

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELICIANO ALFARO, ISIDRO ALFARO, AND RICARDO ZOILO,
ACCUSED-APPELLANTS.**

G.R. No. L-32461. December 15, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

The accused Feliciano Alfaro, Isidro Alfaro, and Ricardo Zoilo were charged before the Circuit Criminal Court of the Eleventh Judicial District at Roxas City with the crime of Murder committed, as follows:

"That on or about the 25th day of November, 1968, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with knives and a pestle, conspiring and confederating together and mutually helping one another, without any just motive and with intent to kill one Mabini Amores, and by taking advantage of the darkness of the night and of superior strength, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, suddenly and without any warning, and from behind, attack, assault, strike, stab and wound with such weapons on various parts of his body said Mabini Amores, thus inflicting on him the following wounds: (1) contusion and depressed comminutive fracture of the skull measuring about 3 inches by 3/4 inches; (2) mascesated wound at the vertex measuring about 2 inches in length, 3/4 in width, fracturing the skull and injuring the brain tissues; (3) ecchymosis of the left eye with fracture maxillary bond including the bone of the bridge of the nose; (4) stab wound located at the left side of the body measuring about 3/4 inch in length 1/4 inch in width directing upward and inward toward the scapule, 4 inches deep, located at the auxilliary line and about 3-3/4 inches, away from the base of the axilla; (5) stab wound located at the abdomen, about 3-1/2 inches away from the xyphoid process, 3/4 inch in length directing obliquely inward toward the right side involving the liver tissues and about 5 inches deep; (6) stab wound located at the edge of the umbilicus about 3/4 inch in length, directing inward involving the intestine; and (7) stab wound located at the right side of the abdomen at the level of the umbilicus, about 1 inch away from wound No. 6 directing toward the right involving the muscle and about 5 inches deep, which wounds directly caused the death of said Mabini Amores."

After hearing the evidence adduced during the trial of the case, Judge Leon Roxas, Jr., found the accused Feliciano Alfaro and Isidro Alfaro guilty of the crime as charged and sentenced "each of them to reclusion perpetua, to jointly and severally indemnify the heirs of the deceased MABINI AMORES in the sum of TWELVE THOUSAND PESOS (P12,000.00) and to pay proportionate costs." The other accused Ricardo Zoilo was found guilty of Homicide and sentenced to "undergo an imprisonment of SIX (6) YEARS and ONE (1) DAY, prison mayor, minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, reclusion temporal, maximum; to pay the proportional costs of the proceedings, to indemnify jointly and severally the heirs of the deceased in the sum of TWELVE THOUSAND PESOS (12,000.00). He is entitled to one-half (1/2) of the preventive imprisonment he may have undergone in connection with this case. He shall not suffer any subsidiary personal liability by reason of the nature of the penalty imposed." [1] From that sentence, all the three accused appealed to this Court.

The evidence for the prosecution shows that at about 6:30 o'clock in the early evening of November 25, 1968, in Barrio Mongpong, a fishing village in Roxas City, the accused Feliciano Alfaro called their neighbor Mabini Amores to come down. Mabini Amores answered the call and went down his house asking Feliciano Alfaro: "Nano ato Marto Lesing?" (What is it Mano Lesing) The accused Feliciano Alfaro exclaimed: "Jugada na naton ini." (This is our time.) At that instant, the other accused Isidro Alfaro, younger brother of Feliciano, coming from under the house of Mabini Amores, struck Mabini Amores on the head, from behind, with a pestle which broke in two upon impact. Mabini Amores fell down on his face. The accused Feliciano Alfaro turned him over and then stabbed him with a knife three (3) times in the abdomen. Then, the other accused Ricardo Zoilo, brother-in-law of Feliciano and Isidro Alfaro arrived and also stabbed Mabini Amores on the left side. Upon seeing her husband being attacked, Salvacion Amores put down the baby she was nursing, jumped down and covered her husband's body with hers. ("Guin hap-an niya ang iya bana.") Nevertheless, Isidro Alfaro again struck Mabini Amores with the pestle, hitting Mabini on the forehead and Salvacion Amores on the shoulder. Salvacion Amores cried: "That is enough because he is dead already," and the three accused left.[2]

Dr. Rafael Almalbis, medical inspector of the Roxas City Health Department, conducted a post-mortem examination and thereafter, issued a certificate reading, as follows:

"POST-MORTEN EXAMINATION

"TO WHOM IT MAY CONCERN:

"This is to certify that on this date I have performed Post Mortem Examination on the cadaver of MABIMI AMORES on regor mortis, 27 years old, married, male, Filipino, residing at Bo. Mongpong, Roxas City, at 10:20 A.M.

"Pertinent Findings:

"(1) Presence of contusion and depressed comminuted fracture of the skull measuring about 3 inches by 1-3/4 inches.

"(2) Presence of mascerated wound at the vertex measuring about 2 inches in length, 3/4 inches in width, fracturing the skull and injuring the brain tissues.

"(3) Ecchymosis of the left eye with fractured maxillary bone include the bone of the bridge of the nose.

"(4) Stab wound located at the left side of the body measuring about 3/4 inch in length, 1/4 inch in width directing upward and inward toward the scapula, 4 inches depth, located at the axillary line and about 3-3/4 inches away from the base of the axilla.

"(5) Stab wound located at the abdomen, about 3-1/2 inches away from the xyphoid process, 3/4 inch in length directing obliquely inward toward the right side involving the liver tissues and about 5 inches depth.

"(6) Presence of stab wound located at the edge of the umbilicus about 3/4 inch in length, directing inward involving the intestine.

"(7) Stab wound located at the right side of the abdomen at the level of the umbilicus, about 1 inch away from wound No. 6 directing toward the right involving the muscle and about 5 inches depth.

"CAUSE OF DEATH: Hemorrhage secondary to brain injury and Hemorrhage secondary to stab wounds of the abdomen."[3]

The accused Feliciano Alfaro and Isidro Alfaro admitted killing Mabini Amores, but claimed self-defense. Their version of the incident is that in the morning of November 24, 1968, Feliciano Alfaro, who was then staying in

the house of his father (Egino Alfaro) in Barrio Mongpong, Roxas City, came home with a catch of shrimps. After eating, he went back to his fish trap in the river. But, before he left, he instructed his younger brother, Isidro Alfaro, not to sell all of his catch and to save some for his (Feliciano's) wife Tacing (Anastacia Amparo), who was then harvesting rice in Jamindan, Capiz, and was expected to return home at any time. On his return at about 4:00 o'clock in the afternoon, Feliciano Alfaro heard Mabini Amores griping ("binuroka"). Feliciano asked Isidro what Mabini was grumbling about and Isidro answered: "He is mad at you and myself because he wanted to buy shrimps but I did not sell shrimps to him because you told me not to sell them." Feliciano reproached his brother for not giving some shrimps to Mabini, but Isidro insisted that he was afraid Feliciano might scold him if there were no more shrimps left.

At about 6:30 o'clock in the evening of the following day, November 25, 1968, Mabini Amores was seen standing in the yard, with arms folded, resting on his stomach. When Feliciano Alfaro came near him, Mabini Amores swung a concealed bolo at him, from left to right, hitting Feliciano on the right arm. Mabini Amores again swung at Feliciano but the latter was able to catch the hand holding the bolo. They wrestled for the bolo. In the scuffle, Feliciano was wounded on the outer arm. Feliciano shouted at Mabini: "Benny you boloed me," and the latter answered: "I had been waiting for you since yesterday. You call your brothers, I wanted to kill all of you." Mabini Amores then kicked Feliciano on the stomach and the latter fell. As Feliciano was lying down, Isidro Alfaro came with a pestle in hand, to pacify the protagonists. Mabini Amores swung at Isidro, but the latter parried the blow with the pestle which was cut in two. Then, Isidro struck Mabini Amores on the head with the pestle. Mabini Amores "turned around and (when) he was about to fall on me (Feliciano) with the intention of boloing me once more," Feliciano drew his knife and stabbed Mabini Amores several times. When Mabini Amores fell, they left. Feliciano Alfaro ran towards the city where he later surrendered to police authorities,[4] while Isidro Alfaro "went up to our house and got my child and wife" and then fled to the nipa swamps.[5]

The other accused, Ricardo Zoilo, upon the other hand, denied participation in the killing of Mabini Amores. He claimed that about 6:00 o'clock in the evening of November 25, 1968, he was in their house, about 400 meters away from the house of his father-in-law (Egino Alfaro) where the incident took place, together with his daughter, Clara, and two grandchildren. He was sick and was lying down. He had chills and was spitting blood. Because of this, he sent his daughter Clara to buy "Vicks". Thirty minutes later, Clara returned and was still panting when she informed him that "Mabini boloed Toto Felesing." Fearful "that Feliciano might come up the house being chased by Mabini," he told his daughter to close the doors.[6]

Having admitted that they inflicted the injuries which caused the death of Mabini Amores, it was incumbent upon the accused Feliciano Alfaro and Isidro Alfaro, in order to avoid criminal liability, to prove the justifying circumstance of self-defense to the satisfaction of the court. To do so, they must rely on the strength of their own evidence and not on the weakness of the prosecution, for even if that were weak, it could not be disbelieved after the accused himself had admitted the killing.[7] This is so because the claim of self-defense is an affirmative allegation which must be established by convincing evidence and not of doubtful veracity, otherwise, the conviction of the accused is imperative.[8]

In the instant case, the trial court correctly rejected the appellants' claim of self-defense. To begin with, the appellants failed to present the bolo purportedly used by the victim. Surely, the appellants' production of the bolo upon the surrender of Feliciano Alfaro was one way of bolstering their story, but they failed to produce the bolo nor account for it. The non-presentation and failure to account for the non-presentation of the weapon allegedly wielded by the victim is fatal to the plea of self-defense.[9]

The appellants also failed to narrate the alleged armed aggression by the victim when Feliciano Alfaro surrendered to the police or at any time during his detention prior to the trial of the case and there is nothing in the

record to explain the appellant's omission in voicing out his version of self-defense.

Besides, the presence of several fatal wounds on the deceased and the fact that the appellants suffered no serious wounds, as per the medical certificate wherein it is stated that the accused Feliciano Alfaro merely suffered sub-cutaneous wounds,[10] although the victim had allegedly struck him by surprise with a bolo which could cut a pestle in two, belie unlawful aggression. Had the victim been the aggressor, it would seem incredible for him to have sustained so many serious and fatal wounds without being able to inflict any considerable injury on the alleged object of his aggression. And, if it were true that the accused were merely acting in self-defense, why did they have to inflict so many serious wounds on the deceased when the two initial blows dealt by the accused Isidro Alfaro on the head of the deceased with a pestle was sufficient to repel the attack? The following observation of the trial court is well taken:

"Another part of the defense' account that suggests self-defense but which is difficult to believe are the wounds on the right arm and outer portion of the elbow of Feliciano Alfaro. If the bolo used by Mabini Amores was sharp-edged as to be able to cut a pestle into two parts, as demonstrated by the defense, then it is surprising that Feliciano Alfaro only sustained superficial or skin-deep wounds when hit by the same bolo. If, indeed, Mabini Amores used a razor-sharp bolo in attacking Feliciano Alfaro, it is logical to expect more serious wounds, even assuming that the bolo blows were not strong or that they were parried. And if Mabini Amores was truly armed, then when Feliciano Alfaro fell down, the former could have slashed the latter. Under the circum-stances it is difficult to believe that Mabini Amores was armed."

Moreover, it appears that Feliciano Alfaro is bigger and taller than Mabini Amores,[11] so that it is highly improbable for Mabini Amores to have dared initiate the fight against Feliciano Alfaro.

At any rate, the witnesses for the prosecution proved conclusively to the satisfaction of the court that the version of the prosecution is the true one. The trial court said:

"To the mind of the Court the account of the prosecution evidence deserves full faith and credit. Raymundo Pacundo, a fourteen (14) year old, rural boy withstood a relentless and withering cross-examination by distinguished counsel of the accused stuck firmly to what he witnessed on the tragic evening of November 25, 1968. He could not be drawn off-tangent of his principal version that Mabini Amores was struck on the head from be-hind by Isidro Alfaro, then stabbed by Feliciano Alfaro, three (3) times and then by Ricardo Zoilo on the left side. The fact that Isidro Alfaro struck on the head covered or protected by the body of Salvacion Amores, is confirmed by Exhibit 'E' of the prosecution which show the injury on the shoulder of Salvacion Amores who was then on top of her fallen husband.

"The recital of the events leading to the death of Mabini Amores ventilated by the prosecution could not be discredited on cross-examination; nor did the defense evidence overthrow its validity and weight. There were, it is true, some discrepancies and contradictions in the testimony of Raymundo Pacundo and the wife of the deceased, Salvacion Amores, but instead of discrediting them only strengthened their candor and sincerity. If they had lapses, that only proved that they were not coached, but declared only on what they know, subject always to disadvantages like their lowly education and the strange atmosphere of a courtroom. In the main, though, the prosecution witnesses remained steadfast to their narrations regarding the manner the accused killed their unfortunate victim, Mabini Amores. As correctly stated in *People vs. Vinas*, 'Contradictions indicate veracity rather than prevarication.' (25 SCRA 683)."

With respect to the alibi of Ricardo Zoilo that he was sick and was lying down in his house, about 400 meters away from the scene of the crime, suffice it to state that he was positively identified as one of the perpetrators of the crime and there is no convincing proof that it was impossible for him to be at the scene of the crime when it was committed. The following findings of the trial court is noteworthy:

"With respect to the alibi of the third accused, Ricardo Zoilo, that he was chilling and spat blood that evening,

and did not go out of his house for two days, can hardly be considered. He is a brother-in-law of the Alfaro, his co-accused and his house is only about four (4) hundred meters from the scene of the incident. According to Ricardo Zoilo, from his house to the scene of the crime at bar is a good trail and the distance can be negotiated in a five minute leisurely walk. It is not therefore impossible for him to be a participant in the commission of the offense charged because of the nearness of his house to the house of Mabini Amores. The alibi is, therefore, rejected, being weak.

"In connection with the allegation of Ricardo Zoilo that on November 25, 1968, he spat blood and was chilling, the Court, in an order, had subject person examined by government doctors to determine if he was suffering from tuberculosis. The report of the Anti-TB pavilion of Roxas City, indicates that the lungs of Ricardo Zoilo is suggestive of TB. If, as averred, that he spat blood on November 25, 1968, and taking into consideration that he had been detained for almost a year by his own statement given in open court, then his lungs would not only suggest TB but his lungs would show deterioration, especially that food in prison is commonly regarded as not nutritious."

In the end, We are satisfied that no overriding consideration exists to justify the reversal of the judgment appealed from. Accordingly, the conviction of the appellants are affirmed.

The trial court correctly found that the killing of Mabini Amores was characterized by *alevosia* because the attack was sudden and unexpected and the deceased had his back turned to Isidro Alfaro who struck him on the head with a pestle, catching him totally unprepared to make a defense on his person. Under the circumstances, the accused employed means, methods or forms in the execution of the crime which tended directly and specially to insure its execution without risk to themselves.

However, the penalty of reclusion perpetua imposed upon the accused Feliciano Alfaro is incorrect as the trial court appreciated the generic aggravating circumstance of abuse of superiority to off-set the mitigating circumstance of voluntary surrender. Abuse of superiority, like nocturnity, is absorbed in treachery and cannot be estimated as an independent aggravating circumstance.[12] There being a mitigating circumstance, without any aggravating circumstance to off-set it, the imposable penalty was reclusion temporal in its maximum period.

The penalty imposed upon Isidro Alfaro, who did not surrender but fled to the nearby nipa swamps with his wife and child after killing Mabini Amores, is correct and should be, as it is hereby, affirmed.

The penalty imposed upon the other appellant Ricardo Zoilo is also correct and should be, as it is hereby, affirmed.

WHEREFORE, Feliciano Alfaro is hereby sentenced to suffer a penalty of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS of reclusion temporal. The judgment appealed from is hereby AFFIRMED in all other respects. With costs against the accused-appellants.

SO ORDERED.

Makasiar, (Chairman), Guerrero, and De Castro, JJ., concur.

Aquino, J., concurs but dissents in part as to the criminal liability of Ricardo Zoilo. He should be convicted as an accomplice and sentenced to seven years of prision mayor as minimum to thirteen years of reclusion temporal as maximum. He and his co-accused are entitled to full time (not ½) credit for their preventive imprisonment.

Abad Santos, J., concurs, perhaps it should be explained that the trial court convicted Ricardo Zoilo of homicide only because there was no showing that he conspired with Feliciano and Isidro Alfaro in the killing of Mabini Amores. The participation of Ricardo Zoilo, who is related by affinity to the Alfaro, appeared to be an impulse of the moment

Escolin, J., no part.

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- [1] Original Record, p. 103.
- [2] pp. 5-28, 36, t.s.n. of Sept. 4, 1969; pp. 7-18, t.s.n. of October 21, 1969.
- [3] Original Record, p. 73.
- [4] pp. 38-58, t.s.n. of February 19, 1970.
- [5] p. 22, t.s.n. of February 20, 1970.
- [6] pp. 3-12, t.s.n. of May 14, 1970.
- [7] *People vs. Ansoyon*, 75 Phil. 772.
- [8] *People vs. Berio*, 59 Phil. 533.
- [9] *People vs. Labisig*, G.R. No. L-12122, May 30, 1959, 105 Phil. 1345.
- [10] See Exhibit 5, p. 93 of the Original Record.
- [11] p. 72, t.s.n. of February 19, 1970.
- [12] *People vs. Lumantas*, G.R. No. L-28355, June 17, 1969 and case cited, 28 SCRA 764; *People vs. Abletes*, G.R. No. L-33304, July 31, 1974, 58 SCRA 241.

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