

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR BABOR AND SONY BABOR, ACCUSED-APPELLANTS.*G.R. No. 106875. September 24, 1996*

Ponente: REGALADO, J.

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A man's anguished cries for help at around 3:00 o'clock in the afternoon of October 22, 1989 awakened prosecution witness Felicidad Duhaylungsod who was asleep at her home. She instinctively peered out of the window and from there, at an approximate distance of twenty meters, she vividly witnessed a ghastly incident. Accused-appellants Nestor Babor and his wife, Sony Babor, both armed with bolos, were chasing a fleeing and bloodied Evangelino Camias. Then, to Duhaylungsod's horror, Sony Babor lunged with her weapon at the hapless Camias and hacked him three times on different parts of the body. Nestor Babor then delivered the fatal blow by stabbing Camias on the chest with his weapon. The three were all neighbors of Felicidad Duhaylungsod in Rizal, Palawan and were known to her.[1]

Appellants were taken into the custody of the law on the same day. The information that initiated Criminal Case No. 8348 on November 13, 1989 in the Regional Trial Court, Branch 74, of Palawan charged appellants with the crime of murder as confederates thereof, and with further allegations of the attendant aggravating circumstances of evident premeditation and treachery.[2] At their arraignment on March 13, 1990, both appellants, with assistance of counsel de oficio, registered negative pleas.[3] The prosecution anchored its case mainly upon Felicidad Duhaylungsod's testimony, whereas the defense had as witnesses the accused spouses themselves and their young daughter, Jonalyn Babor.

Appellants contended at the trial that the fatal event was the result of the victim's attempt to ravish Sony Babor at their residence in Barangay Bunog, Rizal. Sony and Jonalyn testified that on the day and time in question, the victim arrived at their house and asked for "tuba," a local type of coconut wine. Sony, who was then attending to her newborn baby, replied that their supply thereof had all been consumed. She then availed of the occasion to press Camias to settle his unpaid debt to them. Without warning, Camias crept toward Sony and began to assault her sexually. Appellant managed to extricate herself from the clutches of Camias after biting him on the hand and fleeing from him.[4]

Sony Babor's actuations enraged the victim who then unsheathed his bolo and ran after appellant. A hacking blow by Camias hit and wounded Sony on the upper right hand just as the latter was about to make good her escape. At this point, Nestor Babor arrived and saw his wife bleeding from her wound and shouting for help. Before he could attend to her, he was attacked by Camias, causing him to likewise make a dash for safety with the rampaging Camias closely behind him. Thereafter, and this would be appellants' version of the second stage of the fight, Nestor was able to get hold of a bolo from a nearby cart and he then stood his ground. After parrying a blow from the victim, he retaliated with a stabbing blow of his own which hit the victim on the chest. The latter then fell to the ground from that blow which apparently was a fatal one.[5]

Nestor Babor asserted to the end that he had delivered just one stabbing thrust on the victim. He had simply acted in defense of himself and of his family and, therefore, the slaying of Camias was justified under the circumstances. His wife and co-accused, on the other hand, with corroboration from Nestor and Jonalyn Babor, insisted that she never laid a hand on the victim. She could not herself have attacked the deceased considering that she was already wounded and weak from loss of blood. All three of them, Nestor, Sony and Jonalyn, likewise vehemently protested that the prosecution witness, Felicidad Duhaylungsod, was nowhere at the scene of the crime when it was committed.

Nevertheless, the trial court declared itself fully satisfied that the prosecution had duly established, beyond the shadow of a doubt, the guilt of appellants through the firm testimony of Duhaylungsod and the documentary evidence adduced, particularly the autopsy report on the cause of death of Camias which showed a total of ten stab and hacking wounds on different parts of his body.[6] Appellants were accordingly meted the penalty of reclusion perpetua and ordered to pay the heirs of the victim the amount of P80,000.00 by way-of actual, exemplary and moral damages, as well as the costs.[7]

1. In a reprise of their position at the trial, appellants maintain in this appeal that the killing of the victim, Evangelino Camias, was justified on account of their having respectively acted in self-defense and in defense of a relative. Unfortunately for them, the evidence on record contrarily and indubitably point to their guilt in the offense charged. It is elementary that self-defense requires unlawful aggression on the part of the victim, reasonable necessity of the means employed by the accused to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself. The first two requisites, unlawful aggression and reasonable necessity of the means employed to repel it, are likewise required in the justifying circumstance of defense of a relative, with the third element being that if the provocation was given by the person attacked, the one making a defense had no part therein.[8]

An accused relying on said justifying circumstances must prove the same by means of sufficient, satisfactory, and convincing evidence.[9] As the burden of proof rests upon him to establish the same, he must necessarily rely on the strength of his own evidence and not upon the weakness of that of the prosecution.[10] And, where the prosecution evidence, as in the present appeal, renders extremely doubtful the veracity of the defense version, said defenses cannot be granted any evidentiary weight.

In the case at bar, the forthright declarations of prosecution witness Felicidad Duhaylungsod before the trial court coupled with proof of the number of wounds that the victim sustained, sets at naught the feeble reliance of appellants on the justifying circumstances of self-defense and defense of relative. True, there may initially have been unlawful aggression by the victim when he attempted to rape Sony Babor and, failing therein, he vented his ire on a surprised Nestor Babor by attacking the latter. However, the sequence of proven events which transpired thereafter effectively negates the presence or applicability of this fundamental element and of the other element of reasonable means to prevent or repel that aggression at the second stage of the fray.

It clearly appears from the evidence that after the spouses had turned the tide against the deceased, with the latter already wounded and defensively scrambling away from the house of the Babors, both appellants still pursued Camias. As soon as Sony Babor caught up with him near the residence of Felicidad Duhaylungsod, she hacked the victim thrice, after which Nestor Babor stabbed him on the chest. This was exactly the scene which Felicidad Duhaylungsod witnessed. It is therefore apparent that the deceased was then no longer the aggressor but that he was actually attempting to escape from further harm at the hands of the spouses.

It was thus indisputable that the unlawful aggression which the deceased had commenced in appellant's house had long ceased. Consequently, and on the same factual basis, the element of reasonable necessity of the means

employed to repel the aggression could no longer be appreciated. The rule is that when an unlawful aggression no longer exists, the one making the defense has no more right to kill or even wound the former aggressor.[11] The theory of self-defense is based on the necessity on the part of the person attacked to prevent or repel the unlawful aggression, and when the danger or risk to him has disappeared, there should be a corresponding cessation of hostilities on the part of the person defending himself or of a relative making that defense.[12]

Moreover, the number of the wounds sustained by the deceased negates the assertion of said justifying circumstances by appellants.[13] The autopsy report reveals that Evangelino Camias had sustained all of ten wounds and one even resulted incompletely severing his right arm.[14] The numerous wounds also bear out the testimony of Duhaylungsod, to whom no ill motive has been attributed by the defense, that Sony Babor further hacked the wounded victim thrice and that, thereafter, Nestor Babor stabbed him on the chest. Sony Babor's pretense that she had no hand at all in the slaying of the victim is soundly refuted by the positive and credible identification and attestation made by Duhaylungsod regarding her direct participation.[15]

Conspiracy and treachery could further be deduced from the evidence on record. Duhaylungsod recalled that as the victim was veering away from the spouses who were closely advancing on him, he fell forward to a kneeling position, presumably because of his weakened condition. At this point, Sony Babor delivered three hacking blows on the deceased, inflicting wounds on the latter, and Nestor Babor followed suit shortly after Sony shouted in Visayan by way of exhortation, "Finish him off!"

The acts of both appellants, collectively and individually, clearly demonstrate and point to a conspiracy because of a common purpose, concert of action, and community of interest.[16] The couple evidently and concurrently had in mind the termination of the victim's life. Further, from all indications, the mode of attack adopted by them ensured the accomplishment of their criminal objective without risk to themselves as the deceased was by then defenseless and had even turned away with his back towards the spouses. Treachery should ineluctably characterize the mode of such killing, thus converting the crime to murder.[17]

From the undeniable facts of this case, it needs no citation of jurisprudence to show that the aggravating circumstance of evident premeditation can in no wise be considered here, and that no other aggravating circumstance has been alleged or proved against appellants. However, the court below, failed to appreciate, and the parties themselves did not consider, the presence of extenuating circumstances available to appellants and reflected by the evidence on record.

It is significant that the prosecution itself does not dispute that what started the whole fracas which eventuated in the murder of the victim was the sexual advances he made against appellant Sony Babor, followed by his slashing her hand with his bolo when he was frustrated in his lustful design, and thereafter his turning around against and attacking appellant Nestor Babor who arrived upon the scene. There is no showing or intimation that either appellant had any motive or reason whatsoever to cause or provoke a fight with him or that they ever did so.

The Court, therefore, appreciates in favor of appellant Sony Babor the mitigating circumstance of sufficient provocation, personal to her and unlawful in nature, which immediately preceded and resulted in the ensuing exchanges of blows with bladed weapons and culminated in the victim's death.

Appellant Nestor Babor should, in turn, be credited with the mitigating circumstance of having acted in the immediate vindication of a grave offense committed by the deceased against his wife, who is now likewise his co-appellant, consisting of a libidinous attempt against her virtue and a cowardly attack against her person. Parenthetically, while the law speaks of an "immediate" vindication of a grave offense, the same should be understood to mean proximate."[18]

There being no aggravating circumstance to offset these mitigating circumstances to which appellants are respectively entitled, the lower court erred in imposing upon them the medium period of the then penalty for murder, instead of the minimum period thereof with the benefit of an indeterminate sentence.

2. On the foregoing disquisition, this appellate review would have ended with a simple modification of the trial court's judgment of conviction, except that the Court feels it just and fair to address appellants' grievance over the delay that supervened during this appellate proceeding. Indeed, it is lamentable that this appeal is being decided only now although it was brought to this Court under a notice of appeal dated August 13, 1992.

This regrettable impasse was initially caused by appellants' own counsel who, despite the notice to file appellants' brief as early as March 4, 1993, actually complied therewith only on July 27, 1994, after repeated resolutions of the Court and an ultimate sanction by the imposition upon him of a fine.

Thereafter, as candidly revealed in the Court's resolution of January 24, 1996,[19] the situation was aggravated by the inexplicable failure of the Government's own counsel to submit the brief for appellee, despite fourteen extensions patiently granted by the Court on his stereotyped representation of pressure of work as a justification. Thus, although called for upon receipt of appellant's brief, it was only on February 8, 1996 that the brief for appellee was filed by the Office of the Solicitor General. With the Court first attending to the corresponding sanctions, and giving allowance for the filing of appellant's reply brief, it was only in July, 1996 that this case was ready for resolution.

If the Court has digressed to narrate these facts, it is not to essay an apologia or a justification but to make known such contretemps in the hope that the pressure of public opinion would bear upon and deter private and government advocates from practices conducive to delay in judicial administration and adjudication. As the Court stated in its aforesaid resolution:

"The Court has often and unfairly been the object of criticisms for supposed inordinate delay in the administration of justice, especially regarding its role in the criminal justice system. What happened in this case illustrates one of the reasons for such delay, which fact has not been publicly revealed but is known to most members of the bar, with the Court continuously exploring remedial measures therefor. x x x."

It must also be borne in mind by both defense and prosecution counsel that, regardless of the ultimate disposition of an appeal, the unjustifiable delay thereof will have prejudiced the appellant either way. By way of rebuke and reminder, the Court stressed in its aforesaid resolution that counsel should not be "crassly indifferent to the situation of an accused-appellant who, if acquitted, cannot recover in point of time even a moment of his unwarranted detention; and if convicted, would generally be entitled to only 4/5 of his preventive imprisonment and is denied good conduct allowances since he is only a detention prisoner before such final conviction."

To be sure, this case and others which have been beset by the same vicissitudes may constitute isolated situations, with the accused therein being unfortunate victims of circumstances. Also, to their credit, the Solicitor General and heads of prosecution services, together with responsible members of the Philippine Bar in private practice, have pledged to adopt procedures aimed at prompt and efficient conduct of judicial business. It is on the foregoing sobering thoughts and with this present hopeful note that the case at bar may have propitiously served a meaningful purpose.

Coming back to the punitive aspect of the impugned judgment, as earlier explained, the penalty for murder of which we find appellants guilty should be imposed in the minimum period thereof, that is, reclusion temporal in its maximum period. Correspondingly, they are entitled to an indeterminate sentence.

WHEREFORE, the judgment of the court a quo is hereby MODIFIED by imposing upon each of the appellants

Nestor Babor and Sony Babor an indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum. In all other respects, the judgment appealed from is AFFIRMED.

SO ORDERED.

Romero, Puno, and Torres, Jr., JJ., concur.

Mendoza, J., on leave.

[*] Accused-appellant Sony Babor's first name is also spelled "Sonny" in some parts of the record.

[1] TSN, April 19, 1990, 5-11 .

[2] Original Record, 1.

[3] Ibid., 19-21.

[4] TSN, June 28, 1991, 5-10; February 14, 1991, 5-7.

[5] Ibid, June 28, 1991, 10-14; May 21, 1992, 4-7.

[6] Original Record, 74; Exhibit E.

[7] Rollo, 30-31; penned by Judge Eustaquio Z. Gacott, Jr.

[8] Article 11, paragraphs 1 and 2, Revised Penal Code.

[9] People vs. Quiño, G.R. No. 105580, May 17, 1994, 232 SCRA 400.

[10] People vs. Caras, G.R. No. 112731, July 18, 1994, 234 SCRA 199.

[11] People vs. Capoquian, G.R. No. 109145, September 22, 1994, 236 SCRA 655.

[12] Reyes, L.B., The Revised Penal Code, Book 1, 1993, ed., 172.

[13] People vs. Manalo, et al., G.R. No. 107329, January 24, 1994, 229 SCRA 479; People vs. Layam, et al., G.R. No. 102308, July 25, 1994, 234 SCRA 424.

[14] Original Record, 74; Exhibit E; TSN, August 24, 1990, 9.

[15] TSN, April 19, 1990, 8-9.

[16] People vs. Carizo, et al., G.R. No. 96510, July 6, 1994, 233 SCRA 687; People vs. Merabueno, et al., G.R. No. 87179, December 14, 1994, 239 SCRA 197.

[17] People vs. Silong, et al., G.R. No. 110830, May 23, 1994, 232 SCRA 487; People vs. Regoroza, G.R. No. 104500, May 6, 1994, 232 SCRA 244.

[18] The English translation appears to be erroneous since the Spanish text, which is controlling, states: "La de haber ejecutado el hecho en vindicacion proxima de una ofensa grave." Thus, for instance, in U. S vs. Diokno, et al., 63 Phil. 601 (1936), People vs. Parana, 64 Phil 331 (1937), and People vs. Dagatan, 106 Phil. 88 (1959), there wa a substantial interval of time between the commission of the crime by the accused and the prior commission by the victim of the offense sought to be vindicated.

[19] Rollo, 180-186.

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