

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN LAYAM (ALIAS BARENTOY) AND CHIQUITO LAYAM (ALIAS AMID), ACCUSED-APPELLANTS.

G.R. No. 102308. July 25, 1994

Ponente: PUNO, J.

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PUNO, J.:

In an Information, dated October 30, 1989, Martin Layam (alias Barentoy) and Chiquito Layam (alias Amid) were charged with Murder before the Regional Trial Court, Branch 14, Cebu City. The Information against them reads:

"That on or about the 27th day of August, 1989 at around 5:15 o'clock in the afternoon, more or less, in Barangay Sayaw, Municipality of Barili, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and intent to kill, conspiring and confederating together, and mutually helping with (sic) each other, by means of treachery and evident premeditation, and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously, attack, assault and shoot Enrique Tanato from behind by Chiquito Layam with the use of a revolver at close range, that hit him on the nape, causing the victim to fall to the ground; Martin Layam, with the use of his service armalite rifle, fired at said Enrique Tanato several times, inflicting upon him gunshot wounds on different parts of his body, resulting in the instantaneous death of the victim.

"All contrary to law, and with the qualifying circumstances of evident premeditation, and taking advantage of superior strength.

"CONTRARY TO LAW."[1]

The prosecution presented three (3) eyewitnesses, namely: Victoria Siboa, Jacinto Delumbar and Edgardo Escorial. Their testimonies established the following:

On August 27, 1989, at about 5:15 p.m., Jacinto Delumbar and Enrique Tanato, with other companions, were in front of the store of Willy Zosa, located in Sayao, Barili, Cebu. Across the road and opposite the store of Zosa was the store of Charlie Guzman where the Layam brothers, Boy, Martin and Chiquito, were having a drinking spree.[2]

For no known reason, Chiquito and Boy Layam hurled a stone at Boy Guzman. On the other hand, Martin Layam thrust his armalite rifle at said Guzman. From across the street, Enrique Tanato and Jacinto Delumbar witnessed the mauling incident. Intending to pacify the parties, Delumbar (a barangay councilman) and Tanato approached them.[3] Initially, the Layam brothers heeded Delumbar's admonition to stop mauling Guzman. However, when Tanato reproached them for their belligerent behavior, Martin, a PC soldier, got angry. He thrust his armalite at Tanato and Delumbar. Tanato addressed Martin, thus: "Since you did not heed my advise, you might as well shoot me." Tanato then turned his back on the group, thinking that it was over and confident that he would not be harmed for he was a cousin of the Layams. Tanato started walking back towards the opposite side of the road. Unknown to him, Chiquito followed and shot him at the back twice. Tanato fell on the ground and Chiquito

scampered away.[4]

Tanato's ordeal was not over. Martin approached the fallen Tanato. Victoria Siboa, the barangay captain of Sayao, who witnessed the incident from a distance of about fifteen (15) meters away, shouted at Martin, thus: "Barentoy, don't (shoot). Stop." But Martin, pointed the gun at her and replied: "Why? Are you with him?" Martin then repeatedly fired upon Tanato. Martin then left the scene of the crime.

A couple of minutes later, Martin returned and fired another volley of shots at the prostrate body of Tanato. Martin then took out a revolver from his waistband. He placed the gun in Tanato's right hand and tried to wrap the latter's fingers around it. His repeated attempts were unsuccessful. Thus, he decided to just tuck the gun in Tanato's waistband. Martin then threatened that he would kill anyone who went near Tanato's corpse.[5]

Thus, it was only in the morning of August 28, 1989 when Tanato's body was removed from the crime scene.[6]

The autopsy conducted on the body revealed that Tanato sustained fourteen (14) gunshot wounds. The cause of his death was severe shock, secondary to multiple gunshot wounds.[7]

The version of the accused is diametrically different. Accused Martin and Chiquito Layam admitted killing Tanato. They, however, claimed that they were justified in doing so, i.e., that accused Martin acted in self-defense, while accused Chiquito acted in defense of his younger brother Martin.

They alleged that a day before that fateful incident, i.e., on August 26, 1989, at about 3:00 p.m., the basketball team of Sitio Pasil went to Sitio Sayao, Barili, Cebu to play against the team of Sitio Tayong. Accused Chiquito Layam went with the team.

The game was marred by an untoward incident. During the game, Willie Tadipa, a player of Sitio Tayong, hit one of the players of Sitio Pasil. A melee ensued with all the players joining the scrimmage. Accused Chiquito tried to break up the fight. The basketball committee also mediated. The fight was settled and the game was discontinued.

The next day, in the afternoon of August 27, 1989, accused Chiquito and the basketball team of Sitio Pasil returned to Sitio Sayao to play another game against the Minolos team. Accused Martin Layam was designated to act as referee in that game.

After the game, the players of Sitio Pasil, including accused Chiquito and Martin, waited for a ride home near Charlie's store. Martin, a PC soldier, was then carrying his service armalite rifle. Across the road, they saw Willie Tadipa, his younger brother Rudy Tadipa, Enrique Tanato and Alo Estrada having a drinking spree at the store of Willie Zosa.

Suddenly, Rudy Tadipa approached accused Martin and told the latter he was not afraid of anyone even if he happens to be a military man. Chiquito butted in and admonished Rudy to stop for it might lead to another fight. Suddenly, Willie Tadipa hit Chiquito at the back. Chiquito then embraced Willie to stop his assault. Alo Estrada and Rudy Tadipa then joined in the brawl. Using his armalite, Martin fired warning shots in the air. This frightened Alo and Rudy who scampered away. Willie was left behind for Chiquito was holding on to him. A .38 caliber revolver fell off from Willie's waistband. Chiquito picked up the gun and disassociated himself from the affray. It was then that Chiquito saw Enrique Tanato, armed with a gun, rushing towards his brother Martin. Believing that Tanato was about to attack his brother Martin, Chiquito shot him twice. As Tanato staggered, Chiquito scampered away and he heard a rapid succession of fire from Martin's armalite. He however did not see to whom or where the volley of shots was directed.[8]

Accused Martin Layam corroborated in substance the testimony of his brother Chiquito. He claimed that he also saw the armed Tanato rushing towards him. Almost simultaneous to Chiquito's shooting of Tanato, Martin also

shot Tanato in an effort to defend himself from the victim's perceived and impending attack. This was immediately after Chiquito fired at Tanato. He, however, did not see if the bullets hit Tanato but he saw the latter fall on the ground. He claimed that it was the only time he shot Tanato. He then reported the incident to the police authorities and went back to his mother unit. He categorically denied the testimony of the prosecution witnesses that he returned to the scene of the crime and pumped another round of bullets on the victim's body.[9]

As a consequence of the incident, Martin was discharged from military service on November 1, 1989. He then went to Negros to look for work.

In December 1989, Martin was detained at Camp Sergio Osmeña for investigation regarding his participation in the killing of Tanato. Sometime that month, he escaped. In January 1990, he came to know that PC soldiers were looking for him. On February 13, 1990, he surrendered voluntarily to the authorities after learning that a warrant for his arrest has been issued.[10]

In a Decision dated March 20, 1991,[11] the two (2) accused were convicted as charged. The dispositive portion reads:

"WHEREFORE, the Court finds the two accused Chiquito Layam alias 'Amid' and Martin Layam alias 'Barentoy' guilty beyond reasonable doubt of murder and appreciating against each of them respectively the aggravating circumstances of recidivism[12] and outraging at the person or corpse of the late Enrique Tanato, without any mitigating circumstance to offset these aggravating circumstances, hereby sentences these two accused to reclusion perpetua and to pay the heirs of Enrique Tanato civil indemnity in the amount of P30,000.00, without subsidiary imprisonment in the event of insolvency in view of the principal penalty imposed.

"Considering that the accused are detention prisoners, they shall be credited in the service of their sentences with the full time during which they have undergone preventive imprisonment provided that they agree in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

"Costs against the two accused.

"SO ORDERED." (Rollo, pp. 142-153)

Hence, this appeal where appellants assign two (2) errors, viz:

I

THE TRIAL COURT GROSSLY ERRED WHEN IT DID NOT CONSIDER THAT APPELLANTS ACTED IN SELF-DEFENSE WHEN THEY KILLED THE LATE ENRIQUE TANATO.

II

THE TRIAL COURT GROSSLY ERRED AND THEREBY CONSIGNED APPELLANTS TO PERPETUAL PERDITION WHEN IT PRONOUNCED AS MURDER THE SLAYING OF THE LATE ENRIQUE TANATO BY THE APPELLANTS AND SENTENCED THEM TO RECLUSION PERPETUA.

In their Brief, appellants insist that they shot Tanato to repel the latter's impending and unprovoked attack on appellant Martin. They denied culpability for their act as they claim that appellant Chiquito initially fired at the armed Tanato in defense of his younger brother Martin, while appellant Martin shot the same victim out of self-defense.

Appellants further stress that they had no motive to kill Tanato for, prior to the incident, there was no bad blood between them. To bolster their position, they emphasize that appellant Martin did not flee from the crime scene

nor go into hiding immediately after the incident.

The trial court did not find the testimonies of appellants credible. Neither do we.

The evidence against appellants is overwhelming. The killing of Tanato was witnessed by no less than three (3) persons, two of whom were barangay officials. These eyewitnesses were not shown to have been impelled by any evil motive to falsely impute such a grave crime against appellants. In fact, one of the prosecution witnesses, Victoria Siboa, is related to appellants.[13] What further strengthens the case against appellants is the fact that the testimonies of the prosecution eyewitnesses corroborated each other on each and every material point. All of them were united in saying that the victim, unarmed and defenseless, merely tried to pacify appellants. Appellants took it against him and shifted their ire on the victim. Without any qualms, they mercilessly blasted his body with bullets. What is more, appellant Martin had the temerity to cover-up the crime by planting a revolver on deceased's body to bolster his probable defense of unlawful aggression on the part of the victim. Thus, the nature and extent of injuries sustained by the victim and circumstances of attack negate appellants' claim of defense.

In contrast, appellants' testimonies at the trial do not inspire credence. Appellants claim that they were forced to shoot the victim for, holding a gun, he was then rushing to attack appellant Martin. However, as per the police report[14] submitted by investigator Pat. Elmer Mercado, the victim was found lying on the street, with a gun tucked in his waistband. This circumstance shatters the claim of appellants that it was the victim who was the aggressor and that they only acted in self-defense or defense of relative.

Moreover, by appellants' own account, at the time of the incident, they were accompanied by the basketball players of Sitio Pasil and several of their townmates who watched the game.[15] The incident was thus witnessed by several people. Interestingly, however, not one of these people was presented by the defense to corroborate the testimonies of appellants that they acted in self-defense and defense of relative.

The fact that appellants' motive in killing the victim does not appear on the records is of no moment. Time and again, this Court has ruled that absence of motive would not bar conviction of the accused as long as the crime itself and the identity of the perpetrators had been indubitably established. In fact, it is precisely this utter lack of motive which made the killing of Tanato totally senseless. Moreover, the fact that appellant Martin reported the incident to the police authorities would not suffice to exonerate him. We have never considered non-flight, by itself, as an indicium of innocence.

Having admitted killing the victim, the onus probandi shifted on appellants to prove that their act was justified. This appellants failed to do.

Appellants also maintain that, in the alternative, the trial court should have, at least, appreciated the mitigating circumstance of incomplete self-defense and defense of relative.[16]

There is no merit in the contention. For the claim of incomplete self-defense or defense of relative to prosper, it is essential to prove unlawful aggression. Absent this evidence, there could be no defense, complete or incomplete.

As discussed earlier, the overwhelming evidence on record clearly established the lack of aggression on the part of the victim Enrique Tanato. Appellants' claim of defense, complete or incomplete, must thus fail.

Moreover, it is argued that appellant Martin's voluntary surrender to the police authorities, after learning that a warrant for his arrest has been issued, should have been considered by the trial court as a mitigating circumstance in his favor.

We agree. Paragraph 7, Article 13 of the Revised Penal Code does not require that the surrender be made prior to the issuance of the warrant of arrest.[17] All that is required is that the offender voluntarily surrender himself to a

person in authority or his agents before his actual apprehension. Be that as it may, this generic mitigating circumstance would not serve to lessen the penalty for it would be offset by the aggravating circumstance of outraging at the corpse of the victim as properly appreciated by the trial court against appellant Martin.

Finally, it is argued that appellant Martin's report of the incident to the police authorities immediately thereafter should have been considered as a mitigating circumstance similar to voluntary surrender, as provided under paragraph 10, Article 13 of the Revised Penal Code.[18]

Appellants' contention is untenable. We do not find appellant's act of reporting the incident to the police authorities as similar to voluntary surrender. It should be borne in mind that the rationale behind the whole concept of mitigating circumstances is to show mercy and some extent of leniency in favor of an accused who has nevertheless shown lesser perversity in the commission of the offense. The peculiar circumstances in the case at bench, however, preclude us from concluding that appellant Martin showed lesser perversity in killing Tanato. In fact, the contrary is shown. Using his armalite rifle, appellant Martin mercilessly shot the unarmed and fallen victim in full view of the residents of the sitio. He left the crime scene but after a few moments, returned and fired another volley of shots on the victim. He then had the audacity to plant a revolver on the victim's hand to corroborate his probable defense that he merely acted in self-defense and that it was the victim who was the unlawful aggressor. When appellant Martin went to the police authorities to report the crime, he did so not to admit complicity therefor, but to present his contrived version of the incident i.e., that he killed the victim in order to defend himself from the latter's impending attack. Appellant Martin, being a military man, knew the legal consequences of his actions and thus sought to immediately cover up for the crime he committed. We cannot disregard these circumstances and consider appellant Martin's reporting of the incident to the police authorities as an indicium of his lesser perversity.

IN VIEW WHEREOF, the appealed decision is hereby MODIFIED only with respect to the civil indemnity awarded to the heirs of Enrique Tanato. It is hereby increased to fifty thousand pesos (P50,000.00). Costs against appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Original Records, pp. 1-3.

[2] The two (2) stores were approximately fifty (50) feet apart; TSN, May 29, 1990, p. 22.

[3] *id.*, pp. 22-23; TSN, May 31, 1990, p. 9.

[4] TSN, May 29, 1990, pp. 22-25.

[5] *id.*, pp. 3-5, 24-27.

[6] TSN, May 31, 1990, p. 6.

[7] Exhibit "C", Original Records, pp. 55-57; TSN, May 30, 1990, pp. 2-6.

[8] TSN, June 25, 1990, pp. 3-13.

[9] TSN, June 26, 1990, pp. 3-9.

[10] *id.*, pp. 12-13.

[11] Penned by Judge Renato C. Dacudao, RTC, 7th Judicial Region, Branch 14, Cebu City.

[12] By his own admission, accused Chiquito Layam has been previously charged and convicted of the crime of physical injuries.

[13] She is a third degree cousin of the Layams. Also, Martin Layam's wife is her niece (TSN, May 29, 1990, p. 6).

[14] Exhibit "E", Original Records, pp. 60-62.

[15] TSN, June 26, 1990, p. 20.

[16] "Art. 13. Mitigating circumstances. -- The following are mitigating circumstances:

1. Those mentioned in the preceding chapter, when all the requisities necessary to Justify the act x x x are not attendant."

[17] People v. Beltran, Nos. L-37168-69, September 13, 1985, 138 SCRA 521; People v. Canamo, No. 62043, August 13, 1985, 138 SCRA 141; People v. Turalba, No. L-29118, February 28, 1974, 55 SCRA 697; People v. Yecla and Cahilig, No. 46612, October 14, 1939, 68 Phil. 740.

[18] "Art. 13. Mitigating circumstances. -- The following are mitigating circumstances:

x x x

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

x x x

10. And, finally, any other circumstance of a similar nature and analogous to those above mentioned."

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