

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH SUPREMO, DEFENDANT-APPELLANT.*G.R. No. 100915. May 31, 1995*

Ponente: BELLOSILLO, J.

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On 9 August 1990 the Regional Trial Court of Surallah, South Cotabato, Br. 26, found accused Joseph Supremo guilty of murder and sentenced him to reclusion perpetua[1] and to indemnify the heirs of the victim in the amount of P30,000.00. Now before us he clings to his theory of self-defense and, in the alternative, the absence of treachery.

Donald "Dodie" Funtecha succumbed to a penetrating stab wound in the abdomen. Prosecution witness Raymundo Billanes, Jr., testified that on 3 October 1988 at about four-thirty in the afternoon he was with his friends at the Ramos Place, a sing-along bar in Sto. Nino, South Cotabato. Accused Supremo was seated beside victim Funtecha when the former suddenly uttered, "Bon-on to karon" (I will kill you), at the same time thrusting a foot-long knife into the left portion of the victim's abdomen which felled the victim to the ground. As Supremo was about to stab the victim again, Billanes, Jr., who was then about a meter away, lunged at the accused, held his hand and struck him three (3) times while grappling for the knife.

On the other hand, accused Supremo who abandoned his earlier defense of alibi, i.e., that he was not at the place where the incident happened, invoked self-defense. He recounted in open court that he was alone at that time inside the sing-along establishment listening to music and watching betamax when the victim approached with a stick of marijuana which he refused. The victim then demanded a case of beer from him. He gave. The victim and his companions numbering twenty (20) were then occupying four (4) tables. But the victim asked for more beer. Again the accused yielded because of fear. Later, the victim and some five (5) of his group ganged up on him, hitting him on the face and abdomen, and banging his head against the cement wall. He thought he was already dying. Instinctively, he pulled out his knife and hit the victim in the process.

Faced with the contradicting statements of the state witness and the accused the court a quo gave credence to the testimony of the former. Thus "[t]he court is inclined to believe the testimony of Billanes x x x x"[2] and found the story of the accused that "he was ganged up after he refused the offer of the victim of a stick of marijuana and later asked for a case of beer then boxed him even after he gave a case of beer, then later more beer was asked from him x x x x"[3] quite incredible.

To support his claim of self-defense, the accused merely concludes in his brief that the trial court erred in disregarding his testimony. But even if his defense is not sustained, he insists that killing was not attended with treachery.

We affirm the conviction. When confronted with contradictory declarations from the prosecution witness and the accused himself as in the instant case, we generally defer and submit to the findings of the trial court. For, when what is in issue is the credibility of witnesses, deference to the trial court is inevitable unless there appears strong

and cogent reason to disregard its observation.[4] The trial court had the opportunity not available to the appellate court to see the witnesses on the stand and determine by their demeanor whether they were testifying truthfully or simply lying through their teeth.[5] Thus, the evaluation by the trial judge on the credibility of witnesses is well-nigh conclusive on this Court barring arbitrariness in arriving at his conclusions. In the case at bench, we accord credence to the narration of prosecution witness Billanes, Jr., that during the drinking session the accused without being provoked just suddenly stabbed the victim.

Consequently, the claim of the accused that he acted in self-defense cannot prosper in the light of the established fact that he stabbed the victim who did not initiate nor exhibit any form of unlawful aggression. The law enumerates the three requisites for self-defense: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person defending himself.[6] There being no unlawful aggression on the part of the victim the plea of self-defense must fail.

We however find the evidence of the prosecution insufficient to hold that treachery accompanied the killing. The prosecution merely relies on the suddenness of the attack on victim Funtecha in concluding that treachery was present. Not always. In *People v. Ramirez* we said -

While Ramirez's shooting of Zaragoza was, as regards the latter, sudden and unexpected and gave him no opportunity whatever to undertake any form of defense or evasion, this does not necessarily justify a finding of treachery or *alevosia*, absent any evidence that this mode of assault was consciously and deliberately adopted to insure execution of the crime without risk to the offender x x x x As recently observed by this Court:

Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself. There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution without risk to himself. It does not always follow that if the attack was sudden and unexpected it should be deemed with treachery.[7]

Hence, absent treachery the accused cannot be convicted of murder but only homicide.

With the factual allegations of the defense debunked, the record appears wanting of motive or reason why the accused suddenly stabbed the victim. Motive however is immaterial where there is a direct testimony of a witness who was found to be credible, and where the culpability of the accused has been established beyond reasonable doubt, as in the case at bench.

WHEREFORE, the judgment appealed from is AFFIRMED with the modification that instead of murder accused JOSEPH SUPREMO is found guilty of HOMICIDE and, there being no mitigating nor aggravating circumstance, is sentenced to an indeterminate penalty of six (6) years and one (1) day of prison mayor minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum, and consistent with prevailing jurisprudence his civil liability to the heirs of Donald Funtecha is increased from P30,000.00 to P50,000.00. Costs de oficio.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.
Quiason, J., on official leave.

[1] Decision penned by Judge Cristeto D. Dinopol.

[2] *Id.*, p. 4; Rollo, p. 20.

[3] *Ibid.*

[4] *People v. Yumang*, G.R. No. 94977, 17 May 1993, 222 SCRA 119; *People v. Kyamko*, G.R. No. 103805, 17 May 1993, 222 SCRA 183.

[5] *People v. Aruta*, G.R. No. 73907, 1 May 1993, 222 SCRA 201.

[6] *People v. Manlulu*, G.R. No. 102140, 22 April 1994, 231 SCRA 701, citing par. 1, Art. 11, The Revised Penal Code, and *People v. Amania*, G.R. No. 97612, 23 March 1993, 220 SCRA 347;

[7] *People v. Ramirez*, G.R. Nos. 80747-48, 17 October 1991, 203 SCRA 25, citing *People v. Tugbo*, G.R. No. 75894, 22 April 1991, 196 SCRA 133.

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