

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD TALINGTING @ ANOL, ACCUSED-APPELLANT.

G.R. No. 107747. October 20, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

The night of December 21, 1990 held the promise of much festivity and fun. Excitement was palpable in the air as young and old alike, dressed in their best, trudged the well-worn path to where the dance was held. The much-awaited event, one of the few occasions for social interaction in the rural areas, took a tragic turn, however, at dawn, as a man's life was snuffed out in the prime of his life.

This is an appeal from the decision dated October 29, 1991 of the Regional Trial Court (RTC) of Tagbilaran City, Bohol, Branch 1, convicting Arnold Talingting of the crime of murder and sentencing him to reclusion perpetua.

The relevant facts gathered from the records follow:

The accused, Arnold Talingting, together with his friends, Balbino Balani, Jr., Marciano Balani and Larry Bayonas, left barrio San Vicente to attend the dance held in Barangay San Jose on the evening of December 21, 1990.[1] At the dance hall, the group approached 15-year old Rosalia Linggo whom the accused had known for a few months.[2] The party was still in full swing at around 1:30 a.m. when Balbino Balani Jr. who was also acquainted with Rosalia asked her to dance with him to which the girl acquiesced. After the dance, accused accosted Rosalia and "put her to shame." The innocent girl was allegedly called "very cheap" by the accused. Obviously hurt and embarrassed by the unprovoked and slanderous remark against her, Rosalia cried a river of tears.[3]

Upon seeing the girl crying profusely, victim Dario Cuyno asked her the reason for her distress, while patting her on the shoulders. Rosalia confessed that it was due to the accused calling her "very cheap."

At around this time, Armando Barmuel who was on his way to answer the call of nature saw the couple, hesitated briefly out of curiosity but proceeded to walk away. He was eventually followed by the victim who was going to respond to the same need.[4]

As the victim was relieving himself, Talingting suddenly appeared from nowhere and without provocation swiftly stabbed him with a hunting knife, hitting him on the left chest, a few inches below the nipple. The victim was unable to defend himself as the attack was sudden, unexpected and done with stealth. He cried out that he had been stabbed as he slumped to the ground.[5]

Barmuel, who was about 2 meters away from the victim, saw the accused "pull out" the hunting knife from the left chest of Cuyno whom he overheard crying out that he had been stabbed. When Barmuel saw the accused flee as the victim was falling, he ran immediately to the emcee of the program at the dancing area and reported the stabbing. He then rushed back to the dying victim, and loaded him on a motorcycle which sped off towards the wharf.

At the wharf, Armando Barmuel met Pfc. Armando Palatan and Pfc. Romulo Palatan, both from the Philippine National Police (PNP) of Pres. Garcia. They loaded the body of the victim to a pumpboat which brought them to the hospital in Talibon, Bohol. Pfc. Armando Palatan, meanwhile, noticed that Dario Cuyno was already losing consciousness so he decided to take down the latter's statement. He asked the victim what transpired, to which the victim answered weakly that he was stabbed by accused, Talingting. Sensing that the victim was expiring, he grabbed the latter's right hand and dipped his thumb in his own blood. The bloodied thumb was then pressed on the antemortem statement of the victim in the presence of Armando Barmuel, Pfc. Romulo Palatan, the pumpboat operator and some boat helpers. Dario Cuyno never reached the hospital as he expired soon after.

When the body of Dario Cuyno was examined by Dra. Monica Cagulada in the hospital, she found that the victim died of hypoboluliric shock due to the stab wound in his left chest, which was approximately one inch in diameter and about two inches below the nipple line.

In the meantime, Mamerto Serdenia, a Barangay Tanod of Barrio San Jose where the crime was committed, was roused from his sleep with the report that Dario Cuyno was stabbed to death by appellant Talingting. He left for the dancing area where the accused surrendered voluntarily to him, after which he turned over the latter to Pfc. Roberto Gaviola at the Municipal Hall for investigation. During the investigation, accused admitted to Pfc. Afredo Palatan that he stabbed Dario Cuyno with a hunting knife which was subsequently found near the dance hall where the accused said it would be and turned over to the investigators.

Accused denies the murder charge and invokes self-defense. His evidence is anchored on his own testimony and the testimonies of Balbino Balane Jr., and Marciano Balani.

Balbino Balane Jr., testified that he together with Marciano Balani, Larry Bayonas and the accused went to the dance on the fateful night of December 21, 1990. He recounted that it was he whom prosecution witness, Rosalia Linggo, referred to as the man who danced with her which provoked the accused to call said witness as "very cheap." He, however, denied the accused ever calling Rosalia "very cheap" to her face.[6] He further testified that the victim, his third-degree cousin, is a known troublemaker in the community[7] and that at about 1:30 a.m. of December 22, 1990, the victim, Dario Cuyno together with four men asked him for the whereabouts of the accused and he answered that he did not know.[8]

The other defense witness, Marciano Balani, corroborate the foregoing statement of Balbino Balane Jr., on two major points, namely that the victim was a well-known trouble-maker in the community and that Dario Cuyno, together with four men looked for the accused before the incident.[9] He narrated further that upon being asked by the victim where the accused was, he became suspicious, so he followed the victim and the four men.[10] He saw the victim collar the accused while the four men surrounded them. One of them saying, "This is your chance, pards" while punching his own fist to emphasize his point.[11] He then witnessed the accused trying unsuccessfully to free himself from the victim's grip. After the accused blindly made a single backward thrust with his knife at the victim, he saw accused flee.[12]

The accused testified that he was answering the call of nature when someone collared him from behind while four other persons surrounded him. When, in response to his inquiry, he learned that it was Dario Cuyno, he became afraid because of the latter's unsavory reputation. His fear was heightened when he heard one of the four men say, "This is our chance, pards." [13] Since he could not free himself, he stabbed the victim blindly with a single backward thrust of his knife in order to forestall any possible harm on his person by the victim and his four companions.[14] Thereafter, he ran away and hid in the dark with the intension of surrendering as soon as daylight broke but he was apprehended on the way by Barangay Tanod Mamerto Serdenia, to whom he surrendered voluntarily.[15]

After trial, Judge Antonio H. Bautista rendered a decision dated October 29, 1991, finding accused guilty of murder. The dispositive portion states thus:

“PREMISES CONSIDERED, the court finds the accused Arnold Talingting guilty of crime of Murder punished Under Article 243 of the Revised Penal Code and hereby imposes upon him to suffer an imprisonment of Reclusion Perpetua, with the accessories of the law and to pay the cost.

The accused Arnold Talingting is further ordered to indemnify the heirs of the deceased Dario Cuyno the amount of FIFTY THOUSAND PESOS (P50,000) without subsidiary imprisonment in case of insolvency.

The Batangas knife which was used in the commission of the crime is hereby ordered forfeited in favor of the government.[16]

SO ORDERED.”

Aggrieved, accused comes to this court seeking the reversal of his conviction on grounds of credibility of witnesses and self-defense.

We find the appeal devoid of merit.

Accused tries to cast doubt on the veracity of the testimonies of the witnesses for the prosecution. It must be borne in mind, however, that “resort to appellate review to reverse the findings thereon of the trial court would generally elicit a rebuff from the superior court where no perceivable gross error bordering on misapprehension of the facts could be readily gleaned from such factual conclusions.”[17] It is settled beyond question that the factual findings of the lower court are accorded high respect and are generally not disturbed by the appellate court unless found to be clearly arbitrary or unfounded.[18] The rationale for this doctrine, as explained in *People v. Cayabyab*[19] is that “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous matter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observation arrive at an informed and reasoned verdict.”

Accused claims that the prosecution witnesses did not actually see what really transpired before the stabbing but would have us believe his version that the victim and four men threatened him to the point that he was convinced that his life was in imminent danger. It is incomprehensible, however, why defense witness Marciano Balani did not rally their other friends if indeed he got suspicious after the victim and his companions asked him where the accused was. Obviously his assertion was pure fabrication intended to bolster his friends’ claim of self-defense.

Accused also imputes ill motive to Rosalia Linggo contending that she harbored ill-feelings against him for shaming her with the words “very cheap.” However, it is the view of this court that such incident is not sufficient provocation for her to give perjured evidence as to convict the accused for a grave felony like murder. The trial court was correct in its finding that no improper motives impelled the prosecution witnesses to testify as they did. The testimony of Armando Barmuel that he saw “the pulling of hunting knife by Armando Talingting from the left chest of Dario Cuyno” even coincides with the findings of the hospital physician, Dra. Monica Cagulada, as to the stab wound located “about one inch in diameter and about two inches below the left nipple line” which penetrated and perforated the heart, caused by a sharp-edged pointed instrument. A careful review of the records

of the case indicates that the testimonies of the prosecution witnesses are all candid, categorical and consistent. There is therefore no basis to overturn the findings of the lower court as to the veracity of the testimonies of said witnesses.

Accused's theory of self-defense likewise fails to persuade us. The rule consistently adhered to in this jurisdiction in the face of such defense is that the onus is upon the accused to establish the following elements to the satisfaction of the court in order to be relieved of any criminal liability:[20] (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[21] Additionally, he must proffer strong, clear and convincing evidence and not depend on the infirmity of the prosecution's evidence which, even if weak, remains credible after the accused himself admitted the killing.[22]

As regards the requisite elements aforecited, the first is indispensable for there can be no self-defense unless it is proven that there has been unlawful aggression on the part of the person injured or killed by the assailant. Without unlawful aggression, there is nothing to prevent or repel.[23] "In Addition, for unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude[24] and the accused must present proof of positively strong act of real aggression." [25]

In this case, the assertion of the accused that his life was in imminent danger because the victim collared him from behind and held him tightly despite his violent struggle to be released while four other men surrounded him, as one said, "This is our chance, pards" is unacceptable. It is the view of this Court that such a situation does not fall under the category of "actual, sudden, unexpected attack or imminent danger" which must be repelled by an equal or reasonable force. Granting *arguendo* that the version of the accused is true, the actuation of the victim and his companions does not make out a case of real aggression but mere threat and intimidation which could have been handled by other means less violent. More so since it has been established that the victim was smaller in physique and shorter than the accused, which fact underscores the unreasonableness of the use of the knife considering further that the victim and his companions were unarmed.

The version of the prosecution that the accused stealthily approached the victim from behind and silently stabbed him without the latter being able to defend himself is more credible. As such, treachery is deemed present in the commission of the crime, accused having employed a method which tended directly and specifically to insure the execution of his dastardly act without any risk to himself arising from whatever defense which the victim might make.[26]

Finally, the accused claims the benefit of the mitigating circumstance of voluntary surrender. This Court appreciates the said circumstance in favor of the accused as the docile and cooperative manner with which he surrendered himself to the Barangay Tanod who arrested him right after the incident shows his intent to surrender unconditionally to the authorities either as an acknowledgement of guilt or of a desire to save them the trouble and expense of finding and capturing him.[27] "This act of repentance and respect for the law indicates a moral disposition favorable to his reform." [28]

The applicable penalty for murder at the time the crime was committed (prior to the enactment of Republic Act No. 7659 which imposed the death penalty on certain heinous crimes) is reclusion temporal maximum to death. There being no aggravating circumstance but with one mitigating circumstance of voluntary surrender, the penalty imposable on the accused, in accordance with Art. 64(2) of the Revised Penal Code should be the minimum period, that is, reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, he is entitled to a minimum penalty of prision mayor maximum to reclusion temporal medium, being the range of the penalty

next lower than that prescribed by Article 248 of the Revised Penal Code.[29]

WHEREFORE, the decision of the regional Trial Court is AFFIRMED subject to the MODIFICATION that accused, Arnold Talingting, is hereby sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prison mayor as minimum to twenty (20) years of reclusion temporal as maximum. Cost against the accused.

SO ORDERED.

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

[1] TSN, July 29, 1991, pp. 5-6; July 30, 1991, pp. 7, 16-17.

[2] TSN, June 11, 1991, pp. 4-5.

[3] Ibid., pp.5-6.

[4] TSN, June 11, 1991, pp. 19-20; July 8, 1991, pp. 7-10.

[5] TSN, June 11, 1991, pp. 7-9, 20-21.

[6] TSN, July 29, 1991, p. 6.

[7] Ibid., pp. 9-10.

[8] Ibid., p.7.

[9] TSN, July 30, 1991, pp. 2, 8.

[10] Ibid., p. 8.

[11] Ibid., p. 9.

[12] Ibid., pp. 9-10.

[13] TSN, July 30, 1991, pp. 17-18.

[14] Ibid., p. 18.

[15] TSN, June 6, 1991, pp. 28-29.

[16] Rollo, pp. 17-18.

[17] People v. Nalangan, G.R. No. 117218, March 20, 1997; People v. Sanchez, 290 SCRA 14 (1995); People v. Salodaga 297 SCRA 98 (1995).

[18] People v. Gayon G.R. No. 116228, March 13, 1997; People v. Perez, G.R. No. 118332, March 26, 1997; Pat. Rudy Almeda v. People of the Philippines, G.R. No. 120853, March 13, 1997; People v. Catoltol, Sr., No. 122359, November 28, 1996; People v. Balisnomo, G.R. No. 118990, November 28, 1996.

[19] G.R. No. 123073, June 19, 1997; citing People v. de Guzman, 188 SCRA 405 (1990).

[20] People v. Maalat, G.R. No. 109814, July 8, 1997; People v. Alvarez, G.R. No. 117689, January 30, 1997; People v. de Gracia, G.R. No. 112984, November 14, 1996.

[21] Article 11 (1), Revised Penal Code ; People v. Nalangan, supra; People v. Maalat, supra; People v. Ronquillo, 247 SCRA 793 (1995).

[22] *People v. Cayabyab*, supra; *People v. Obzunar*, G.R. No. 92153, December 16, 1996.

[23] *People v. Maalat*, supra; citing *People v. Bausing*, 199 SCRA 335 (1991); *People v. Malazzab*, 160 SCRA 123 (1988).

[24] *People v. Rey*, 172 SCRA 149 (1989).

[25] *People v. Literado*, 209 SCRA 319 (1992).

[26] *People v. Soldao*, 243 SCRA 119 (1995); citing Article 14, No. 16, par. 2, of the Revised Penal Code; *People v. Villanueva*, 225 SCRA 353 (1993).

[27] *People v. Maalat*, supra; *People v. Isleta*, G.R. No. 114971, November 19, 1996; *People v. Camahalan*, 241 SCRA 558 (1995); *People v. Ablao*, 183 SCRA 658 (1990).

[28] Francisco, *The Revised Penal Code*, Book One, Third Ed., 1958, p. 375.

[29] *People v. Ocana*, 229 SCRA 341 (1993).

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