

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR OSIGAN AND VICENTE CURATO, ACCUSED-APPELLANTS.*G.R. No. 102980. June 28, 1993*

Ponente: CRUZ, J.

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The victim was dead on the ground with no less than 25 hack wounds, many of them fatal. Investigation pointed to the two appellants as the assailants. Charged with murder, they were arraigned, tried, convicted, and penalized accordingly. The decision of the trial court is now before us on appeal.

In arriving at her decision,[1] Judge Evangeline S. Yuipco of the Regional Trial Court of Agusan del Sur relied heavily and mainly on the testimony of prosecution witness Melchor Goloran.

This witness testified that in the afternoon of August 2, 1989, he was plowing the land of Tortiliano Osin at Caridad, Prosperidad, Agusan del Sur, when he saw the killing of Favio Goloran. According to him, Vicente Curato was behind Favio when he hacked the victim on the left shoulder, causing him to fall. Salvador Osigan, who was facing Favio, also hacked him. Favio was able to run about seven meters but his two attackers pursued him. Both of them carried bolos about 45 to 50 inches long. All this he clearly saw, he declared, because he was only about fifteen meters away.[2]

Two other prosecution witnesses also claimed to have witnessed the incident, but they had a different version. These were Vicente Goloran and Roy Osigan, appellant Salvador Osigan's younger brother.

These two witnesses testified that on August 2, 1989, at about 4:30 p.m., they were drinking tuba with Salvador when Favio approached them and demanded to know why Salvador was siding with Curato in the latter's controversy with Favio. As Salvador's reply was unsatisfactory to Favio, the two simultaneously started hacking at each other with their bolos, which were each about 20 inches long. Salvador bested Favio, who sustained many wounds and died as a result.[3]

Both Vicente Goloran and Roy Osigan declared that Vicente Curato was not present during the incident.[4]

In his defense, Curato pleaded alibi, claiming that at the time of the incident in question he and his son were fencing their lot at Bahbah, Prosperidad, also in Agusan del Sur, and that he learned of the killing of Favio only the following day.[5] He was corroborated by Felixberto Dagatan, who swore that when he went to buy cigarettes at Curato's store at around 3:30 p.m. of that day, he saw Curato working on the fence. He added that Curato and his son stopped fencing their lot at about 5:30 that same afternoon.[6]

For his part, Salvador Osigan testified that in the afternoon of August 2, 1989, he was drinking tuba with his brother Roy and Vicente Goloran when Favio approached them and berated him for siding with Curato. Rejecting his reply, Favio drew his bolo and struck him on his left cheek, drawing blood that dimmed his vision. In self-defense, he drew his own bolo and started fighting back, continuing to do so even after Favio had fallen to the ground. Osigan said he was confined in a hospital for about a week, after which he surrendered to the police.[7]

A study of the above-discussed testimonies will readily show that there is no evidence to convict Vicente Curato of murder, or of any other crime for that matter.

While it is true that alibi is an inherently weak defense, such defense has been amply established in this case. In fact, it did not have to be established at all since, in the view of the Court, the prosecution evidence has not overcome the constitutional presumption of innocence in favor of Curato.

Significantly, the other two prosecution eyewitnesses both testified that Curato was not present when Favio was killed.[8] Both said it was Osigan who killed Favio.[9]

As for Melchor Goloran, the only witness who implicated Curato, the Court finds his credibility hardly acceptable. His declaration that both Curato and Osigan were carrying bolos 45 to 50 inches long is especially unbelievable. That would make the bolos about four feet long, longer than a *kampilan* or a *saber*. Farmers do not usually carry such extraordinary weapons. The Court also notes Apolinaria Goloran's testimony that on the day of the killing, Melchor Goloran could not have been plowing Osin's land because he had already been replaced by Salvador Osigan.[10]

Even assuming he was really on Osin's land at the time, Melchor Goloran was by his own admission some fifteen meters away from the scene of the incident. By contrast, Roy Osigan and Vicente Goloran, who said Curato was not present, were immediately in front of Favio and Salvador when they started fighting each other.

As for Salvador Osigan, the burden of proof shifted to him after his admission of the killing of Favio.[11] His proffered justification is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence.[12] He has not presented such evidence.

The Court finds it difficult to accept his plea of self-defense, considering that while he sustained only a single minor wound, Favio was hacked as many as twenty-five times, in the neck and chest, and even on the back, when he was already lying face down on the ground. Only Salvador testified that it was Favio who began the unlawful aggression when the latter allegedly hit him on the left cheek. No one else did. Not even his own brother Roy testified to such aggression, and neither did the other prosecution eyewitnesses.

As unlawful aggression has not been established, it is not necessary to prove the other elements of self-defense, to wit, reasonable necessity of the means employed to resist the aggression and lack of sufficient provocation.[13] The defense counsel should have known he was engaging in a futile exercise. In fact, even incomplete self-defense is not available to Osigan because this mitigating circumstance requires, as an essential and indispensable element, proof of unlawful aggression.[14] This is also elementary.

The crime committed by Osigan is, however, not murder as charged because the prosecution has failed to prove the alleged qualifying circumstance of treachery. That circumstance was sought to be established through the testimony of Melchor Goloran which has, however, been discredited. No other prosecution witness has testified to such treachery; on the contrary, the other alleged eyewitnesses declared under oath that Favio and Salvador simultaneously started hacking at each other. Lacking such qualifying circumstance, the killing of Favio by Osigan must be described only as homicide, attended by the mitigating circumstance of voluntary surrender.

WHEREFORE, the appealed decision is REVERSED as to VICENTE CURATO, who is hereby ACQUITTED and ordered released immediately, and MODIFIED as to Salvador Osigan, who is declared guilty of HOMICIDE only instead of murder and is meted an indeterminate sentence of nine (9) years and one (1) day of prison mayor, as minimum, to thirteen (13) years, four (4) months and one (1) day of reclusion temporal, as maximum. No costs.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Rollo, pp. 14-20.

[2] TSN, April 5, 1991, pp. 1-11.

[3] Ibid., March 20, 1991, pp. 2-6; 9-11.

[4] Id., pp. 6-7, 12.

[5] TSN, May 21, 1991, pp. 12-17.

[6] Ibid., pp. 9-12.

[7] Id., pp. 18-21.

[8] TSN, March 20, 1991, pp. 6-7,12.

[9] Ibid., pp. 4, 9.

[10] TSN, May 21, 1991, p. 3.

[11] *People v. Molina*, 213 SCRA 52 (1992).

[12] *People v. Ybeas*, 213 SCRA 793 (1992).

[13] *People v. Bigcas*, 211 SCRA 631 (1992); Article 11, paragraph 1, Revised Penal Code.

[14] *People v. Delgado*, 182 SCRA 343 (1990).

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