

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO MORIN, ALIAS "TITOY" AND ARNEL LORIA ALIAS "NONO," ACCUSED-APPELLANTS.

G.R. No. 101794. February 24, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 26, Surallah, South Cotabato, finding Eliseo Morin alias "Titoy" and Arnel Loria alias "Nono" guilty of the crime of murder in Criminal Case No. 365-N.

We affirm, with modification, the decision.

I

On March 7, 1985, the First Assistant Provincial Fiscal of South Cotabato, charged Eliseo Morin alias "Titoy" and Arnel Loria alias "Nono" with the crime of murder, which was committed as follows:

"That on or about the 12th day of October, 1984, at Barangay Simsiman, Municipality of Norala, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in company with Romeo Morin who is still at large and whose whereabouts could not yet be ascertained, armed with bladed weapons, conspiring, confederating together and mutually helping one another, with treachery and evident premeditation, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and stab one Celso Llagas hitting him on the different parts of his body, which caused his death thereafter (Rollo, p. 29).

Both accused entered a plea of not guilty when arraigned (Rollo, p. 29).

On August 25, 1988, after trial, the court a quo rendered judgment, the dispositive portion of which reads:

"In view of the foregoing, the Court finds the accused Eliseo Morin alias "Titoy" and Arnel Loria alias "Nono," guilty beyond reasonable doubt as principals in the Crime of Murder, sentences each one of them to suffer the penalty of Reclusion Perpetua, to jointly and severally indemnify the heirs of Celso Llagas in the sum of P30,000.00 by reason of the death of said victim, and to pay the cost" (Rollo, p. 38).

Hence, this appeal.

II

On October 12, 1984, at around 8:00 P.M. in Simsiman, Norala, South Cotabato, Corazon Llagas, mother of Celso Llagas, was reading inside her house when she heard someone shout "Patay don!" (which means "already dead").

Immediately thereafter, she heard Norma Rigo, her neighbor, crying "Aro," the nickname of Norma's husband,

Lazaro.

Corazon went to the house of Celso and asked the latter's wife, Nida, if Celso was home. When the latter answered in the negative, they decided to go to Lazaro's house to look for Celso. Before they reached the house of Lazaro, they saw Celso lying on the road bathed in his own blood. They rushed to him and Corazon cradled Celso in her arms while Nida knelt beside him.

Corazon asked her son who stabbed him. Celso, between gasps, answered "Nay, tabang, buno, Titoy, Nono, Agui" (which means "Ma, help, stabbed, Titoy, Nono, Agui"). In Barangay Simsiman, appellants Eliseo Morin, Arnel Loria and Romeo Morin were known as Titoy, Nono and Agui, respectively. After Celso uttered those words, Corazon screamed for help but nobody responded.

Corazon and Nida proceeded to the house of Lazaro to ask for help but they were told by Norma that Lazaro was asleep. They then looked for a tricycle that would take them to the hospital. When they returned to fetch Celso, they found that he had succumbed.

The incident was reported to the police by Celso's father, Glecerio, and his brother, Nilo. The two were accompanied by the Barangay Captain of Simsiman.

The victim's family learned later that appellant Morin had been arrested by the police at the Norala Hospital that same night.

III

The defense version of the incident, is as follows:

"On October 12, 1984 at between 8:00 to 9:00 P.M. at Barangay Simsiman, Norala, South Cotabato Celso Llagas died as a result of a stab wounds (sic) which are approximately 1/2 to 1 inch long.

"In the morning of the same day the victim Celso Llagas was seen by the accused Eliseo Morin maltreated by his father, who struck him with a piece of wood which was about two inches in diameter and one meter long. At around 5:00 o'clock (sic) in the afternoon, accused Eliseo Morin went to the house of Leonora Arenga and later helped the latter in making puto (rice cakes). When the victim Celso Llagas bought cigarettes at 8:00 P.M., Eliseo Morin asked Celso Llagas why was he struck by his father, after which Celso said in an angry manner, "wait for me because I will get my arm." Eliseo Morin never thought and expected that Celso Llagas would return. At around 8:30 P.M. Eliseo Morin asked permission to go home from Leonora Arenga, who then opened the door for him. When he stepped out of the door, he was hack by Celso Llagas who was already waiting just outside the door unknown to Eliseo Morin and Leonora Arenga. Eliseo Morin parried the hacking but he was still hit on his left wrist and forehead. Leonora Arenga when she saw Celso Llagas hacked Eliseo Morin and hit him immediately closed the door because of fear. Then, Eliseo Morin took out his pinuti and stab the victim who kept on attacking and pushing him. He enveloped with fear for danger to himself, had no recourse but to continue stabbing while Celso Llagas kept on attacking him until they reached the end of the road. He realized later that he had killed the victim. He went home, asked his father to accompany him to a hospital where he was thereafter treated for his wounds. He was arrested by the authorities at the hospital after his wounds were treated (TSN, June 26, 1987, pp. 93--100).

"Accused Arnel Loria who was living at the house of Leonora Arenga arrived home on the same day at about 6:00 P.M. He then ate, went upstairs and slept early while Eliseo Morin and Leonora Arenga were still making puto (TSN, August 7, 1987, pp. 11-14). When the stabbing incident happened Arnel Loria was upstairs sleeping. During the stabbing incident Leonora Arenga went upstairs and wake (sic) Arnel Loria and told him that Celso hacked Eliseo. Arnel Loria thereupon stood up and about to go (sic) downstairs but he was prevented by his grandmother Leonora Arenga (TSN, August 7, 1987, pp. 21-22)" (Rollo, pp. 69-71).

IV

Appellant Morin interposed self-defense in order to escape criminal liability. He, however, disregarded the rule that self-defense must be established by clear and convincing evidence (Araneta, Jr. v. Court of Appeals, 187 SCRA 123 [1990]). Where an accused claims self-defense, "the burden of proof is shifted to him. He must rely on the strength of his own evidence and not on the weakness of the prosecution" (People v. Uribe, 182 SCRA 624 [1990]). This is both a logical and inevitable consequence dictated by the fact that, having admitted the killing, he has to justify the taking of the victim's life by the standards of the law for such absolution (People v. Bigcas, 211 SCRA 631 [1991]).

It is basic that for self-defense to prosper, the accused must prove that there was unlawful aggression by the victim, that the means employed to prevent or repel such aggression were reasonable, and that there was lack of sufficient provocation on his part (People v. Boniao, 217 SCRA 653 [1993]; People v. Apolinario, 58 Phil. 586 [1933]).

However, although the evidence for the defense showed that the victim was armed with a bolo, it failed to explain why the same bolo was still sheathed. The presence of the bolo in its scabbard belies the claim that it was used against appellant Morin.

Moreover, the results of the post-mortem examination conducted by Dr. Gelacio L. Beltran on the victim showed that the latter sustained nine (9) stab wounds and one (1) lacerated wound (Exhs. "A", "A-1" and "A-3"). The nature and number of wounds inflicted by an assailant are considered important indicia which disprove a plea of self-defense (Guevarra v. Court of Appeals, 187 SCRA 484 [1990]; People v. Legaspi, 151 SCRA 670 [1987]; People v. Cuadra, 85 SCRA 576 [1978]).

Appellant Morin claimed that he himself was wounded on his left wrist and on his forehead while he parried the victim's blows (TSN, June 26, 1987, p. 97). His own doctor, however, testified that both wounds could have been self-inflicted (TSN, August 7, 1987, p. 7).

Appellant Loria's defense of alibi is unavailing. For alibi to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the crime scene at the time of the incident (People v. Bugho, 202 SCRA 164 [1991]). The testimonies of the defense witnesses failed to convince this Court of such impossibility in view of the fact that Leonora Arenga's house, where appellant claims he was sleeping at the time the incident occurred, is only about 35 meters from where the crime was committed.

Besides, appellant Loria's alibi cannot prevail over the victim's dying declaration, naming Loria as one of his assailants.

An ante mortem statement is an evidence of the highest order (People v. Almeda, 124 SCRA 486 [1983]). At the threshold of death, all thoughts of fabricating lies are stilled. The utterance of a victim made immediately after sustaining serious injuries may be considered so-to-speak as pure emanations of the stabbing incident or the incident speaking thru the victim (People v. Montilla, 211 SCRA 119 [1992]).

Appellants further argued that no dying declaration could have been uttered because the victim's death was instantaneous in view of the gravity of wound No. 1 as testified by Dr. Gelacio L. Beltran (Rollo, pp. 71-74).

We find this argument highly conjectural.

True that Dr. Beltran testified on cross-examination that the victim could have died immediately as a result of wound No. 1 (TSN, April 30, 1987, pp. 8-9). The witness, however, did not categorically state that the victim died instantly. Asked a hypothetical question, the witness could only give an answer that was within the realm of

possibility.

The term "instantaneous" when used to refer to death does not necessarily mean the cessation of life simultaneously with the infliction of the injury. In a death described as "instantaneous," it is possible that the victim may survive the infliction of the mortal wound for as much as 15 to 20 minutes (Black's Law Dictionary [5th ed]; *West v. Detroit United Railways* 123 N.W. 1101, 159 Mich. 269 [1909]; *Lobenstein v. Whitehead & Kales Iron Works*, 146 N.W. 293, 179 Mich. 279 [1914]).

The resolution of the issues raised by appellants before this Court hinges on the credibility of the testimony of the prosecution and defense witnesses. In this respect, it is settled that the findings of the trial court are given weight and the highest degree of respect by the appellate courts (*People v. Caraig*, 202 SCRA 357 [1991]).

Corollarily, the Court has also consistently ruled that credibility is a matter that peculiarly falls within the province of the trial court which had opportunity to watch and observe the demeanor and behavior of the witnesses at the time of their testimony (*People v. Realon*, 99 SCRA 422 [1988]).

We agree with appellants that evident premeditation was erroneously appreciated by the trial court. The prosecution failed to present sufficient evidence as to how and when the plan to neutralize the victim was conceived or what time elapsed before it was carried out. Such qualifying circumstance cannot be appreciated in the absence of direct evidence of the planning and the preparation to kill (*People v. Samson*, 176 SCRA 710 [1989]). Likewise, there was no evidence to show that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment (*People v. Tunhawan*, 166 SCRA 638 [1988]).

The Solicitor General agrees with appellants that the killing of the victim was not qualified by evident premeditation (Rollo, p. 131).

We are likewise not inclined to accept the trial court's ruling that the qualifying circumstance of treachery should be appreciated against appellants. No one saw the actual stabbing of the victim by appellants. It does not therefore seem possible to draw the conclusion that appellants stabbed the victim suddenly, without warning and without giving him any opportunity to make any defense against the assault on his person (*People v. Pagsanjan*, 221 SCRA 735 [1993]).

Turning to the doctrines of earlier vintage but which are still consistently followed as authoritative precedents, we are reminded that treachery is not presumed, but must be proved as conclusively as the act it qualifies (*People v. Gundayao*, 30 SCRA 226 [1969]; *People v. Abril*, 51 Phil. 670 [1928]). The same degree of proof to dispel any reasonable doubt is required before treachery may be considered either as an aggravating or qualifying circumstance (*People v. Torrejas*, 43 SCRA 158 [1972]). Furthermore, the qualifying circumstance of treachery must be based on some positive conclusive proof and not only upon hypothetical facts (*U.S. v. Rana*, 4 Phil. 231 [1905]) or on mere supposition or presumptions (*U.S. v. Perdon*, 4 Phil. 141 [1905]).

Since criminal justice inclines in appropriate cases to the milder form of liability, the crime should be considered as simple homicide without any attending circumstance.

WHEREFORE, the judgment appealed from is MODIFIED by convicting the accused of the crime of homicide instead of murder, without any attending circumstance, and imposing upon them an indeterminate sentence of TEN (10) YEARS of prision mayor, as minimum, to FIFTEEN (15) YEARS of reclusion temporal, as maximum. The indemnity to be paid to the heirs of the victim is increased to P50,000.00.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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