PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO SARABIA, ACCUSED-APPELLANT.

G.R. No. 106102. October 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Appeal from the Decision dated May 4, 1992, handed down by Branch 45 of the Regional Trial Court of Bacolod City in Criminal Case No. 10201, finding appellant Armando Sarabia guilty beyond reasonable doubt of the crime of murder and sentencing him thus:

> "WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable (sic) doubt of the charge of MURDER, qualified by treachery, and hereby sentences him to suffer the penalty of reclusion perpetua with the accessory penalty provided for by law; to pay Fifty Thousand Pesos (P50,000.00) as death indemnity; and to pay the costs.
>
> As to the civil aspect, this Court awards P15,000.00 for moral damages, P29,700 for actual damages; P180,000.00 for loss of income of Edward Liza; P10,000.00 for attorney's fees and P300.00 per court appearance.

Filed on May 7, 1991 by Provincial Prosecutor Reynaldo M. Nolido, the Information indicting appellant Armando Sarabia, alleges:

> "That on or about the 16th day of March, 1991, in the Municipality of Murcia, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with evident premeditation and treachery and with intent to kill, did then and there wilfully (sic), unlawfully and feloniously attack, assault and hack one EDWARD LIZA, thereby inflicting multiple injuries upon his body which caused his death.
>
> Contrary to law."[1]

With the appellant entering a negative plea upon arraignment, with the assistance of counsel, on August 6, 1991, trial ensued, with the prosecution presenting Joelouie Dolorosa, Pfc. Jose Laboyo, Dr. Emmanuel Bando, Raul Villanueva and the victim's father, Rolando Liza, as its witnesses.

For the defense, Rogelio Onate and appellant Armando Sarabia took the witness stand.

As summarized in the Appellee's Brief, the facts sued upon by the People are as follows:

> "The prosecution's case, as well as the trial court's conviction of appellant, is primarily anchored on the testimony of eyewitness Joelouie Dolorosa, a cable tender of the Victorias Milling Company's Murcia Transloading Station and a resident of New Barrio Central, Victorias, Negros Occidental.
>
> Dolorosa testified that on March 16, 1991, he was working at the Murcia Transloading Station at Hda. Josefa, Brgy. Blumentritt, Murcia, Negros Occidental (Tsn, Aug. 22, 1991, p. 7). With him were Raul Villanueva and Edward Liza, who had similar tours of duty for that day, i.e., from 7:00 p.m. to 7:00 a.m. (id., p. 9). Liza was

the office clerk in that transloading station.

Around 11:00 o'clock in the evening, while Dolorosa and Liza were inside the office of the transloading station, appellant suddenly barged into the room with a bolo ("ginunting") in his hand. Without warning, appellant hacked the unsuspecting Liza twice, once on the head and once on the neck (id., pp. 12-14). Fearing for his life, Dolorosa instinctively rushed outside the office and hid himself at the nearest refuge he could think of --- an old, enclosed cane car used for stockpiling sugar (ibid.). This car was the favorite resting place of employees in that transloading station. When Dolorosa went inside the car, he saw Raul Villanueva there together with about four (4) other employees (Tsn, Oct. 3, 1991, pp. 38-40). Immediately, he narrated to Villanueva what happened. As they were about to leave the car, they saw the appellant, still clutching a bolo and shouting "Who are the others?" (Tsn, Aug. 22, 1991, pp. 15-16). Thus, they decided to stay in the car for some time. While they were inside, they saw appellant being accosted by a certain Junior, the station's overseer (id., p. 18). The overseer brought appellant to the Municipal Hall and it was only then that Dolorosa and company got out of the car. They went back to the station office.

At the time the entire incident happened, the transloading station was well-lighted. Around five (5) or six (6) powerful search lights surrounded the station and were in full operation (id., pp. 16-17).

Inside the station office, Dolorosa and Villanueva saw Liza dead and covered with blood. Liza's neck was almost severed. They saw a hacked wound on the left portion of Liza's neck measuring about three (3) to four (4) inches in length (id., p. 36). Without touching the corpse, Dolorosa and Villanueva contacted the Victorias Milling Company by radio and reported the incident. Then, policemen arrived at the scene, followed by an investigator and photographer from the Victorias Milling Company. Rolando Liza, father of the deceased - victim, also arrived at the station (id., pp. 19-22). Photographs were taken of Liza's corpse and the interior of the station office. All these were identified by Dolorosa in open court.

Thereafter, Liza's corpse was loaded on a truck and taken to the Alisbo Funeral parlor (id., p. 33).

The Post-mortem Certificate issued by Dr. Emmanuel Bando, Murcia's Rural Health Physician who autopsied Edward Liza's cadaver on March 17, 1991, enumerated the following injuries:

Wound No. 1, hacked wound, 8 inches long, left forehead, with chip fracture of the skull; wound No. 2, hacked wound 3 inches long, left face, 1/2 inch deep area of the cheekbone; wound No. 3, hacked wound, 5 inches long, left temporal head, with chip fracture of the skull; wound No. 4, hacked wound, neck, left side, 9 inches long, cutting blood vessels and muscles, trachea esophagus, chip fracture of the cervical vertebrate; wound No. 5, hacked wound, left postero-part of the neck 4 inches long cutting blood vessels, muscles, chip fracture of the cervical bone; wound No. 6, stabbed wound, 3 inches wide, penetrating the left chest 1 1/2 inches from the left nipple, at the level of the 2nd and 3rd ribs, anterolateral at the side of the left nipple, injuring the lobe of the left lung; wound No. 7, contusion, right forearm; wound No. 8, hacked wound, 5 inches long, 1 1/2 inches deep, back right side, cutting part of the scapular bone (Tsn, Oct. 3, 1991, pp. 11-13; emphasis supplied).

Dr. Bando indicated the cause of Liza's death to be cardio-respiratory arrest due to multiple hack wounds and stab wound (id., p. 13). He testified further that the deceased-victim's wounds were caused mainly by a sharp and pointed instrument, probably a bolo or "ginunting" (id., pp. 13-19). In his expert opinion, the position of the assailant, at the time of the attack, could have been at the left side of or directly behind the victim (id., pp. 28-31)."[2]

Assisted by the Public Attorney's Office, appellant placed reliance on self-defense and theorized:

"xxx while he was in the house of their overseer together with his co-worker Rogelio Onate, Edward Liza, his kumpadre, arrived and invited him to have a drink at MUCH office at around 10 to 11:00 o'clock in the evening as the latter's officemate would be attending a dance. He accepted the invitation. When he arrived at and entered the MUCH office, Liza was alone drinking. Looking surprised of his arrival, Liza asked "what will

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> you do here (sic)?" Before, he could answer, Liza got hold of the 'ginunting" and poised to hack the victim. To protect himself, he boxed Liza at his stomach causing the latter to fall to the ground and to release the bolo. He picked up the bolo and hacked Liza hitting him on the head and on the neck.
>
> Had he not hit Liza, he would have been dead by now.
>
> Joelouie Dolorosa was not present at the MUCH office at that time. (TSN., November 28, 1991, pp. 3-36).
>
> Rogelio Onate testified that he is a laborer at MUCH Transloading Station. He had known accused Sarabia for about three to four years being likewise a resident of Hacienda Josefa. He had also known victim Edward Liza for almost three years. Accused and the victim were kumpadres.
>
> At around 9 p. m. of March 16, 1991, he was at the store of the overseer drinking Pilsen as it was pay day and a Saturday. Armando Sarabia was also there, standing by the side of the store and asking from the overseer the computation of his indebtedness. Victim Edward Liza was in front of MUCH office, six to eight meters away. Edward Liza arrived and told Sarabia to go with him to the office. Liza went back to the office. After Sarabia had the computation of his indebtedness, or after about 15 minutes, he went to the MUCH office at the invitation of Liza. As it was already late in the evening, and his house was still one (1) kilometer, more or less, away, he already went home. At about 8 o'clock the following morning, he learned about what happened to Armando Sarabia" (TSN., January 21, 1992, pp. 3-12).[3]

On May 4, 1992, the trial Court came out with a Decision finding appellant guilty of the charge, and sentencing him thus:

> "WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonbale (sic) doubt of the charge of MURDER, qualified by treachery, and hereby sentences him to suffer the penalty of reclusion perpetua with the accessory penalty provided for by law; to pay Fifty Thousand Pesos (P50,000.00) as death indemnity; and to pay the costs.
>
> As to the civil aspect, this Court awards P15,000.00 for moral damages, P29,700 for actual damages; P180,000.00 for loss of income of Edward Liza; P10,000.00 for attorney's fees and P300.00 per court appearance.[4]

The trial Court gave credence to the testimony of eyewitness Joelouie Dolorosa who narrated that there was a sudden assault against Liza, identifying the herein appellant as the perpetrator of the crime. Dolorosa, together with Mr. Raul Villanueva, testified on the exact location of the crime. Dr. Emmanuel Bando identified the death certificate and explained the post-mortem examination he conducted on the victim's body. As regards the civil aspect of the case, the victim's father was called to the witness stand. The trial Court also gave credence to the testimony of Pfc. Jose Laboyo who narrated:

> "xxx he was designated to investigate the incident of March 16, 1991. He conducted a fact finding investigation at the police headquarters on March 17, 1991, in Murcia, Negros Occidental, and prepared affidavits of witnesses. At around 9:00 o'clock in the morning, March 17, 1991 the suspect voluntarily surrendered to the police officers headed by Pfc. Rolando Salamisan after the commission of the offense at MUCH Transloading Station, Brgy. Blumentritt, Murcia, Negros Occidental, on March 16, 1991. Suspect Armando Sarabia admitted having killed Edward Liza by hacking the victim inside the office of the MUCH Transloading Station on the evening of March 16, 1991 because of the long time grudge. Pfc. Laboyo prepared an investigation report, the basis of the Fiscal in filing this information. Pfc. Laboyo likewise identified the accused Armando Sarabia, the investigation report dated March 17, 1991, Exh. "G" and his signature as Exh. "G-1". In the said report it is reflected that the suspect Armando Sarabia was turned over by a fellow peace officer together with the bolo stained with blood, measuring about 23 inches from tip to the handle, the lethal weapon, Exh. "H", used in the killing of Edward Liza. Likewise identified was the police blotter report and also the two pictures left to him by the father of the deceased when they reported the matter to the police

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> headquarters of Murcia, Negros Occidental, which pictures are marked as Exhs. “I” and “J” for the prosecution. Pat. Jose Laboyo, when shown the blade of the combat bolo (ginunting), Exh. “H”, said that the bloodstain looked like rust for the blood has dried and has been there for quite a time. He also identified the excerpt of the piece of police blotter marked as Exh. “K” signed by Lt. Celso Gonzales and also that of Pat. Ranilo Mercurio, the desk officer.”[5]

Hence, this appeal.

In the Appellant’s Brief, the appellant assigned the following errors:

“I

THE TRIAL COURT ERRED IN GIVING OUTMOST CREDIT TO THE TESTIMONY AND REPORT OF PFC. JOSE LABOYO, JR., WHICH PIECE OF EVIDENCE IS PURELY HEARSAY AND VIOLATIVE OF APPELLANT’S RIGHT TO PRESUMPTION OF INNOCENCE.

II

THE TRIAL COURT ERRED IN NOT CONSIDERING THE PROVEN VITAL FACT THAT IT WAS THE VICTIM WHO PROVOKED THE FIGHT BY FIRST HACKING AND INSULTING APPELLANT AND IN NOT APAPRECIATING (sic) SELF-DEFENSE SIMPLY BECAUSE APPELLANT WAS NOT INJURED.”[6]

The appeal is devoid of merit.

To begin with, having invoked the justifying circumstance of self-defense, the appellant is deemed to have admitted having killed the victim and the burden of proof shifted to him to establish and prove the elements of self-defense, to wit, “(a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the person defending himself.” (People v. Cahindo, 266 SCRA 554). “Self-defense, xxx, should be established as convincingly as possible and the onus falls on the appellant who relies on it to prove its unequivocal signification” (People v. Magallano, 266 SCRA 305, 315).

“The plea of self-defense cannot justifiably be entertained where it is not only uncorroborated by any separate competent evidence but is in itself extremely doubtful. The question of whether the appellant acted in self-defense is essentially a question of fact.” (Jacobo v. Court of Appeals, 270 SCRA 270) In the present case, one Rogelio Onate merely testified that they (Onate and the appellant) were together on that fateful day of killing. Nothing was mentioned in Onate’s testimony that he witnessed the killing and the appellant just defended himself.

It has also been held by this Court that, “unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense.” (People v. Ignacio, 270 SCRA 445, 451) “For unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude (People v. Ignacio, supra, citing the doctrine laid down in People v. Pasco, Jr., 137 SCRA 137[1986]; as reiterated in People v. Pletado, 210 SCRA 634[1991]; People v. Bausing, 199 SCRA 355[1991]; People v. Rey, 172 SCRA 149[1989]) and the appellant must present proof of positively strong act of real aggression” (Ibid, see Pacificar v. Court of Appeals, 125 SCRA 716[1983]; People v. Aquiatan, 123 SCRA 501[1983]; People v. Aquino, 124 SCRA 835[1983]. “Absent such unlawful aggression, there can be no self-defense” (People v. Sol, 272 SCRA 392). In this case, appellant Sarabia was unable to substantiate his claim. A careful scrutiny of the facts showing that Sarabia admitted that Liza was very much surprised when he saw the former. Appellant also claimed that Liza had even asked Sarabia why he was there. If Liza, indeed, invited Sarabia, Liza should not have been surprised and the latter would not have asked appellant why he went to the

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MUCH office.

Verily, “self-defense is a time-worn excuse resorted to by assailants in appealed criminal cases” (People v. Maalat, 275 SCRA 206).

The appellant insisted that the trial court of origin erred in appreciating the qualifying circumstances of treachery and evident premeditation against the appellant. Treachery, whenever present and alleged in the information, qualifies the killing of the victim and raises it to the category of murder. “But to constitute treachery, the means, methods or forms of attack must be consciously adopted by the offender” (People v. Tumaob, 83 Phil 742). In the present case, the appellant used a “ginunting” and ensured the death of the victim. Liza had been caught unaware leaving him defenseless from Sarabia’s aggression.

If evident premeditation is also proven, it shall be considered as a generic aggravating circumstance. “The essential elements for evident premeditation to be appreciated are: (1) the time when the appellant decided to commit the crime; (2) an overt act showing that the appellant clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the appellant to reflect upon the consequences of the act” (People v. Fortich, 281 SCRA 600).

In this case, there is direct evidence showing that the appellant meditated and reflected on his intention to kill the victim. The medical findings proved that Sarabia deliberately employed reliable and unfailing means to ensure the killing without giving the victim an opportunity to defend himself.

The appellant begged of this Court to give a second look to the lower court’s finding of probative value in the testimony of Pfc. Jose Laboyo which he claimed was nothing but hearsay evidence. This Court is aware that “hearsay evidence carries no probative value” (Waterous Drug Corporation v. National Labor Relations Commission, 280 SCRA 735). “When evidence is based on what was supposedly told the witness, the same is without any evidentiary weight being patently hearsay” (People v. Villaran, 269 SCRA 630).

Generally, “a judicial admission is conclusive upon the party making it and does not require proof except (1) when it is made through palpable mistake and (2) when it is shown that no admission was in fact made. “In spite of the presence of judicial admission in a party’s pleading, the trial court is still given leeway to consider other evidence presented” (Atillo III v. Court of Appeals, 266 SCRA 596). Undaunted, the appellant inflicted eight (8) wounds on the victim’s body. Six (6) of them were hack wounds, one (1) stab wound and one (1) contusion in the right forearm. “The nature, location and number of wounds inflicted on the victim thus belie and negate the claim of self-defense” (People v. Unarce, 270 SCRA 756). “Presence of a large number of wounds on the part of the victim negates self-defense” (People v. Alvarez, 267 SCRA 266).

In a long line of cases, it was held that “the findings of the trial court on the credibility of the witnesses are entitled to highest degree of respect” (Juliano v. Sandiganbayan, 269 SCRA 52, see also People v. Tañedo, 266 SCRA 34; People v. Magallano, 266 SCRA 305; People v. Ramirez, 266 SCRA 335; People v. Sarabia, 266 SCRA 471; People v. Navales, 266 SCRA 569; Lustan v. Court of Appeals, 266 SCRA 663; People v. Dinglasan, 267 SCRA 26; Villanueva v. Court of Appeals, 267 SCRA 89; People v. Valles, 267 SCRA 103; People v. Alvarez, 267 SCRA 267; People v. Borja, 267 SCRA 370; People v. Ombrog, 268 SCRA 93; People v. Letigio, 268 SCRA 227; People v. Qiamco, 268 SCRA 516; People v. Burton, 268 SCRA 531; Sumalpong v. Court of Appeals, 268 SCRA 764; People v. Corea, 269 SCRA 76; People v. Hebrieto, 269 SCRA 472; People v. Quinao, 269 SCRA 495).

All things studiedly considered in proper perspective, the Court finds the guilt of the appellant proven beyond reasonable doubt. His allegation that he acted in self-defense has not been substantiated. The prosecution was also

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able to prove the qualifying circumstance of treachery and the evident premeditation as generic aggravating circumstance, beyond reasonable doubt.

WHEREFORE, the appealed Decision of Branch 45 of the Regional Trial Court of Bacolod City in Criminal Case No. 10201 finding appellant guilty of murder is hereby AFFIRMED with modification that the awards for moral damages and loss of income are hereby deleted. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, p. 8.

[2] Appellee's Brief, pp. 3-6.

[3] Appellant's Brief, pp. 5-7; Rollo, pp. 60-62.

[4] Amended Decision, p. 9, Rollo, p. 34.

[5] Decision, p. 3, Rollo, p. 18.

[6] Accused-Appellant Brief, p. 1, Rollo, p. 56.

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