

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO OCSIMAR Y ALIGNO, DEFENDANT-APPELLANT.

G.R. No. 104630. February 20, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The doctrine that treachery, as a qualifying circumstance of murder, must be proven as clearly as the killing itself is reiterated by this Court in this case.

Appellant Alejandro A. Ocsimar was convicted by the Regional Trial Court of Lanao del Norte, Branch IV,[1] of the crime of murder for killing Apolinario Lato and accordingly sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the sum of fifty thousand pesos (P50,000.00). The Information from which appellant's conviction sprung, reads as follows:

"That on or about November 8, 1991, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, to wit: a hunting knife, with intent to kill and evident premeditation and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab and wound one Apolinario Lato, thereby inflicting upon the said Apolinario Lato, the following physical injuries to wit:

- Cardiorespiratory arrest secondary to Pneumo-Hemothorax 2° to stabwound 10 cm. in depth directed downward, medial 3cm. from collarbone (r) side.

as a result thereof the said Apolinario Lato died.

"Contrary to and in violation of Article 248 of the Revised Penal Code with the aggravating circumstances (sic) of evident premeditation."

At his arraignment, appellant manifested his willingness to enter a plea of guilty, not of the crime charged, but of homicide. However, since the prosecution and the complainant did not accede to his offer, appellant, assisted by his counsel from the Public Attorney's Office, Atty. Federico R. Miranda, entered a plea of not guilty to the crime of murder.[2]

Evidence for the Prosecution

The prosecution evidence consisted primarily of the eyewitness account of Franklin Villamor, a 43-year-old fruit vendor at the Pala-o Supermarket in Iligan City, whose wife is the sister of the victim's own wife. Villamor's fruit stand was around twenty (20) meters away from the Cinderella Bake Shop.

At about 6:30 p.m. of November 8, 1991, Villamor was on his way to buy bread at said bakeshop. He was around two (2) arms' length from the bakeshop when he saw appellant "stabbed a person inside the jeepney." [3] The victim, who turned out to be Apolinario Lato, his brother-in-law, was then seated at the left side of a Tamaraw passenger jeepney, a seat away from and behind the driver's seat. The jeepney, which was bound for Taparak,

had no other passengers on board yet and was parked for the last trip. Villamor, who was then an arm's length away from the jeepney, saw appellant "stabbed the victim from behind" by thrusting downward to the right side of the victim, with his right hand which was holding a knife.[4] The victim was "unaware" of what was about to happen to him.[5]

Upon seeing the stabbing incident, Villamor chased appellant. He was joined by the "Bantay ng Bayan," a composite unit of the military, but after appellant had run towards Baddelles St., Villamor stopped and went to the hospital where the victim was brought by the jeepney driver.

Benhur Babatido, a member of the Philippine National Police responded to a request for assistance regarding the stabbing incident, from civilians with the "Bantay ng Bayan". With a 5-member team and some civilians, Babatido proceeded to the crime scene where he was informed that the culprit, who was identified as the appellant, was still in the premises. They were able to apprehend appellant at Manga, Bara-as. Upon searching him, they recovered a blood-stained hunting knife.[6] They brought appellant to Dr. Uy's Hospital where he was identified by several persons as the assailant and, thereafter, to the police headquarters.[7]

Evidence for the Defense

Appellant took the witness stand as the sole witness in his own defense. A 38-year-old sidewalk vendor, he testified that on November 8, 1991, at about 6:30 p.m., he was mauled and choked by Apolinario Lato while they were both inside the jeepney bound for Taparak. As he nearly fell off the jeepney, he stabbed Lato, who was drunk at that time, with the knife he carried with him for cutting flowers for sale.

Appellant alleged that, at around 7:00 o'clock in the morning of that day, appellant had an altercation with the victim who was asking him for money to buy liquor. Inasmuch as appellant was not able to give him any amount, the victim told him, "You better watch out." The victim had previously mauled him on November 5, 1991. Because the victim was much bigger than he was, appellant had no chance at all of putting up a defense. However, appellant, whose wife was the sister of the victim's wife, claimed that he bore the victim no grudges and that vengeance was not his intention.[8]

In its 4-page Decision convicting the appellant of murder, the trial court held that appellant could not have acted in self-defense because he fled after stabbing the victim and that his escape from the crime scene "indicated his guilt." The trial court appreciated the qualifying circumstance of treachery because appellant "stabbed the deceased from behind and in retaliation to an alleged previous mauling incident." [9]

In his Brief filed before this Court, appellant ascribes to the trial court the following errors:

I

THE TRIAL COURT ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE INSUFFICIENCY OF EVIDENCE FOR CONVICTION OF THE CRIME CHARGED.

The Court's Ruling

Appellant's owning of the stabbing of Lato appears to have lulled both the prosecution and the defense into not strengthening further their respective cases by presenting more witnesses who could have seen the commission of the crime, notwithstanding that, according to Villamor, the street where the crime transpired was busy at that time

with so many "passengers, trucks and business"[10] (sic) around. While Section 5, Rule 110 of the Rules of Court, expressly vests upon the fiscal or prosecutor direction and control over the prosecution of a case and that, therefore, the determination of which evidence to present rested upon him,[11] the presentation of additional witnesses would have bolstered its charge of murder. On the part of the defense, placing at least one more credible witness on the stand might have provided the foundation for its claim of self-defense considering that the testimony of an accused generally reflects self-interest and therefore is of weak evidentiary value.

It therefore follows that appellant's claim of the justifying circumstance of self-defense[12] must fail. It is not substantiated by strong clear and convincing evidence, for which reason, appellant's testimony showing self-defense was not accorded credibility by the trial court. While we do not subscribe to the trial court's holding that the claim of self-defense was negated by appellant's flight, this Court does not find any reason to depart from the lower court's finding on the issue of credibility as far as the testimony of appellant is concerned. As time and again held by this Court, appellate courts accord the highest respect to the assessment made by the trial court of the testimonies of eyewitnesses because of its unequalled opportunity to observe on the stand their demeanor and manner of testifying and to detect whether they were telling the truth or not.[13]

When the accused invokes self-defense, he admits the fact that he killed the victim but alleges justification therefor. It is doctrinal that the burden of proof shifts to him. He must then rely on the strength of his own evidence and not on the weakness of the prosecution's. Like alibi, self-defense is inherently a weak defense which, as experience has demonstrated, can easily be concocted. Hence, it is incumbent upon the accused to prove with credible, clear and convincing evidence that he acted in self-defense.[14] This the accused has miserably failed to do. None of the three essential elements of self-defense, viz., unlawful aggression, reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself[15] has been proven by him.

However, the Court finds merit in appellant's claim that the crime he had committed was not murder under Article 248 of the Revised Penal Code. The information alleged two (2) qualifying circumstances: evident premeditation and treachery. The trial court correctly disregarded evident premeditation as a qualifying circumstance because it was not duly established at the trial. As regards treachery, the trial court appears to have misapprehended facts in appreciating it.

The prosecution attempted to establish treachery through the necropsy report,¹⁶ the death certificate,¹⁷ and the testimony of Villamor. The said pieces of documentary evidence point to the fact that the victim inflicted a stab wound at the area of the victim's collarbone. The prosecution claims that the position of said injury was consistent with the testimony of Villamor that appellant attacked the victim from behind. However, upon a closer look at the testimony of Villamor, we find that it is not clear with respect to the commencement of the attack. The pertinent portions of the direct examination of Villamor read as follows:

"Q.

At around 6:30 in the evening of November 8, 1991, where were you?

A.

I went to Cinderilla Bake Shop to buy bread.

Q.

Were you able to buy bread at Cinderilla?

A.

Not yet because. . . No, sir, because I saw him stabbed (sic) a person inside the jeepney.

Q.

When you say, 'him,' to whom are you referring to?

A.

Alejandro Ocsimar.

xxxxxxxxxx.

Q.

How did accused Alejandro Ocsimar stab the victim Apolinario Lato?

A.

Alejandro Ocsimar stabbed the victim from behind the back of the said victim.

xxxxxxxxxx.

Q.

When you saw the victim riding on a passenger vehicle, please tell the Court in what particular place the victim Apolinario Lato sits (sic)?

A.

Left side, at the back of the driver's seat.

Q.

You also said that the victim was stabbed behind by the accused, will you please demonstrate to the Court the manner the accused stabbed the victim in relation to the sitting arrangement of that vehicle.

COURT:

Using the interpreter as the deceased, and you (Witness) as the accused.

A.

The witness showed to the Court how the deceased was stabbed by the accused, by making the following arrangements: the table as the inside of the jeepney; and placing the interpreter on a chair directly behind the other chair which is supposedly occupied by the driver; the witness acting as the accused, re-enacted by getting from behind the interpreter who acted as the deceased; and with his right hand, let's say, holding a knife, made a downward thrust, hitting the right side of the interpreter, where the deceased was stabbed.

xxxxxxxxxx.

Q.

Did you notice from what you saw . . . Did the victim see the accused when he was stabbed by the accused?

A.

He was unaware.

Q.

How far were you from the place of the stabbing?

A.

About one armslength.

Q.

Now, when you saw the accused stabbed (sic) the victim from behind, did you observe whether the victim was struggling to defend himself?

A.

No, Sir.[18] (*italics supplied*)

From these portions of Villamor's eyewitness account, it is apparent that he witnessed the actual stabbing of the victim from a distance of an arm's length and that the victim's being "unaware" of the attack was just Villamor's own conclusion. Considering that both the victim and the appellant were his brothers-in-law,[19] it is rather surprising and even contrary to human nature that he did not lift a finger to prevent the stabbing incident. Such inaction is not consistent with appellant's quick response right after seeing the stabbing incident - he lost no time at all in giving chase to the appellant. It is therefore not far-fetched to conclude that, before the actual attack, Villamor's attention was somewhere else. The defense elicited this fact when it cross-examined Villamor as follows:

"Q.

Will you please tell this Court how far were you from the Cinderilla Bake Shop on that day when you mentioned that you allegedly saw the stabbing incident?

A.

About two armslength.

Q.

So, you were still on the road?

A.

Yes.

Q.

You were still in the road, am I right?

A.

Yes, sir.

Q.

And that since you were still on the road, you were actually looking forward, your attention was directed forward to the Cinderilla Bake Shop?

A.

Yes, sir.

Q.

And that at that very moment, what was most important to you was your intention to buy bread at Cinderilla Bake Shop?

A.

Yes, sir."[20]

To be considered as a qualifying circumstance, treachery must be proven as clearly as the crime itself.[21] Treachery cannot be considered where the lone eyewitness did not see how the attack commenced.[22] Thus, where the eyewitness saw the incident already in progress, he was not considered as having testified as to how it began.[23] Consequently, even if Villamor witnessed the actual stabbing, the mere fact that the victim was stabbed at the back did not necessarily make the attack treacherous.[24]

The fact that appellant's act of stabbing Lato as witnessed by Villamor was the cause of the only injury sustained by the said victim does not necessarily lead to the conclusion that that was the first assault made by appellant upon the victim. To repeat, treachery must be proved by strong, clear and convincing evidence and, in the absence thereof, all doubts must be resolved in favor of the accused.

Appellant must therefore be held liable only for homicide under Article 249 of the Revised Penal Code. In the absence of any mitigating or aggravating circumstances to modify the penalty of reclusion temporal imposed by said article, the same penalty shall be imposed in its medium period.[25] With the application of the Indeterminate Sentence Law, appellant shall suffer the penalty of eight (8) years of prision mayor minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium.

WHEREFORE, the decision of the Regional Trial Court of Lanao del Norte, Branch IV in Crim. Case No. 3760 is hereby MODIFIED. Appellant Alejandro Ocsimar y Aligno is hereby CONVICTED of the crime of homicide and sentenced to suffer the indeterminate penalty of eight (8) years of prision mayor minimum as minimum penalty to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum penalty and indemnify the heirs of Apolinario Lato in the amount of fifty thousand pesos (P50,000.00). Costs against accused appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Presided by Judge Felipe G. Javier, Jr.

[2] Record, p. 19.

[3] TSN., January 16, 1992, p. 3.

[4] Ibid., pp. 4-5.

[5] Ibid., p. 6.

[6] Exh. C.

[7] Ibid., pp. 11-13

[8] TSN., January 17, 1992, pp. 18-23.

[9] Decision, p. 3.

[10] TSN., January 16, 1992, p. 10.

[11] *People vs. De los Reyes*, 229 SCRA 439,445 (January 21, 1994), citing *People vs. Carpio*, 207 SCRA 569 (March 25, 1992).

[12] Art. 11(1), Revised Penal Code.

[13] *People vs. Magalong*, 244 SCRA 117 (May 12, 1995).

[14] *People vs. Albarico*, 238 SCRA 203 (November 17, 1994); *People vs. Macagaling*, 237 SCRA 299 (October 3, 1994); *People vs. Amaro*, 235 SCRA 8 (August 4, 1994); *People vs. Lualhati*, 234 SCRA 325 (July 21, 1994); *People vs. Quino*, 232 SCRA 400 (May 17, 1994).

[15] cf. *People vs. Quiño*, *supra*.

[16] Exh. A.

[17] Exh.B.

[18] TSN., January 16, 1992, pp. 3-6.

[19] *Ibid.*, p. 6; TSN, January 17, 1992, p. 6.

[20] TSN, January 16, 1992, p.7.

[21] *People vs. Ablao*, 229 SCRA 280 (January 14, 1994); *People vs. Tiozon*, 198 SCRA 368,387-388 (June 19, 1991).

[22] *People vs. Cordero*, 217 SCRA 1, 7 (January 5, 1993), see also *People vs. Tiozon*, *supra*.

[23] *People vs. Salvador*, 224 SCRA 819, 826 (July 30, 1993), citing *People vs. Tiozon*, *supra*.

[24] *People vs. Adriano*, 226 SCRA 131, 135 (September 6, 1993), citing *People vs. Jajarit*, 214 SCRA 678 (October 19, 1992).

[25] Art. 64 (1), Revised Penal Code.

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