

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO BRIONES, JR., JOSE ESTRIBER, FRANCISCO RUFINO, AND TEODORICA MENDIONA, ACCUSED-APPELLANTS.

G.R. No. 101257. September 23, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

In Criminal Case No. 724 of the Regional Trial Court, Branch 10, Abuyog, Leyte, Gregorio Briones, Jr., Jose Estriber, Francisco Rufino and Teodorica Mendiona were charged with Murder.

After trial, the court a quo rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the prosecution having established the guilt of all these accused beyond reasonable doubt, the Court finds the accused GREGORIO BRIONES, JR., JOSE ESTRIBER, FRANCISCO RUFINO Guilty beyond reasonable doubt of the crime of MURDER as charged and each is sentenced to suffer the indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum, to EIGHTEEN YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, while TEODORICA MENDIONA, as accomplice, is sentenced to suffer the penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as maximum. All accused are ordered to indemnify the heirs of Wenceslao Camposano the sum of P30,000.00 x x x" (Rollo, p. 60).

Appellants appealed to the Court of Appeals, which rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the instant appeal is hereby DISMISSED and the decision appealed from is AFFIRMED with the modification that all appellants should be as a (sic) they are hereby each sentenced to suffer the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of the deceased in the sum of P50,000.00 without subsidiary imprisonment in case of insolvency" (Rollo, p. 78).

In view of its imposition of the penalty of reclusion perpetua, the Court of Appeals certified the case to us for final determination pursuant to Section 13(3) of Rule 124 of the 1985 Rules on Criminal Procedure.

On October 6, 1992, Teodorica Mendiona withdrew her appeal.

The Court of Appeals found that on August 15, 1987 at about 8:00 P.M., Wenceslao Camposano had a drinking spree with Eugenio Malquisto in the latter's house at Barangay Batug, Javier, Leyte. After having consumed one-half gallon of tuba, Camposano, together with his son William, asked leave to go home. After the two left, Malquisto closed the front door of his house. Then, he heard a commotion outside. So he opened the door and went out. He saw Mendiona focus her flashlight at Camposano while Briones, Estriber and Rufino hacked Camposano with their bolos. William screamed as his father fell on the ground. When the four appellants left, Malquisto immediately informed Felipe Cain, Camposano's father-in-law, of the incident. The victim was then brought to the hospital where he was pronounced dead on arrival.

The autopsy report showed that the victim sustained the following:

- "1. stab wound 1 inch in L along the anterior axillary line at the level of the 7th ICS, left-penetrating.
2. stab wound 1 inch along the anterior axillary at the level of 12th rib-penetrating.
3. stab wound 1 inch in L along the posterior axillary line at the level of the 7th ICS back-penetrating.
4. stab wound 2 inch in L at the lumber area back-penetrating" (Rollo, pp. 65-66).

He died due to:

"cardio-respiratory arrest sec. to hypovolemic shock sec. to blood loss sec. to Multiple stab wound" (Rollo, p. 66).

Briones admitted having stabbed the victim but alleged that he did so in self-defense. On the other hand, Estriber, Rufino and Mendiona denied participation in the stabbing of the victim. They testified that on August 15, 1987, they went to the house of Paz Camposano at Barangay Batug and delivered P100.00 worth of fish, which she ordered from them. They left at 10:00 P.M., after they had cleaned and prepared the fish. As the place was dark, Briones carried a torch to illuminate their way home. After they passed the house of Malquisto, they saw Camposano with a large coconut frond, which he used to strike Briones. The torch, which the latter was holding, fell on the ground. When Estriber, Rufino and Mendiona sensed trouble, they immediately scampered in different directions, leaving Briones behind. Camposano, then unsheathed his bolo and attacked Briones. A struggle ensued, in the course of which, Camposano was stabbed. A day after the incident, Briones voluntarily surrendered to the authorities.

Appellants filed a new appeal brief with us, claiming that the Court of Appeals erred:

I

"xxx IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONTRADICTING TESTIMONIES OF PROSECUTION'S WITNESSES EUGENIO MALQUISTO AND FRANCISCA NOVE.

II

x x x IN NOT ACQUITTING THE ACCUSED APPELLANTS ON GROUND OF REASONABLE DOUBT.

III

x x x IN NOT FINDING THAT ACCUSED GREGORIO BRIONES, JR. ACTED IN SELF-DEFENSE" (Appellant's Brief, p. 21).

Appellants claim that the testimonies of prosecution witnesses Eugenio Malquisto and Francisca Nove are replete with material inconsistencies, to wit: (1) Malquisto testified that Briones used a short bolo (pisao) while Estriber and Rufino used long ones (jaro) to stab the victim; on the other hand, Nove testified that Briones used a long bolo (jaro) while Estriber and Rufino used small bolos (pisao); (2) the autopsy report showed that the wounds sustained by the victim were caused by stabbing which contradicted Malquisto's testimony that the victim was hacked by Estriber and Rufino; Nove, on the other hand, claimed that there were no hacking blows inflicted by Estriber and Rufino; (3) Malquisto stated that after appellants attacked the victim, the latter fell face down and all the appellants ran away; while Nove testified that the victim was stabbed by the appellants after he fell; (4) Malquisto testified that the flashlight was aimed by Mendiona on all her three co-accused; while Nove claimed that it was focused towards the victim; and (5) Malquisto claimed that he, together with Felipe Cain, brought the victim to the hospital; while Nove claimed that she and Felipe Cain were the ones who brought the victim to the

hospital.

Inconsistencies in the testimonies of the witnesses on minor or inconsequential matters do not diminish their credibility (*People v. Doctolero*, 193 SCRA 632 [1991]). The reason for this is that different persons, who witness a particular incident, do not perceive it in exactly the same manner and from the same vantage point. It is therefore but natural that they may disagree on minor details. What is important is their consistency in relating the significant and essential components of the principal occurrence and their identifying the appellants unequivocally as the assailants of the victim.

With regard to the weapons used by the appellants in stabbing the victim, the testimonies of Malquisto and Nove conformed with each other. They both testified that the weapons used were bolos.

Anent the nature of the wounds sustained by the victim, it is possible that both hacking and stabbing blows were inflicted upon him to ensure his death but only the stabbing blows found their mark. Besides, whether appellants delivered hacking or stabbing blows is left to the individual perception of the eyewitnesses.

A perusal of the records showed that Nove did not state, as claimed by appellants, that appellants stabbed the victim after he fell down. Her testimony reads as follows:

"Q. Will you narrate to this Court how you were able to see the killing?

x x x x x x x x

Q. After the three stabbing blows delivered by the accused, what happened next, (sic) what happened to Wenceslao Camposano?

A. He was not able to stand up because he has already fallen down" (TSN, December 6, 1988, p. 5).

From the foregoing testimony, it is clear, as Nove declared, that the victim fell after he was stabbed by appellants.

Appellants harp on the alleged inconsistency as to where Mendiona focused the flashlight she was holding. A flashlight when beamed over a subject would illuminate all that is near or beside the subject. Apparently, the beam of the flashlight illuminated not only the persons who were stabbing the victim but also the victim himself. Furthermore, Nove's testimony showed that the flashlight was beamed towards the appellants and the victim, thus:

"Q. When was the flashlighted (sic)? Was it lighted to the three accused?

A. Yes, Sir.

Q. Where was it focused?

A. Towards Wenceslao Camposano" (TSN, December 6, 1988, p. 4).

Finally, with regard to the alleged contradiction as to who brought the victim to the hospital, such fact is no longer material as to affect their credibilities and change the finding that appellants did commit the crime charged.

Absence of any false or ill motive on the part of the witnesses to testify against the appellants give credence to their testimonies. Insofar as Nove is concerned, it may be added that she is even related to the four appellants (TSN, December 6, 1988, p. 6).

Briones failed to impress us with his claim of self-defense.

Under Article 11, paragraph 1 of the Revised Penal Code, the requisites of self-defense are: 1) unlawful aggression; 2) reasonable necessity of the means employed to prevent or repel it; and 3) lack of sufficient provocation on the part of the person defending himself.

Also, it is a well-established rule that if an accused invokes self-defense, it is incumbent upon him to prove such fact by clear and convincing evidence (*People v. Sicat*, 213 SCRA 603 [1992]). The onus probandi is shifted to the accused and it becomes his duty to substantiate the justifying circumstance invoked (*Sacay v. Sandiganbayan*, 142 SCRA 597 [1986]).

Appellants insist that at the time of the incident, the victim was carrying a coconut frond with which he used to strike Briones. Assuming *arguendo* that this was the case, there was no reasonable necessity of the means employed by appellants of hacking or stabbing the victim with their bladed weapons.

The claim of appellants that the victim was armed with a bolo was belied by the testimonies of Nove and Malquisto who both claimed that they did not see any weapon being held by Camposano.

It is contrary to human behavior for the victim to gear for a fight with the appellants, considering the presence of his ten-year old son. As the Solicitor General aptly observed, any father would take all cautions to avoid any fight if only to shield his small son from peril. More so, the lone victim was pitted against the four appellants. To provoke a fight against the latter was simply foolhardy and beyond comprehension.

The failure of Briones to immediately report to the authorities the alleged attack upon him by the victim, raises a question as to the veracity of his defense.

As the trial court observed, Paz Camposano was never called to testify for the defense. She could have testified that on the night of the incident, the appellants came from her house to deliver the fish she had ordered from them. This evidence would disabuse the mind that appellant went to the crime scene purposely to ambush the victim and show that they were peacefully on their way home.

Indeed, appellants presence outside the house of Malquisto when the victim and his son came out of said house cannot be dismissed as plain coincidence but should be viewed as a part of a preconceived plan.

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** with the **MODIFICATION** that the appellants are sentenced to suffer the penalty of reclusion perpetua. They are also ordered to indemnify the heirs of the deceased the amount of P50,000.00.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.
Griño-Aquino, J., on leave.

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