

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO PATOTOY AND BONIFACIO PATOTOY, ACCUSED, BONIFACIO PATOTOY, ACCUSED-APPELLANT.

G.R. No. 102058. August 26, 1996

Ponente: VITUG, J.

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VITUG, J.:

Appellant Bonifacio Patotoy sets upon the decision[1] of the Regional Trial Court of Masbate, Branch 44, in Criminal Case No. 6015 convicting him of murder for the killing of Manuel Verano.

Bonifacio Patotoy was charged with his father, Sergio Patotoy, in an information that read:

"That on or about February 7, 1990 in the afternoon thereof, at Barangay Sawang, Municipality of Uson, Province of Masbate, Philippines, and within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to kill, evident premeditation, treachery and superiority of strength, did then and there, willfully, unlawfully and feloniously attack, assault and stab with a knife one Manuel Verano, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused his instantaneous death.

"CONTRARY TO LAW."[2]

The accused pleaded not guilty to the charge. His father was never apprehended and remained at large.

The Solicitor General sums up the evidence submitted by the prosecution; viz:

"On February 7, 1990, at about 4:30 p.m., the residents of Barangay Sawang, Uson, Masbate were celebrating the wedding of a certain Ergie Garganta to a Chinese. Dancing and merrymaking attended the wedding celebration which was held at the barangay plaza (tsn., B. Garganta, Aug. 8, 1990, p. 2; ts., E. Conejos, Aug. 9, 1990, p. 12).

"While the dancing was in progress, victim Manuel Verano succeeded in getting Sergio Patotoy's wife as dancing partner. This apparently irked co-accused for after the dance, he approached said victim and elbowed the latter on the stomach. The victim asked why he was elbowed. Instead of answering, co-accused boxed him. Thereafter, a fistfight ensued. The people pacified them and advised them to go home. While the victim went home, co-accused went to his house five meters away to get a bolo then returned to the plaza (tsn., B. Garganta, Aug. 8, 1990, pp. 4-5; ts., E. Conejos, Aug. 9, 1990, pp. 13-14).

"At the time of the boxing incident, appellant was in the house of Ranilo Carmen. A certain Bugoy Monares arrived and informed the former that co-accused, his father, was involved in a fistfight at the plaza. Thereafter, appellant left the said house and went to the plaza to ask his father about the incident (tsn., B. Patotoy, Feb. 26, 1991, pp. 3-4; ts., R. Carmen, Apr. 2, 1991, pp. 1-3).

"When appellant arrived at the plaza, he immediately approached co-accused and asked him what happened. Co-accused told him that he was mauled by the victim. Thereafter, he encouraged appellant, his son, to go and

kill the victim. This prompted appellant to pull out a 'batangas' knife and comment that the same was sufficient to kill a person. Afterwards, he ran towards the house of the victim one hundred meters away from the plaza. Co-accused followed him (Exhs. 'E', 'E-1', E-2'; tsn., B. Garganta, Aug. 8, 1990, pp. 6-7; tsn., E. Conejos, Aug. 9, 1990, pp. 15-18).

"When appellant reached the victim's house, the victim and his wife were about to climb the stairs leading to their house. Suddenly, appellant, with the knife in hand, rushed to where the victim was and said: 'What did you do to my father?' As the victim turned left to face appellant, the latter suddenly stabbed the former with an upward thrust on the left breast. After the victim was fatally stabbed, he staggered towards the fence, with blood oozing from his mouth, nose and chest (tsn., M. Saspa, Aug. 8, 1990, pp. 10, 55-56, 60; tsn., E. Conejos, Aug. 9, 1990, pp. 20-22; tsn., F. Verano, Jan. 23, 1991, pp. 3-4).

"The victim's wife and daughter tried to stop appellant by grappling with him for the possession of the knife. However, as they were preventing appellant from further hurting the victim, appellant's co-accused who was following him likewise stabbed the dying victim, at the back this time. After the second stabbing, co-accused told his son: 'tama na ina, patay na ina'. As the two walked away from the place, co-accused said: 'Appear. That is what I want to (sic) my son. He knows how to kill.' (tsn., B. Garganta, Aug. 8, 1990, p. 7; tsn., F. Verano, Jan. 23, 1991, pp. 3-5; tsn., E. Conejos, Aug. 9, 1990, p. 22).

"At around 5:30 p.m., appellant surrendered to the Barangay Captain of Marcella, Uson, Masbate (tsn., E. Monares, Apr. 2, 1991, p. 6)."[3]

The medical report of Dr. Artemio Capellan, the municipal health officer who conducted an autopsy, revealed that Manuel Verano had sustained the following injuries:

"1. Stab wound affecting the left lateral portion of the chest just above the mammary gland, hit by a sharpened (sic) pointed instrument. Major organs and blood vessels were affected.

"2. Stab wound affecting the left lumbar area of the back, hit by a sharpened (sic) pointed instrument. Major organs and blood vessels were affected."[4]

Appellant admitted having killed Manuel; he denied, however, that his father was with him at the time. He instead gave the following account:

Appellant was in the house of his friend, Ranilo Carmen, when he learned from one Bugoy Monares that his father and Manuel had figured in a fistfight. Since he was unaware of any grudge between the two protagonists, appellant proceeded to the house of Manuel to ask him about what might have led to the "quarrel." [5]

Just as he arrived at Manuel's house, appellant heard Manuel telling his wife to let go of him "because he was going to kill (someone)." [6] Confronting Manuel, appellant said, "Manoy Maning you (fought with) Tata!" Manuel retorted, "Ikaw pa." [7] After freeing himself from his wife's hold, Manuel lunged towards the accused and appeared to draw at the same time "something" [8] from his waist. Appellant promptly drew his fan knife and instantly stabbed Manuel on his breast. Manuel tried to embrace him but appellant gave a second thrust. Manuel fell to the ground. Appellant refrained from delivering another stab blow and left. [9]

At home, appellant told his family that he had killed Manuel, and that he was going to give himself up. He surrendered to Barangay Captain Eutequiano Velasco of Marcella and handed over the death weapon. [10] According to Velasco, appellant did not surrender to the barangay captain of Sawang, the latter being a relative of the victim. [11]

After the presentation of evidence, the trial court, on 15 May 1991, rendered a decision disposing of the case, as follows:

"Wherefore, finding without doubt that Bonifacio Patotoy is guilty beyond reasonable doubt of the crime of Murder and the Mitigating Circumstance of surrender is offset by treachery. His admission of the crime could not be given consideration as mitigating as it was made after the prosecution presented its evidence. This Court hereby renders judgment convicting the accused and imposes the penalty of Reclusion Perpetua to be served at the National Penitentiary. He is further ordered to indemnify the heirs of the victim the amount of P50,000.00 as moral damage and to pay the cost of the suit.

"The Court not having acquired jurisdiction over the person of Sergio Patotoy his case is hereby placed in Archive(d) and an Alias Warrant for his arrest is hereby ordered issued.

"The evidence presented during the trial are ordered confiscated in favor of the government.

"SO ORDERED." [12]

In this appeal, appellant contends that the trial court has erred in not sustaining his plea of self-defense or, in the alternative, in finding that the killing of Manuel Verano has been attended by the aggravating circumstances of treachery, evident premeditation and abuse of superior strength.

We start with the familiar rule in criminal cases that the burden of proof to show the guilt of an accused is on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[13] Where, however, an accused charged with the killing of a person admits having caused that death but invokes self-defense to escape from criminal liability, it becomes incumbent upon him to prove by clear and convincing evidence the positiveness of that justifying circumstance.[14] Self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof[15] and, coincidentally, the existence of the following requisites: (a) unlawful aggression; (b) reasonable necessity of the means employed to repel it, and (c) lack of sufficient provocation on the part of the person defending himself.[16] All these conditions must concur.[17]

Unlawful aggression presupposes an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude. There must exist a real danger to the life or personal safety of the person claiming self-defense.[18] This element, in the case before us, is sorely wanting. No veritable physical force on the part of Manuel has been shown that could have really endangered appellant's life. Manuel's alleged act of drawing "something" from his waist certainly is not the "unlawful aggression" meant in the law that would justify a fatal strike at the victim with such lightning-speed as appellant has delivered. In fact, no weapon, supposedly in the person of Manuel, is shown to have been found. Without unlawful aggression, self-defense cannot exist nor be an extenuating circumstance.[19]

The aggravating circumstance of abuse of superiority is present when there is proof of "gross physical disparity" between protagonists[20] or when force used by the aggressor is out of proportion to the means of defense available to the victim.[21] The narration of the incident by the prosecution witnesses (supra), detailing the attack on the hapless victim by appellant and his co-accused, quite aptly would indicate the presence of this aggravating circumstance. We cannot, however, appreciate in the same affirmative way the aggravating circumstances of treachery and evident premeditation. The incident has been preceded by a fistfight between appellant's father and the victim that must have forewarned the victim.[22] Evident premeditation cannot be considered absent any convincing evidence that the accused had indeed planned to commit the offense.[23]

The allegation of abuse of superior strength in the information, qualified the killing to murder pursuant to Article 248(1) of the Revised Penal Code. Voluntary surrender was correctly considered in appellant's favor by the trial court. Conformably with Article 64(2) of the Revised Penal Code, the imposable penalty should be the minimum period of the prescribed penalty of reclusion temporal maximum to death imposed by Article 248 for the crime of

murder. Applying the Indeterminate Sentence Law, appellant could be held to bear the indeterminate penalty of anywhere from ten (10) years and one (1) day of prision mayor maximum to seventeen (17) years and four (4) months of reclusion temporal medium, as the minimum penalty, to anywhere from seventeen (17) years, four (4) months and one (1) day to twenty (20) years (maximum period of reclusion temporal) as the maximum penalty. The trial court correctly imposed upon appellant the payment of an indemnity of fifty thousand pesos (P50,000.00) in favor of the heirs of Manuel Verano.

WHEREFORE, the decision of the trial court is hereby AFFIRMED subject to the modification that appellant Bonifacio Patotoy shall, instead, suffer the indeterminate penalty of from twelve (12) years of prision mayor, as minimum, to seventeen (17) years four (4) months and one (1) day of reclusion temporal, as maximum. Costs against appellant.

SO ORDERED.

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

[1] Penned by Judge Manuel C. Genova.

[2] Rollo, p. 6.

[3] Rollo, pp. 110-113.

[4] Exh. C, Records, p. 65.

[5] TSN, 26 February 1991, p. 3.

[6] Ibid., p. 5.

[7] Ibid., p. 6.

[8] Ibid., p. 6.

[9] Ibid., pp. 5-7.

[10] Ibid., p. 8.

[11] TSN, 02 April 1991, p. 7.

[12] Rollo, pp. 25-26.

[13] *People vs. Decena*, 235 SCRA 67.

[14] *People vs. Ronquillo*, 247 SCRA 793.

[15] *People vs. Osigan*, 223 SCRA 742.

[16] *People vs. Ronquillo*, supra.; *People vs. Daguinutan*, 233 SCRA 368.

[17] Article 11, paragraph 1, Revised Penal Code; *People vs. Bernal*, G.R. No. 101332, 13 March 1996.

[18] *People vs. Boniao*, 217 SCRA 653.

[19] *People vs. Curaraton*, 224 SCRA 372.

[20] *People vs. Peralta*, 237 SCRA 218.

[21] *People vs. Bernal*, supra.; *People vs. Ruelan*, 231 SCRA 650.

[22] People vs. Alacar, 211 SCRA 580.

[23] People vs. Salvador, 224 SCRA 819.

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