

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN BALONSO, ACCUSED-APPELLANTS.

Ponente: ROXAS, J.

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ROXAS, J.:

Legal Principles in this Case:

When no improper or self-seeking motive could be attributed to the victim for imputing an offense against the accused, his identification of the accused is entitled to full faith and credit.

To take advantage of superior strength to be considered an aggravating circumstance, the accused must be proven to have used excessive force out of proportion to the means of defense available to the person attacked.

Treachery requires the concurrence of two conditions: (1) the employment of a means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.

Abuse of superior strength is absorbed in treachery, and thus, only one of them qualifies the crime and the other could not be considered as a separate and distinct aggravating circumstance.

The Case

Two (2) accused were charged with Frustrated Murder. Since only one of the two accused was arrested, he was the only one charged.

His defense was that his identity as one of the perpetrators of the crime was not sufficiently established and that the prosecution was not able to prove his guilt beyond reasonable doubt. Accused interposed this appeal.

The Facts

This is an appeal from the July 12, 2002 Decision[1] of the Regional Trial Court (RTC) of Naga City, Branch 19, in Criminal Case No. RTC'95-5755, which convicted accused-appellant Edwin Balonso (BALONSO) of the crime of Frustrated Murder and ordered him to pay civil indemnity in the amount of P40,000.00 as well as actual damages in the amount of P40,798.40.

On February 15, 1995, Prosecution Attorney II Richard T. Cu filed an Information[2] with the Regional Trial Court of Naga City, Branch 19, docketed as Criminal Case No. RTC 95-5755, charging accused-appellant BALONSO and accused Jessie Bajamonde (BAJAMONDE) with the crime of Frustrated Murder, committed as follows:

“That on or about 7:00 o'clock in the evening of the 3rd day of October 1994, at Bagolatao, Minalabac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, conspiring and mutually helping one another, with intent to kill and with treachery, while armed with bolos, and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack and hack for several times one Bobby Bitchayda who suffered injuries on the different parts of

his body and which could have caused his death had no medical attention been rendered to him, thus, the accused performed all the acts of execution which could have produced the crime of Murder as a consequence, but nevertheless did not produce it by some reason or cause independent of the will of the accused, to the damage and prejudice of said Bobby Bitchayda.

ACTS CONTRARY TO LAW.”

Accused-appellant BALONSO was arrested, but accused BAJAMONDE remained at large.

When arraigned on April 19, 1995, accused-appellant BALONSO, with the assistance of his counsel de officio, Atty. Renato Marpuri, pleaded not guilty to the charge.[3]

During trial, it was established that at around 7:00 in the evening of October 3, 1994, while the victim Bobby Bitchayda (BITCHAYDA) was having a drinking spree with Simplicio Velasco at his residence at Brgy. Bagolatao, Minalabac, Camarines Sur, accused-appellant BALONSO and accused BAJAMONDE passed by. BITCHAYDA invited accused-appellant BALONSO and accused BAJAMONDE to join them, but accused BAJAMONDE declined explaining that he was tired and his wife, who was pregnant, was with him.

The victim BITCHAYDA then asked accused BAJAMONDE’s wife how old she was and how many months she was pregnant. Accused BAJAMONDE interrupted saying that he had a problem because his first child had not yet been baptized. At that point, the victim BITCHAYDA offered to be the godfather of the child, which was declined by accused BAJAMONDE saying: “It’s ok, in fact there are many people offering to be the godfather but I have no money.” The victim BITCHAYDA retorted: “binibilog kaya ninyo ang payo ko” (you are making a fool of me), and then he boxed accused BAJAMONDE on the left side of his face. Thereafter, accused BAJAMONDE and accused-appellant BALONSO left while shouting at the victim BITCHAYDA to follow them at Sitio Sibunot.

The victim BITCHAYDA followed them and when he was in front of the house of Amado Malvarosa, he heard accused BAJAMONDE shout: “biraha na” (attack). When the victim BITCHAYDA turned his head, he saw accused-appellant BALONSO wielding a bolo. Accused-appellant BALONSO hacked the victim BITCHAYDA on the left elbow and head. Accused BAJAMONDE also hacked the victim BITCHAYDA twice, one at the head and the other at the back while he was already lying on the ground, using a “wastari” or a long bolo.

The victim BITCHAYDA, however, was able to run away. He reached the house of Pablito Aroncillo, where he asked for help to bring him to the hospital. Pablito Aroncillo asked him what happened and he replied that he was hacked by accused-appellant BALONSO and accused BAJAMONDE. The victim BITCHAYDA was then brought to the St. John Hospital.

The victim BITCHAYDA was hospitalized from October 3, 1994 to October 17, 1994. He was treated by Dr. Francisco J. Sales III, who certified that the victim sustained 7 injuries.[4] Dr. Francisco J. Sales III also testified that the victim’s scalp injury would have caused his death due to loss of blood if no immediate medical attendance was rendered.[5]

The Statement of Account[6] and various receipts[7] issued by the St. John Hospital showed that the hospitalization, treatment and medical services rendered to the victim BITCHAYDA amounted to P40,495.10.

Assailed Decision of the RTC

On July 12, 2002, the Regional Trial Court of Naga City, Branch 19, rendered the assailed Judgment,[8] in Criminal Case No. RTC 95-5755, convicting accused-appellant BALONSO of the crime of Frustrated Murder and ordering him to pay civil indemnity in the amount of P40,000.00 as well as actual damages in the amount of

P40,798.40, the dispositive portion of which reads as follows:

“WHEREFORE, in view of the foregoing, the Court finds accused Edwin Balonso GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248 in relation to Article 6 and 50 of the Revised Penal Code, taking into consideration the qualifying circumstances of abuse of superior strength and treachery, and hereby imposes upon him an indeterminate sentence of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to ten (10) years and one (1) day of prision mayor, as maximum, to indemnify the victim, Bobby Bitchayda, in the sum of forty thousand pesos (P40,000.00) without subsidiary liability in case of insolvency; and to reimburse him of actual damages in the amount of forty thousand seven hundred ninety-eight and forty centavos (P40,798.40).

Anent the accused, Jessie Bajamonde, pending his arrest let the record of this case be consigned to the ARCHIVES.SO ORDERED.”

Accused-appellant BALONSO filed a notice of appeal[9] on August 9, 2002, which was given due course by the trial court in its Order[10] dated August 20, 2002.

Assignment of Errors

In his Brief,[11] accused-appellant BALONSO assigned the following errors:

- THE TRIAL COURT ERRED IN NOT GIVING DUE COURSE TO THE ACCUSED’S DEFENSE OF ALIBI; and
- THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT AND EVENTUALLY ORDERING HIM TO INDEMNIFY THE OFFENDED PARTY FOR HOSPITALIZATION EXPENSES AND OTHER ACTUAL DAMAGES.

The Ruling of this Court

The assailed decision ought to be affirmed except for the penalty imposed which should be modified to conform to jurisprudence.

Accused-appellant BALONSO contends that the prosecution failed to establish with certainty the identity of accused-appellant BALONSO because the victim testified that the attack was so sudden for the victim to be able to catch a glimpse of the accused-appellant BALONSO and the crime was committed at around 7:00 in the evening in an unlighted place which prevented the victim from ever seeing the face of accused-appellant BALONSO. Moreover, accused-appellant BALONSO alleged that the victim BITCHAYDA was drunk at that time of the commission of the crime and therefore did not have the faculty to recognize anyone and that there were no eyewitnesses to the hacking incident to corroborate the testimony of the victim.

The above defenses of accused-appellant BALONSO fail in the face of positive identification by the victim himself, BITCHAYDA, of accused-appellant BALONSO, as one of the perpetrators of the crime. His testimony is as follows:

“Q What happened when you passed by the house of Amado Malbarosa?

A When I passed by the house of Malbarosa, I heard a shout, “biraha na” (attack) and I turned my head I saw a bolo.

Q Were you able to see who shouted, “biraha na”?

A Jessie Bajamonde.

PROS. DY:

Q You said, you saw a bolo when you turned your head, who was carrying that bolo?

WITNESS:A Edwin Balonso was the one carrying the bolo.

Q What did Edwin Balonso (do) with the bolo in his hand?

A He hacked me sir.

x x x x x x x x

Q How many times did Edwin Balonso hack you with his bolo?

A He hacked me twice, sir.

Q Will you specify where the hack landed?

A Firstly, on my arm.

Q How about the second blow?

A Second on my head.”

The fact that the crime was committed in a dark and unlighted place does not cast doubt on the victim’s positive identification of the culprits.[12] The victim BITCHAYDA was able to clearly establish that he was hacked by accused-appellant BALONSO and that he actually saw accused-appellant BALONSO carrying a bolo, which accused-appellant BALONSO used in hacking his arm and his head. Contrary to accused-appellant BALONSO’s claim, there was an eyewitness to the hacking incident, because the victim himself was that eyewitness. Although the victim was drunk, there was no showing that the victim was incapable of using his faculties to identify his assailants. Thus, he is competent to testify as to the identity of accused-appellant BALONSO.

Furthermore, the positive identification of accused-appellant BALONSO as one of the assailants was bolstered by the statements made by victim BITCHAYDA to Pablito Aroncillo immediately after the hacking incident, identifying and naming accused-appellant BALONSO and accused BAJAMONDE as his assailants, which statements may be received in evidence as part of the res gestae.[13]

In light of the positive identification of accused-appellant BALONSO as one of the perpetrators of the crime, his alibi is worthless.[14] Moreover, the defense failed to meet the requisites for alibi to be considered as a valid defense. For alibi to prosper, it is not enough that the appellant proved that he was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime or in its immediate vicinity at the time of its commission.[15] In this case, it was not even established that accused-appellant BALONSO was somewhere else when the crime transpired. Conversely, it was proven that he was at the scene of the crime at the time of the hacking incident.

It must be stressed that there was also no showing that victim BITCHAYDA was actuated by any improper or self-seeking motive to incriminate accused-appellant BALONSO in the present charge. Thus, the presumption that the victim BITCHAYDA was not so actuated stands and his identification of the latter in his testimony is entitled to full faith and credit.[16]

Accused-appellant BALONSO and accused BAJAMONDE intended to kill the victim as shown by the weapon used, the part of the victim’s body at which the weapon was aimed, and the wounds inflicted. Moreover, accused-appellant BALONSO and accused BAJAMONDE performed all the acts of execution which could have killed the victim had there been no adequate medical intervention. In fact, Dr. Francisco J. Sales III, the surgeon who operated on the victim, testified that the scalp injury of the victim would have caused death if no immediate

medical assistance was rendered because it would cause loss of blood.[17]

The trial court correctly appreciated the attendance of the aggravating circumstances of abuse of superior strength and treachery.

To take advantage of superior strength, to be considered an aggravating circumstance, the accused must be proven to have used excessive force out of proportion to the means of defense available to the person attacked.[18] In this case, the attack made by accused-appellants BALONSO and accused BAJAMONDE with the use of bolos, which are deadly weapons, upon an unarmed and defenseless victim, BITCHAYDA, who was also tipsy or drunk at the time of the incident, constitutes abuse of superior strength.

On the other hand, treachery requires the concurrence of two conditions: (1) the employment of a means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.[19] In this case, the evidence shows that accused-appellants BALONSO and accused BAJAMONDE suddenly hacked the unarmed and totally unsuspecting victim, who had no means or opportunity to defend himself. Accused-appellants BALONSO and accused BAJAMONDE consciously and deliberately adopted beforehand a definite and particular means of attack considering that they asked the victim BITCHAYDA to follow them at Sitio Sibunot and when the victim reached that place, both attacked him after accused BAJAMONDE shouted “biraha na” to signal the attack.

Since abuse of superior strength is absorbed in treachery, only one of them qualified the crime and the other could not be considered as a separate and distinct aggravating circumstance.[20]

The penalty imposed by the trial court should be modified. Under Article 248 of the Revised Penal Code, as amended, the penalty for Murder is reclusion perpetua to death. Pursuant to Articles 250 and 50 of the Revised Penal Code, the penalty for a frustrated crime is one degree lower than that prescribed by law for the consummated felony. Under Article 61 (2) of said Code, the penalty next lower in degree is reclusion temporal, whose duration is from 12 years and 1 day to 20 years. Considering that there are no other attendant modifying circumstances after qualifying the crime to Frustrated Murder, the imposable penalty on accused-appellant BALONSO would be reclusion temporal in its medium period.[21]

Applying the Indeterminate Sentence Law, the minimum penalty to be meted out on accused-appellant BALONSO should be anywhere within the range of six (6) years and one (1) day to twelve (12) years of prision mayor, and the maximum should be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Accordingly, accused-appellant BALONSO should be sentenced to eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.[22]

The Fallo

WHEREFORE, premises considered, the July 12, 2002 Decision of the Regional Trial Court of Naga City, Branch 19, in Criminal Case No. RTC 95-5755, is hereby MODIFIED in that accused shall suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as the minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as the maximum. All other aspects of the decision are hereby AFFIRMED.

SO ORDERED.

Reyes, (Presiding Justice and Chairman) and De Guia-Salvador, JJ., concur.

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- [1] Original Records, p. 253.
- [2] Original Records, p. 1.
- [3] Certificate of Arraignment, Original Records, p. 31.
- [4] Exhibit "A," Original Records, p. 104.
- [5] TSN, February 11, 1999, pp. 10-11.
- [6] Exhibit "B," Original Records, p. 131.
- [7] Exhibits "C" to "C-28," Original Records, pp. 132 to 144.
- [8] Original Records, p. 253.
- [9] Original Records, p. 261.
- [10] Original Records, p. 263.
- [11] Rollo, p. 48.
- [12] People vs. Banela, G.R. No. 124973, January 18, 1999, 301 SCRA 84.
- [13] Section 42, Rule 130 of the Revised Rules of Court.
- [14] People vs. Mendoza, G.R. No. 104461, February 23, 1996, 254 SCRA 61 citing People vs. Miraday, G.R. No. 111581, March 23, 1995, 242 SCRA 620.
- [15] People vs. Gusmo, G.R. No. 144974, February 13, 2004, 422 SCRA 580 citing People vs. Jose, G.R. No. 107106, November 24, 1995, 250 SCRA 319.
- [16] People vs. Rivera, G.R. No. 139185, September 29, 2003, 412 SCRA 224 citing People vs. Alfeche, G.R. No. 124213, August 17, 1998, 294 SCRA 352; and People vs. Mostrales, G.R. No. 125937, August 28, 1998, 294 SCRA 701.
- [17] TSN, February 11, 1999, pp. 10-11.
- [18] People vs. Ventura, G. R. Nos. 148145-46, July 5, 2004, 433 SCRA 389 citing People vs. Cabiling, G.R. No. L-38091, December 17, 1976, 74 SCRA 285; People vs. Sarabia, G.R. No. L-31755, March 31, 1980, 96 SCRA 714; People vs. Cabato, G.R. No. L-37400, April 15, 1988, 160 SCRA 98; People vs. Carpio, G.R. Nos. 82815-16, October 31, 1990, 191 SCRA 108, 119; People vs. Moka, G.R. No. 88838, April 26, 1991, 196 SCRA 378; and People vs. De Leon, G.R. No. 128436, December 10, 1999, 320 SCRA 495.
- [19] People vs. Escarlos, G.R. No. 148912, September 10, 2003, 410 SCRA 463 citing People vs. Figuracion, G.R. No. 129162, August 10, 2001, 362 SCRA 606; People vs. Enriquez, G.R. No. 138264, April 20, 2001, 357 SCRA 269; and People vs. Galvez, G.R. No. 136790, March 26, 2001, 355 SCRA 246.
- [20] People vs. Loreto, G.R. Nos. 137411-13, February 28, 2003, 398 SCRA 448.
- [21] People vs. Demate, G.R. Nos. 132310 and 143968-69, January 20, 2004, 420 SCRA 228.
- [22] People vs. Dela Cruz, G.R. Nos. 154348-50, June 8, 2004, 431 SCRA 388.

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