

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL GOMEZ, ACCUSED-APPELLANT.

G.R. No. 109146. August 17, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Ariel Gomez was originally charged with the crime of homicide in an information filed on 7 April 1987 by Provincial Fiscal Augusto Zabala with Branch 39 of the Regional Trial Court of Camarines Norte.[1] However, on 6 April 1990, State Prosecutor Santiago Turingan filed an Amended Information[2] charging Ariel Gomez with the crime of murder, committed as follows:

"That on or about 2:15 o'clock in the morning of February 11, 1987, at Barangay Sta. Cruz, municipality of Jose Panganiban, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of treachery and with intent to kill, unlawfully, feloniously and criminally, did then and there, assault, attack and stab one Rodil[3] Rieza with an icepick, thereby inflicting upon the vital parts of the body of the latter mortal stab wounds which directly caused his death, to the damage and prejudice of the heirs of said Rodil [Rodel] Rieza."

The accused pleaded not guilty to the charge when arraigned on 26 April 1990.[4] A pre-trial conference was held on 19 June 1990.

After trial on the merits, the trial court promulgated on 22 December 1992 its decision[5] finding the accused guilty as charged and specifically disposing as follows:

"WHEREFORE, this Court hereby finds the accused guilty beyond reasonable doubt of the crime of Murder and is hereby sentenced to serve the single penalty of reclusion perpetua. The accused is furthermore, ordered to pay P12,600.00 for burial and funeral expenses spent by the relative Rubio Rieza and the amount of P150,000.00 moral damages to the latter; and finally to indemnify the victim's heirs the amount of P50,000.00 for his death."[6]

The accused filed a notice of appeal[7] a day after the promulgation of sentence.

The appeal is predicated on the following errors allegedly committed by the trial court:

"I. The Court a quo erred in disregarding the plea of self-defense interposed by the accused-appellant.

II. The Court a quo erred in disregarding the facts and/or evidence pointing to the innocence of accused-appellant herein."[8]

The prosecution's evidence showed that on the night of 10 February 1987, Rodolfo Labella (a barangay tanod of barangay Sta. Cruz, Jose Panganiban, Camarines Norte), Rodel Rieza, and Larry Natino were at a dance party sponsored by a beauty queen. The party was held near the elementary school of barangay Sta. Cruz. At around 11:00 p.m., Rodolfo admonished the accused from imbibing more liquor as he was already drunk.[9]

Some ten minutes later, the accused left the party. While the dance was going on at around 2:00 a.m. of 11 February 1987, a woman screamed that one Rosa Español had been stabbed. Rodolfo Labella asked Rodel Rieza and Larry Natino to accompany him to check the outcry. Rodel and Larry agreed. After procuring a torch, the three walked toward the direction of the scream. Rodel walked ahead holding the torch borrowed from the store of Alberto Maderal while Rodolfo and Larry followed. They walked two meters behind Rodel. When they were about twenty-five meters from the dancing hall, the accused came out from nowhere and without any warning stabbed Rodel twice. As the latter fell slowly to the ground, the accused ran away.[10]

Rodolfo and Larry assisted Rodel and brought him to the Health Center where he was treated by a midwife. Believing that Rodel's injury was serious, Rodolfo procured a banca to bring Rodel to the poblacion of Jose Panganiban for further treatment. Seven other persons accompanied Rodel in the banca. On board the banca, Rodel told Rodolfo that it was the accused who had stabbed him. Rodel, however, died after they had sailed for about twenty minutes and before they could reach the poblacion of Jose Panganiban. Thus, instead of proceeding to a doctor, they brought Rodel's body to the barangay captain of barangay San Jose, Jose Panganiban, as Rodel is from San Jose. At around 8:00 a.m., Rodolfo reported the incident to the Station Commander of Jose Panganiban. He told the latter that it was the accused who had stabbed Rodel.[11]

At 7:00 p.m. on 11 February 1987, Dr. Marcelino Abas, Rural Health Physician of Lobo, Camarines Norte, conducted a post-mortem examination of the body of Rodel Rieza. He found stab wounds at the 5th intercostal space of the midclavicular line which pierced the heart, and at the left hypocardiac region which pierced the abdomen. The first injury is 11 cm. in depth, 1 cm. in length and 0.5 cm. in width, while the second is 10 cm. in depth, 1.5 cm. in length and 0.7 cm. in width. He opined that the first injury at the left chest was more serious than the other and could cause instant death and that the wounds could have been caused by a bladed instrument, such as balisong, dagger, small bolo, or any sharp-pointed instrument with a length of about 8 to 10 centimeters. He prepared a sketch showing the injuries sustained by Rodel (Exhibit "B") and also signed a death certificate indicating that Rodel died of cardio-respiratory arrest secondary to shock and severe internal hemorrhage due to stab wounds (Exhibit "A").[12]

Rodel Rieza was an orphan and during his lifetime lived with his uncle, Rubio Rieza. The latter spent P600.00 for the rental of the banca, P12,000.00 for funeral services, and P2,000.00 for food and drinks during the wake. He also quantified his personal sufferings caused by the death of Rodel at P150,000.00.[13]

The defense presented a different version of the incident. In his testimony, accused Ariel Gomez declared that on 11 February 1987 at about 2:00 a.m., while on his way home to barangay Sta. Cruz, he was waylaid and ganged upon by more or less seven persons, four of whom he recognized to be Carlito Tarosa, Edgardo Caldit, Larry Natino, and Rodel Rieza. At that time, only the stars illuminated the place as there were no street lamps. Carlito hacked him on his back with the bolo, another struck him from behind, Larry hit him with the stick, and Rodel hit him with a piece of wood. When somebody shouted "kill," Rodel threw away the piece of wood he was carrying and drew a sharp object from his waist. So he grabbed Rodel's arm and grappled for the possession of the sharp object until he was able to wrest it away and thrust it on Rodel.[14] While grappling, he sustained wounds on his lower palm and lower arm. He had no idea, however, what weapon he was able to grab from Rodel.[15] Thereafter, he ran away from the scene and, instead of going home, went to the house of Rosita Alposeba, his aunt.[16] Upon arrival at Rosita's house at 4:30 a.m., he told her, "nadisgrasya ako." Rosita dressed with a piece of cloth the wound on his right arm.[17] He lay down and slept. When he woke up, he felt his whole body aching. His aunt advised him to go to the hospital, but he failed to go because he lost consciousness. After he regained consciousness in the afternoon, he decided not to go to the hospital anymore and instead requested his aunt to go to the barangay captain to facilitate his voluntary surrender. The barangay captain, one Nena Jurilla, acceded to

his aunt's request, picked him up, and brought him to the police headquarters of Jose Panganiban where he was detained.[18]

At 2:45 p.m. on 12 February 1987, the accused was examined at the Labo District Hospital at Labo, Camarines Norte, by Dr. Agnes Sinaon, a resident physician, who found some injuries in the accused's body and who thereafter issued a medical certificate[19] (Exhibit "1") attesting to her findings of old incised and superficial lacerated wounds, old hematoma and abrasions. On the line "DATE OF INJURY/ILLNESS" in the said medical certificate, Dr. Sinaon made the following entry: "2/10/87." She also declared that the wounds were two or three days old at the time of her examination, i.e., were sustained two or three days earlier, and when she asked the accused how he sustained them, the accused answered that he had a quarrel with someone.[20] On cross-examination, Dr. Sinaon stated that the injuries were inflicted on 10 February 1987, because the accused told him so.[21]

The lower court did not believe the version of the accused. It gave full faith and credit to the testimonies of Rodolfo Labella and Larry Natino that the accused suddenly stabbed the victim while the three of them were on their way to investigate an outcry of a woman. The lower court took into consideration the fact that Rodolfo Labella was a barangay tanod who was well known to the accused and expressed the view that the former "will not be motivated to lie" against the accused.[22]

As to the qualifying circumstance of treachery, it considered the two sudden and successive stabbings of the victim as a "treacherous assault upon the deceased who did not have a bit [of a] chance to repel the aggression or defend himself." [23]

The resolution of this appeal principally hinges on the merit of the accused's plea of self-defense.

It is hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to show that the killing was justified and that he incurred no criminal liability therefor. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing.[24] He must prove the essential requisites of self-defense, to wit: (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to repel the aggression, and (c) lack of sufficient provocation on the part of the accused.[25]

The prosecution established that a few minutes before the victim was stabbed, the accused was admonished by barangay tanod Rodolfo Labella to stop drinking as he was already drunk; the latter then left and did not come back. Then, as Rodolfo Labella, Larry Natino, and the deceased were on their way to investigate the cry of a woman that one Rosa Español was stabbed, the accused suddenly appeared from the dark and attacked the deceased who was then carrying a torch. The unlawful aggression thus came from the accused and the proximate cause therefor could be nothing less than the earlier admonition of Rodolfo Labella which the accused must have resented, for which reason he left.

The accused's insistence that he was waylaid and mauled by seven persons, as evidenced by the injuries he sustained, does not convince us. His own witness, Dr. Agnes Sinaon, testified that the injuries she found on the accused when she attended to him on 12 February 1987 were already two or three days old and, therefore, could not have been inflicted on 11 February 1987. As a matter of fact, she indicated in her medical certificate that, per information from the accused, the injuries were inflicted on "2/10/87," or 10 February 1987. Dr. Sinaon further declared that when she asked the accused how he sustained his injuries, he answered that he had a quarrel with someone -- therefore only one, not more.

If he were indeed ganged upon and mauled by seven, one of whom, Carlito Tarosa, hacked his back with a bolo,

another struck him from behind and Larry Natino and the deceased hit him with a stick and a piece of wood, respectively,[26] then the accused should have been badly injured. Yet, his medical certificate belies his claim.

Moreover, if it were true that the weapon he used to stab the deceased belonged to the latter which he wrested from the deceased during the scuffle, the accused should have presented it to the police and if he threw it away somewhere, pointed that out to the police. He did not.

Even if we accept his version on the issue of unlawful aggression, the accused failed, nevertheless, to prove the second requisite of self-defense. If indeed he was able to obtain possession of the weapon from the deceased, there is no further evidence that the latter or his companions persisted in their aggression. Hence, there was no necessity to stab the deceased for aggression had already ceased. There was no more aggression to repel.

In support of his second assignment of error, the accused attempts to engender doubt on his culpability by pointing out the inconsistency between the testimony of the witnesses for the prosecution and the Medico-Legal Officer regarding the description of the weapon used to stab the victim. According to him, the former declared that it was an icepick while the latter stated that it was a sharp-bladed instrument. This contention is unmeritorious. Since he admitted having killed the victim in self-defense, the kind of weapon used has become immaterial.

The accused likewise suggests that the prosecution is guilty of suppression of evidence because it did not present Rosa Español as a witness in this case. He believes that she is the only one who could shed light on the incident. The disputable presumption laid down in Section 3(e), Rule 131 of the Rules of Court,[27] however, does not apply when the testimony of the witness is merely corroborative or where the witness is available to the accused.[28] In this case, Rosa's testimony could not even qualify as corroborative evidence because there was no showing that she was an eyewitness to the stabbing of the victim. Even if she were, her testimony could be dispensed with. Moreover, in *People vs. Fernandez*[29] and *People vs. Pablo*[30] this Court held that if an accused honestly believed that the testimony of a witness would be adverse to the prosecution, he should have availed of the compulsory process to have such witness produced as his witness, or even as a hostile witness.

Finally, the accused puts special significance on his voluntary surrender. According to him, such act militates against the workings of a guilty mind and cannot be the natural reaction of a man who had cold-bloodedly killed a person. While this Court agrees that he voluntarily surrendered to the authorities, which would therefore mitigate his criminal liability, it cannot accept the proposition that such act is indicative of his innocence. True, persons who kill another in legitimate self-defense almost often surrender themselves to the authorities. But voluntary surrender may also be the spontaneous act of one who acknowledges his guilt. Precisely, voluntary surrender is recognized by the Revised Penal Code as one of the circumstances which mitigate criminal liability.[31]

We agree with the trial court that the killing of the deceased is murder because of the qualifying circumstance of treachery which is duly alleged in the amended information and proved beyond reasonable doubt by the evidence of the prosecution. There was treachery in the sudden attack which the accused consciously and deliberately adopted to ensure the accomplishment of his criminal objective without risk to himself arising from the defense which the victim might make.[32]

The penalty for murder at the time it was committed by the accused was reclusion temporal in its maximum period to death.[33] Since the ordinary mitigating circumstance of voluntary surrender is present and is not offset by any generic aggravating circumstance, the penalty to be imposed upon the accused should be the minimum period of the prescribed penalty, which is reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the accused may be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree and the maximum of which should be within the range of reclusion

temporal maximum. The accused may thus be sentenced to an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum.

In respect of the civil liability imposed by the trial court, some modifications are in order. The award for actual damages in the amount of P12,600.00 representing funeral and burial expenses is increased to P14,600.00 as the prosecution had duly proved that P600.00 was spent for the rental of the banca, P12,000.00 for funeral services, and P2,000.00 for food and drinks during the wake. The award of P150,000.00 for moral damages is without basis as the deceased was single, an orphan, and survived only by an uncle. The civil indemnity for death in the amount of P50,000.00 is affirmed.

WHEREFORE, the appealed decision in Criminal Case No. 4660 of Branch 39 of the Regional Trial Court of Daet, Camarines Norte, is hereby **AFFIRMED** with the following modifications:

(1) the penalty imposed is hereby reduced from reclusion perpetua to an indeterminate penalty ranging from Ten (10) years and (1) One day of prision mayor maximum as minimum, to Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal maximum as maximum.

(2) the civil liability of the accused is hereby fixed at P14,600.00 as actual damages and P50,000.00 as civil indemnity for the death of the victim.

Costs against the appellant.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

[1] Original Records (OR), 1.

[2] Id., 42.

[3] Should be Rodel.

[4] OR, 45.

[5] Id., 189-194; Rollo, 20-28. This decision is dated 10 December 1992. Per Judge Luis D. Dictado.

[6] Id., 194; Id., 28.

[7] OR, 195.

[8] Rollo, 48.

[9] Testimony of Roberto Labella, TSN, 17 August 1990, 8-10.

[10] Id., 11-13.

[11] TSN, 17 August 1990, 18-20.

[12] Testimony of Dr. Marcelino Abas, TSN, 19 July 1990, 7-14.

[13] TSN, 28 May 1991, 7-19.

[14] TSN, 20 August 1992, 3-12.

[15] Id., 15.

[16] Id., 18.

[17] Testimony of Rosita Alposeba, TSN, 1 July 1992, 5-6.

[18] TSN, 20 August 1992, 18-21.

[19] OR, 176.

[20] TSN, 2 June 1992, 8-10.

[21] Id., 12-13.

[22] OR, 194.

[23] Id., 194.

[24] People vs. Ybeas, 213 SCRA 793 [1992].

[25] Article 11(1), Revised Penal Code; 1 RAMON C. AQUINO, The Revised Penal Code 132 (1987 ed.); People vs. Deunida, G.R. No. 105199-200, 28 March 1994.

[26] TSN, 20 August 1992, 5-12.

[27] It provides: "(e) That evidence willfully suppressed would be adverse if produced."

[28] People vs. Pablo, 213 SCRA 1 [1992]; People vs. Casinillo, 213 SCRA 777 [1992].

[29] 209 SCRA 1 [1992].

[30] *supra*.

[31] Article 13(7), Revised Penal Code.

[32] Article 14(16), Id.

[33] Article 248, Id. As amended by R.A. No. 7659, the penalty has been amended to reclusion perpetua to death.

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