Fidel Ramos and also proceeded towards Julio Torio. All of a sudden Salvador Rosario said: "You hit him, Cuya". Julio Torio looked at Santiago Rosario who hit Julio Torio with the bolo Exh. B. Although Julio Torio ducked to avoid being hit, yet he was hit at the back of the head. Julio Torio turned his face towards the right and Salvador Rosario hit Julio Torio on the left cheek and severed his left ear. With those two mortal wounds, Julio Torio fell into the "depositohan" Exh. I-A, South of the dike where he was seated. Santiago Rosario and Salvador Rosario slid from the top of the dike, followed Julio Torio to the "depositohan" and continued to hit and strike Julio Torio with their bolos until he was submerged under the water. When Julio Torio fell into the "depositohan" as stated above, the accused Juan Rosario, father of Santiago and Salvador Rosario, arrived and shouted at his sons: "You finish his life." Then, Santiago Rosario asked his father Juan Rosario to go and get the basket with "endrine".

As stated earlier, accused Juan Rosario was acquitted while his two sons and co-accused Santiago and Salvador both surnamed Rosario were found guilty of the crime of homicide and were sentenced accordingly.

Santiago and Salvador appealed the decision to the Court of Appeals. However, the latter Court certified the case to us because of its findings that the crime committed by the appellants was murder qualified by abuse of superior strength and that the proper penalty to be imposed on Santiago should be reclusion perpetua.

In their appeal, the appellants alleged that the trial court committed the following errors:

I

THE LOWER COURT ERRED IN CONVICTING APPELLANTS UPON THE PERJURED TESTIMONY OF TWO FRIENDS OF THE DECEASED WHO DID NOT ACTUALLY WITNESS THE CRIME CHARGED.

II

THE LOWER COURT ERRED IN TAKING IN ALL AND EVERY TRIMMING TO THE CONCOCTED STORY. THE LOWER COURT ERRED IN PICKING OUT THE INCREDIBLE STORY OF THE PROSECUTION.

IV

THE LOWER COURT ERRED IN REJECTING THE VERSION OF SELF-DEFENSE.

V

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT SALVADOR ROSARIO WHO WAS NOT AT THE SCENE OF THE INCIDENT AND WHO HAD NOTHING TO DO WITH THE SAME.

VI

UNDER THE ASSUMPTION THAT APPELLANTS ARE GUILTY OF HOMICIDE, THE LOWER COURT ERRED IN FINDING ABUSE OF SUPERIOR STRENGTH AGAINST THEM.

The first five assigned errors raise the same issue regarding the credibility of witnesses.

Santiago Rosario admitted having inflicted the ten (10) stab wounds, seven (7) of which probed fatal as testified to by Dr. Geronimo Valerio, municipal health officer of Binmaley, Pangasinan, who performed the autopsy on Julio Torio. The settled rule is "x x that one who admits the infliction of the injuries which caused the death of another, has the burden of proving self-defense, which is an affirmative allegation. Where the evidence of self-defense is of doubtful veracity, the defense must fail. The quintessence of various decisions on this point is to the effect that evidence of self-defense must be clear and convincing and the accused claiming self-defense must plant his case on the strength of his own evidence and not on the weakness of that of the prosecution." (People vs. Cardenas 118 SCRA 458).

From Santiago Rosario's own testimony, the first three stab wounds were inflicted in the following sequence: the first blow hit Julio Torio at the back of the head; the second blow hit Julio on the left face and the left ear; and the third blow resulted in the cutting off of the right hand of Julio. Based on the post-mortem examination of Julio Torio and the testimony of Dr. Valerio, the first blow resulted in the eight centimeters' incised wound on the right temporo parietal; the second blow resulted in the twelve centimeters long incised wound on the left face toward the left ear and which severed the whole left ear while the third blow resulted in the nine centimeters deep and three centimeters wide incised wound which resulted in cutting off the right hand at the wrist joint. According to Dr. Valerio, these three wounds were all fatal, such that the first stab wound would cause unconsciousness, the second stab wound would cause "death afterwards" due to loss of blood and the third stab wound would cause immediate death due to loss of blood. Moreover, Dr. Valerio testified that each of the first two stab wounds would cause immediate loss of consciousness and that the third stab wound was an act which was executed deliberately.

Considering the location and nature of the first three stab wounds suffered by Julio Torio, Santiago's version of the circumstances under which he inflicted them on the body of Julio Torio is incredulous. We agree with the trial court's findings to the effect that:

From the nature and position of the wound at the back of the head of Julio Torio, shown in the photograph (Exhs. D and D-1) and which was allegedly caused by the first blow, the Court finds that said injury cannot be caused in the manner testified to by Santiago Rosario. Santiago Rosario is left handed, although according to him, he can also make use of his right hand. This wound indicated in the information, as Wound No. 6 is an incised wound 8 cms. on the right "temporo parietal" indicated on the photograph (Exhs. D and D-1) as the whitish portion at the back of the head of Julio Torio, close to his right ear. If both Santiago Rosario and Julio Torio were standing and facing each other as Santiago Rosario declared, that wound cannot be inflicted by a frontal blow. If Julio Torio thrust the bolo (Exh. C) towards the breast of Santiago Rosario who retreated and pulled his bolo with his left hand and then struck Julio Torio would be hit on the front of the head or his face but surely not at the back of his head. This injury can only be caused if Julio Torio turned his head towards Santiago Rosario, bend it and allow Santiago Rosario to hit him at the back of the head, which will be a very foolish thing to do. From the position of Wound No. 6, the Court finds plausible the testimony of Modesto Alipio as to how it was caused. According to Modesto Alipio when Santiago approached Julio Torio, Santiago

Rosario was carrying the bolo (Exh. B) on his right hand and when Salvador Rosario shouted "strike him, Cuya", Julio Torio who was sitting on top of the dike and fishing with hook and line, turned his face towards Santiago Rosario on his left side and when Santiago Rosario hit him; Julio Torio ducked to avoid the bolo blow of Santiago Rosario. Julio Torio did not avoid that blow and was hit on the back of the head exactly in the position, marked as Exhibit D-I in the photograph (Exh. D). Santiago Rosario was carrying the bolo with his right hand and hitting Julio Torio, in a sitting position with his face turned towards Santiago Rosario and ducking or bending his head to avoid the blow, the resulting injury will exactly be at the back of his head, close to the right ear as Exhibit D-1. That Santiago Rosario used the pointed bolo (Exh. B) in hitting Julio Torio for the first time, is corroborated by the fact that the pointed end of said bolo scratched and caused an incised injury at the base of the neck, close to the right shoulder of Julio Torio, also visible in the photograph, Exhibit D.

As the second blow, which according to Santiago Rosario was inflicted when he was swinging his bolo in a circular movement, downwards and upwards, which caused the wound on the left face of Julio Torio and severed his left ear, the Court finds that like the first blow, it cannot be caused in the manner testified to by Santiago Rosario. If that injury were caused by the upward movement of his bolo, the direction of the wound would be from downwards going upwards. According to the photograph (Exh. H) the wound on the left face of Julio Torio starts from the left ear going down towards his mouth. Such injury cannot be caused simply by any downward or upward movement of the bolo (Exh. B). The blow, which caused that injury, must be heavy and forceful to cause that deep wound, 12 cms. long on the left face and 5 cms. long on the left lower lips. Like the first wound inflicted by Santiago Rosario, the Court finds that this injury was caused by the accused Salvador Rosario in the manner testified to by both, Modesto Alipio and Fidel Ramos. According to Modesto Alipio, after Santiago Rosario hit Julio Torio at the back of the neck, Julio Torio turned towards the right and then Salvador Rosario hit Julio Torio on his left face with the bolo (Exh. C). Salvador Rosario is right handed and was at the right side of Julio Torio. In that position the left face of Julio Torio is exposed to the bolo blow by Salvador Rosario, with his right hand, when Julio Torio turned his face at Salvador Rosario, who was on his right side.

It was after Julio Torio was hit a second time that he fell into the "depositohan" followed by both Santiago Rosario and Salvador Rosario, who continued to hit and stab Julio Torio several times with their bolos until he died. As to the third blow which cut the right hand of Julio Torio above the wrist, Dr. Geronimo Valerio testified that the cutting of that hand was intentional and can only be done by holding that right hand and cutting it. The cut-off right hand, shown in the photograph (Exh. D) is clean cut. If as testified to by Santiago Rosario that hand was cut when Julio Torio kicked Santiago Rosario with his right leg, the hand must be cut in an oblique or slanting position and not straight from edge to edge, as shown in the photograph (Exh. D). With the manner the right hand of Julio Torio was cut the Court finds the testimony of Dr. Valerio, that it was intentionally cut either before or after Julio Torio died, to be credible.

The foregoing findings render Santiago's self-defense theory of doubtful veracity. The two wounds and the abrasion he allegedly suffered at the hands of Julio Torio during the incident as stated in his medical certificate (Exh. "G") consisting of (1) stab wound, 1 1/2 inches deep directed laterally forearm, right; (2) lacerated wound, arm right and (3) abrasion, forearm left were minor injuries. This was the testimony of Dr. Antonio Esfe who examined him and who testified in his behalf. Dr. Esfe testified that a left handed person could have self inflicted the shoulder wound. Santiago Rosario is left handed. Moreover, the two brothers were swinging their bolos at the same time in the heat of murderous intent. These wounds could not have been inflicted by Julio Torio in the manner described by Santiago. According to Santiago, Julio Torio with a bolo in his left hand thrust it towards Santiago's right breast but retreated. Hence, Santiago could not have been hit on the right shoulder. If Santiago was not hit on the breast because he was able to retreat, it is improbable that he would be hit on the shoulder. Julio could not have hit him on the right shoulder.

Salvador's defense of alibi does not deserve credence since he was positively identified to have participated in the killing of Julio Torio. Moreover, Salvador did not demonstrate in court that it was physically impossible for him to have been at the scene of the crime at the time of the incident.

We are convinced that the incident resulting in the death of Julio Torio was as narrated by eyewitnesses Fidel Ramos and Modesto Alipio. It is a well-established doctrine "that findings of trial courts relative to the credibility of the testimony of the witnesses as well as of the witnesses themselves are entitled to high respect, and, therefore, are generally sustained by the appellate court. There is no showing that the trial judge has overlooked or misinterpreted any facts or circumstances of weight and value as to impeach his findings or call for a different finding and which would constitute an exception to the rule on respect for the findings of the trial court. (People v. Surban, 123 SCRA 218 citing People vs. Abboc, et al. 53 SCRA 54; People vs. Geronimo, 53 SCRA 246; People vs. Balmaceda, 87 SCRA 94; People vs. Ancheta, 60 SCRA 333; People vs. Espejo, 36 SCRA 400). The alleged inconsistencies and contradictions in the testimonies of the eyewitnesses were on mere details of no consequence which do not affect the integrity of the testimonies. In this connection, we take note of the manner in which Fidel Ramos testified in court, Fidel Ramos admitted that he did not go to school and that he only knew how to write his name. When asked to identify a sketch (Exhibit "I") showing the relative positions of the place where he was standing and the place where Julio Torio was killed, he answered in a simple and honest manner that he did not know how to read and suggested an ocular inspection so that he could show the exact place where Julio Torio was killed. Moreover, when the counsel tried to help him by explaining the points as indicated in the sketch, he repeated his earlier stand that he could not understand the sketch and suggested anew for an ocular inspection because he wanted to make sure that he would not commit a mistake in identifying the points indicated in the sketch. Such demeanor shows the sincerity and spontaneity of Fidel Ramos while on the witness stand, characteristics hardly associated with a perjured witness.

Another factor advanced by the appellants to impeach the credibility of eyewitnesses Fidel Ramos and Modesto Alipio was their failure to report the incident to the authorities. Their failure was, however, sufficiently explained. The two eyewitnesses to the killing are poor fishermen. They had no motive to testify falsely. Fidel Ramos testified that he was so frightened at what he witnessed that he ran for home immediately where, upon seeing his wife, he informed her that Julio Torio was dead. That same afternoon, he went to the wake of Julio in the latter's house and informed Julio's relatives about the incident. He, however, did not want to talk about the incident until he was subpoenaed by the Fiscal to appear in court because he might be implicated and that he was afraid of gossips. Modesto Alipio, too, was frightened at what he saw, so much so that he got sick for a week after the incident. He, however, was able to reveal the incident to a certain "Logia", mother-in-law of the deceased two weeks after the incident.

Such reactions of the eyewitnesses to the incident are understandable since the accused were acquainted with them and their townmates. They were afraid of getting involved in the case and of provoking reprisals from the accused if they took the initiative of going to the police instead of leaving the matter to the relatives of the deceased.

The records belie the appellant's assertion that Julio Torio started the unlawful aggression by throwing the insecticide "endrine" to poison the fishes in the "depositohan" because of his ill-feeling at the accused who replaced him as caretaker of the Vinluan family fishponds. Julio Torio's house is only about 300 meters away from the fishpond and therefore, he could have easily poisoned the fishes at nighttime when he would not be seen by the accused whose house is also within the area. We agree with the trial court's observation that the accused himself poured the endrine into the "depositohan" to simulate a defense for the killing of Julio Torio.

In convicting the appellants of the crime of homicide, the trial court found abuse of superior strength as an

aggravating circumstance. This finding is challenged in the sixth assigned error.

There is no doubt that under the attendant circumstances, the appellants took advantage of their superior strength to consummate the offense. This is evident from the manner the act of killing Julio Torio was executed. Thus, the appellants armed with bolos positioned themselves on each side of the unarmed Julio Torio and hacked him producing fatal stab wounds at the back of his hand and his left cheek and in the process severing his ear. Not satisfied, the appellants followed the victim into the "depositohan" where the latter fell after receiving the first two fatal stab wounds. They hacked Torio eight more times, the nature of five wounds also being fatal, until Torio was submerged in the water.

In addition to abuse of superior strength, the Solicitor General opined that treachery was also present in the killing of Julio Torio. The Solicitor General stated:

We also believe that the killing was attended by treachery because the two appellants, armed with bolos came from opposite sides of the dike, sandwiched the deceased who was unarmed between them, and without any warning attacked the deceased from both sides; giving the deceased no opportunity to evade the blow or to run for safety.

We agree. While it is true that Salvador uttered the word "inan mo cuya" (You hit him brother) before Santiago stabbed Torio, such cannot be considered a warning for the victim and rules out a valid argument against "suddenness of the attack" which characterizes treachery.

Even before Salvador uttered those words, the appellants were already in a position which left no alternative of escape on the part of Julio Torio. He could not run away as they were in a narrow embankment between two fishponds. The record shows that immediately after Salvador's utterance, Santiago stabbed Julio Torio followed by Salvador thus producing the fatal wounds. Armed with a bolo on each side of the intended victim who was unarmed and with no place to run, there can be no doubt that the appellants insured the execution of the crime without risk to themselves arising from any defense Julio Torio might make.

In a similar situation, we ruled in *People vs. Surban supra*:

With reference to the qualifying circumstance of treachery as found to have attended the two killings, appellants limit their discussion thereof only as regards the slaying of Gregorio Gesmundo. We sustain the trial court's finding it being clear from the evidence that all the accused, with manifest abuse of superior strength, deliberately resorted to as a way of insuring the execution of the crime without risk to themselves arising from the defense the offended party might make.

From the first moment Gregorio came in contact with three of the accused who were all armed, it was evident that said accused deliberately and consciously adopted means and ways of committing the crimes without risk to themselves. By their number and arms, they made it futile for their intended victim to even attempt to make any kind of defense. This becomes more evident when account is taken that four other accused had positioned themselves as to spring upon Gregorio at the very moment of their own choosing, when surprise and suddenness would be factors in their favor, prompting Gregorio to run for his life. However, chased by his determined killers all armed while he was not, the initial blow was inflicted from behind which felled him. In such defenseless position, all accused inflicted injuries as if in a spree of unbridled violence. The numerousness of wounds, including stab wounds which they deny having been found on autopsy, but it is so shown by the autopsy report (Exhibit "A") attest to this well-planned slaying that precluded any form of, or attempt at, defense on the part of the hapless victim.

There is no question from the records that the killing of Julio Torio was attended by both abuse of superior strength and treachery. The presence of abuse of superior strength alone qualifies the killing to murder. However, in the presence of both treachery and abuse of superior strength, treachery absorbs abuse of superior strength

(People vs. Surban supra). Applying these principles to the facts of this case, the crime committed by the appellants is murder and not homicide.

WHEREFORE, the judgment appealed from is modified in that appellants Santiago and Salvador both surnamed Rosario, are found guilty of the crime of murder. Considering the mitigating circumstance of voluntary surrender, Santiago Rosario is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. With no mitigating circumstance, Salvador Rosario is sentenced to suffer the penalty of reclusion perpetua. Both appellants are ordered to jointly indemnify the heirs of Julio Torio in the amount of P30,000.00. Costs against the appellants.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De La Fuente, and Alampay, JJ., concur.

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