

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO NELL ALIAS “OMENG”, DANNY ANGELES ALIAS “DANNY FAKE” AND JOHN DOE, ACCUSED, ROMEO NELL ALIAS “OMENG,” APPELLANT.

G.R. No. 109660. July 01, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

After an accused has openly admitted the killing, the gravamen of the prosecution’s case cannot be disbelieved anymore. Thus, the accused must prove all the elements of self-defense clearly and convincingly. He must rely on the strength of his own evidence, and not on the weakness of the prosecution’s.

This is an appeal from the December 11, 1992 Decision[1] of the Regional Trial Court of Valenzuela, Branch 172, in Criminal Case No. 10341-V-90 convicting Appellant Romeo Nell of murder.

Together with Danny Angeles, alias “Danny Fake,” and one John Doe, appellant was charged with murder in an Information dated June 11, 1990 which reads:

“That on or about the 24th day of March 1990, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a bladed instrument and with intent to kill one Reynaldo Laureano y Nuque, conspiring and confederating together and mutually helping one another did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and stab with the said bladed instrument they were then provided the said Reynaldo Laureano y Nuque, hitting the latter on his body, thereby causing him serious physical injuries which directly caused his death.”[2]

Only appellant was arrested while the two other accused remained at large. During his arraignment on May 13, 1992, he pleaded “not guilty” to the charge.

After trial, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, the Court finds the accused guilty of the crime of Murder as principal, and is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of Reynaldo Laureano in the sum of P50,000.00; and to pay the costs.

SO ORDERED.”[3]

The Facts Version of the Prosecution

The prosecution actually presented two versions of the incident: one by Rosini Espejo-Cenon and another by Benjamin Laureano. Although both versions undoubtedly pointed to appellant as the assailant, they materially differed as to the participation of the other accused and the events which led to the fatal stabbing of the deceased.

Prosecution Witness Rosini Cenon’s testimony was summarized by the trial court as follows:[4]

“x x x On March 24, 1990 at about 10:00 p.m. she was washing clothes in front of their house. From across the street, at a distance of 6 meters she saw the accused Romeo Nell alias Omeng, pointing to him in Court, stabbed (sic) Reynaldo Laureano. Romeo Nell was with Danilo Angeles alias Danny Fake. The victim when stabbed was just resting by sitting in front of an already closed store. Romeo made a thrust at Reynaldo with a ‘panaksak’ but Reynaldo was able to run away. Romeo followed him. Some liquor drinkers noticed Reynaldo being chased so they threw bottles at Romeo who was hit at the nape and stumbled. Danny Fake tried to help Romeo. Before Romeo was able to stand up, Danny Fake was able to pull Reynaldo and immersed him in a canal. Then Romeo who was already up stabbed Reynaldo upon orders of Danny Fake. Reynaldo was hit on the chest by Romeo who even repeatedly moved the bladed weapon inside the body to and fro. After Reynaldo was stabbed and they saw he was no longer moving, Danny Fake kicked Romeo saying ‘Putang ina mo ano pa ang hinihintay mo, sumibat ka na’. Romeo then ran together with another man who was half naked from waist up. Danny Fake then shouted, ‘bakit hindi tulungan ito ng mga bumato sa kanya’ while holding a veinte nueve knife. Then Danny Fake left. Somebody went down and helped Reynaldo. She (witness) shouted ‘tulungan ninyo si Rey.’ He was brought to the hospital but he died. She saw all the incident because of the light from the stores which were still open then.”

In contrast, Prosecution Witness Benjamin Laureano, the victim’s brother, described the events differently. His testimony was presented in the appealed Decision as follows:[5]

“x x x On March 24, 1990 x x x (a)t about 10:30 p.m. of said date he was fetching water at Abalos St., about 20 meters away from their residence. He was told by among (sic) those fetching water with him that there was trouble going on at the corner of Abalos St. and Concepcion St. which is about 20 meters away. He went there to look, with Boyet Manansala. Upon reaching the place he saw his brother Reynaldo and Romeo quarreling. He pointed to the accused Romeo in Court. He had known Romeo before the incident because he used to borrow tools from their neighbors. He saw Romeo and Reynaldo struggle with each other and then Romeo ran out (sic) of the corner towards the market. After the accused ran away his brother Reynaldo chased him. He asked his brother Reynaldo to go home because Reynaldo was not able to run far and was not able to catch the accused. His brother and he (sic) went home. His brother again went down the house and drunk beer in a store in front of their house. He was with Junior Cenon. Romeo Nell arrived. He saw Romeo because he (witness) was then lifting the container of water for their house. Romeo chased his brother with a bladed weapon. When he caught up with him they struggled with each other first. His brother was hit and knelt in the canal. Romeo Nell stabbed him and kicked him. His brother was hit on the chest once. Romeo Nell ran away. He saw all this from a distance of 8 meters. He went upstairs to ask help from his brothers. When they all went down Romeo Nell was no longer there. They brought Reynaldo out of the canal to the Santisimo Rosario Hospital. He was dead on arrival. He gave a statement to the police (Exh. B, B-1).

On cross examination, Benjamin Laureano testified as follows:

When he saw his brother being stabbed he could not go near because Romeo had a companion and a look out.

Dr. Prospero Cabanayan conducted the autopsy on the victim. He testified that the victim died of severe hemorrhage due to an eleven-inch stab wound below the right collarbone, penetrating the big blood vessels direct to the heart, and two puncture wounds located at the chest almost near the armpit.[6] The stab wound could have been caused by a sharp, single-bladed instrument while the puncture wounds, by a pointed instrument.[7] From the location of the wounds, he opined that it was possible that the victim was lying down, facing the assailant who was standing.[8]

The prosecution presented Francisca Sagnip, the sister of the victim, as rebuttal witness. She testified that:[9]

“On March 26, 1990 at about 8:00 A.M., [s]he was at the police station to present the kitchen knife which she found at the canal at Abalos St., Marulas, Valenzuela. She found it on March 26, 1990 at about 7:30 A.M. She identified the kitchen knife (Exh. H).

On cross examination she testified that she was not present when her brother was stabbed. It was after the report was made to the police that the latter went to the scene and investigated. They found no kitchen knife. She was alone when she found the knife. She believes it was the one used by his (sic) brother.”

Evidence for the Defense

Appellant justifies his act by invoking self-defense. His testimony is synthesized in the Appellant’s Brief:[10]

“x x x [O]n March 24, 1990 while plying his tricycle he saw Reynaldo Laureano at about 5:00 to 6:00 p.m. He let his two passengers alight. Reynaldo approached him for beer money and he told him he will give him later. He just started plying his tricycle. Reynaldo got angry saying ‘hindi puede’. Reynaldo said he needed to drink and if he will not give, something bad will happen to him. Reynaldo said ‘Ako ang may hawak ng Abalos St.’ and Reynaldo boxed him as he said these. He fought back. While they were boxing each other, Reynaldo’s brother Benjamin and a certain Junior arrived. He ran because Benjamin had a knife. The three gave chase. They failed to catch him. He went home. He left his tricycle on the road. After one hour, he tried to retrieve it but did not pass Abalos St. He was able to retrieve his tricycle and went home. He rested for 4 hours before plying his tricycle. That was about 10:00 p.m. He met for the second time Reynaldo Laureano because he passed by Abalos St. He saw Benjamin, Junior, and Reynaldo Laureano drinking beer, sitted (sic) on a bench on the side of the street near the house of Reynaldo Laureano. Upon his return trip, the three blocked his way. He was forced to stop. They were again asking for money particularly Reynaldo while the two were just standing by. He requested that he be allowed not to give because his trip was destroyed and that he has his family to feed. Reynaldo approached him to box him. He jumped towards his tricycle to get his screw driver to defend himself because one of them already pulled out a knife while Junior was holding a bottle of beer and hit him on the head. Junior is the brother in law of Rosini Espejo. After he was hit with a bottle of beer, his vision became dark and he started stabbing Reynaldo. Benjamin and Junior ran away when they saw Reynaldo was hit. He boarded his tricycle and went home. He stabbed Reynaldo even if it was Junior who hit him with a bottle of beer because Reynaldo was poised to box him. When he started stabbing, he hit Reynaldo. He did not tell this to the police. He was afraid he would be incarcerated. He was thinking of his children as his wife is abroad. The incident happened on March 24, 1990. He was arrested on April 27, 1992. He did not hide but just continued plying his tricycle. The father, brother and sister of Reynaldo were often his passengers. The reason why they did not cause his arrest is because people there knew that the deceased is a trouble maker and a ‘salot’ in their place. The testimony of Espejo which gave a different version that he had a companion is not true. She just testified that way because her brother in law is involved in the case. He had a screw driver because he uses it as a tool for adjustment of the contact point of his tricycle. x x x (TSN, November 4, 1992, pp. 3-19).”

Ruling of the Trial Court

In rejecting the claim of self-defense, the trial court held that the evidence of the prosecution was more credible than that of the appellant. Prosecution Witnesses Benjamin Laureano and Rosini Cenon gave two versions of the facts, but the trial court accepted Benjamin’s testimony rather than Rosini Cenon’s because the former gave his statement to the police immediately after the stabbing incident at ten minutes past one o’clock early morning of March 25, 1990. Rosini’s statement, on the other, hand was executed two days later, on March 27, 1990, after her brother-in-law Junior Cenon was implicated in the stabbing by appellant.

Unlike Benjamin’s story, appellant’s version was not only uncorroborated; it was also incredible. The trial court opined that, even if the victim was a drug user and a troublemaker, appellant’s actions were not justified.

The lower court also held that the killing was qualified by evident premeditation. It found that the appellant and the victim had a quarrel that ended when the former ran away from the latter. Later on, appellant returned and stabbed the victim.

Assignment of Errors

Appellant claims self-defense. He ascribes the following errors to the trial court:[11]

I

The trial court erred in categorizing the crime committed as murder instead of homicide.

II

The trial court erred in not acquitting the accused-appellant on the ground of self-defense under paragraph 1 of Article 11 of the Revised Penal Code.”

The Court’s Ruling

The appeal is partly meritorious. We do not agree with appellant’s claim of self-defense, but we find that the prosecution has not established evident premeditation beyond reasonable doubt. We shall now discuss the errors assigned by the appellant in inverse order.

Assessment of Appellant’s Credibility by the Trial Court

By interposing self-defense, appellant shifted the burden of proof, thereby obligating himself to show that his act was justified and that he incurred no criminal liability therefor.[12] Consequently, he must establish clearly and convincingly all the elements of self-defense, relying mainly on the strength of his own evidence and not on the weakness of the prosecution’s; for even if the latter was weak, it could not be disbelieved after his open admission of the killing.

The trial court, however, did not find appellant’s uncorroborated testimony credible. The time-tested doctrine is that a trial court’s assessment of the credibility of a witness[13] is entitled to great weight-- even conclusive and binding on this Court, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Credibility is a matter that peculiarly falls within the province of the trial court as it had the opportunity to watch and observe the demeanor and behavior of the witnesses at the time of their testimony.[14] Thus, assigning value and weight to each testimony is within its jurisdiction.[15]

The trial court’s assessment of the credibility -- or the lack of it -- of appellant and his version of the incident appears supported by the records. Five crucial points are worth noting.

The first point is the matter of the weapon used. Appellant claimed that he used a six-inch screwdriver to stab the victim.[16] The medico-legal officer described the two instruments which could have inflicted such wounds as a single-bladed weapon and an instrument with a sharp point.[17] A screwdriver fits neither of the two descriptions. Based on appellant’s description, it was as an old screwdriver with a blunt end and rounded on the side.[18] He did not even present in evidence this alleged implement to show that it fitted either of the two descriptions.

Second, appellant would like us to believe that it was Benjamin who wielded a knife -- one of the weapons that, according to the medico-legal officer, could have caused the wounds of the deceased. He thus wants to imply that it was Benjamin who fatally stabbed his brother. This allegation is not only illogical; it runs counter to the established fact that the quarrel was between the victim and the appellant, not Benjamin. Appellant has not shown any plausible reason, argument or evidence why Benjamin should kill his own brother.

Third is appellant’s choice of victim. He testified that he was hit on the head with a beer bottle by one Junior Cenon. Why then did he attack the victim who, according to him, was only poised to box him. Clearly, it was Junior who had hit him and was probably holding a bottle of beer broken by then. The more imminent threat

against his life was posed by the armed Junior, not the unarmed victim.

The fourth point is the matter of flight. Although he claimed that he did not go into hiding after the incident, he also admitted that he fled from the scene of the crime in his tricycle.[19] Flight, in jurisprudence, is a strong indication of guilt,[20] although its converse does not necessarily imply innocence.[21] That he feared being imprisoned as he had children to take care of does not exempt him from these legal precepts. He even intentionally failed to report the incident to the police, negating his claim of self-defense.[22]

The fifth point is the failure of the defense to raise the extortion theory and Benjamin's complicity therein during the latter's testimony. The failure to raise a theory that would have gravely impaired Benjamin's credibility creates a very serious doubt on the veracity of appellant's present allegations.

Thus, we cannot blame the trial court for not putting much faith in appellant's testimony. Evidence, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself.[23]

Failure to Prove Requisites of Self-Defense

An accused must also establish by clear and convincing evidence[24] the requisites of self-defense, namely: (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.[25] These, appellant failed to prove.

Self-defense, by its very nature, requires the attendance of unlawful aggression initiated by the victim.[26] Unlawful aggression is an assault or attack, or a threat thereof in an imminent and immediate manner which places the accused's life in actual peril.[27] It must be such that it puts in real danger the life or personal safety of the person defending himself.[28] It cannot be merely an imagined threat or a threatening or intimidating attitude.[29]

In this case, unlawful aggression was not established by the defense. Appellant merely proved that the victim, Benjamin and Junior Cenon were extorting beer money from him. The manner of extortion described by appellant, however, does not show how appellant's life or limb was placed in any peril as to justify his killing of Reynaldo.

Even if we consider that a threat to his life or limb could have been imminent because Benjamin held a knife, still appellant did not state that the latter threatened him with the deadly weapon. In fact, Benjamin did not threaten him at all. Appellant admitted that after his head was hit with a bottle of beer, his vision dimmed and he started stabbing the victim who was allegedly approaching and about to box him. Based on said testimony, we fail to see any peril to appellant's life or limb that could have justified his having killed the victim.

In self-defense, there should also be reasonable necessity for the action taken as well as the means used. The latter requires a consideration of (1) whether the aggressor was armed, (2) the nature and quality of the weapon used, and (3) the physical conditions and sizes of both aggressor and the person defending himself.[30] Appellant was armed while his three alleged assailants were not competently shown to have been armed. His claim is that Benjamin had a knife and that Junior Cenon and the victim held a bottle of beer each. But allegation is not evidence and, in the absence of the latter, we cannot agree with appellant that his alleged aggressors were similarly armed. Therefore, the reasonable necessity of the means employed to prevent or repel the "aggression" from the victim and his companions was not proven in this case.

Clearly, the justifying circumstance of self-defense cannot be sustained. Appellant failed to prove unlawful aggression by the victim or to demonstrate the reasonable necessity of the means he employed to defend

himself.[31]

Evidence of Premeditation, Treachery and Abuse of Superior Strength

However, the trial court erred in appreciating evident premeditation based solely on the fact that appellant returned to the crime scene four hours after his first quarrel with the victim. Evident premeditation indicates a stubborn adherence to a decision to commit a felony. It requires a showing of: (1) a previous decision by the accused to commit the crime; (2) overt act(s) manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow the accused to reflect upon the consequences of his acts.[32] Evident premeditation connotes a deliberate adherence to a plan to commit a crime.

Returning to the scene of an earlier fight about four hours later does not establish these elements. Mere lapse of time is not equivalent to evident premeditation.[33] Time and again, we have held that evident premeditation cannot be appreciated to qualify a killing to murder in the absence of evidence, not only of sufficient lapse of time, but also of the planning and preparation to kill when the plan was conceived.[34] The prosecution evidence simply showed that after the fight was broken up, appellant returned to kill the victim. From said circumstances, we cannot deduce with certainty that appellant clung to a decision to kill the victim.

Treachery and abuse of superior strength were not discussed in the trial court's Decision. Since they were alleged in the Information, the Court pored over the records to find any evidentiary support therefor. However, we are also unable to appreciate treachery from the prosecution's narration of events. Benjamin was bringing several containers of water into their house when the incident occurred. Thus, because his attention was focused elsewhere prior to his brother's stabbing, he was not in a position to say that appellant attacked his brother suddenly and without warning. He did see, however, that appellant chased his brother with a bladed weapon and that they struggled with each other first before appellant stabbed his brother. In effect, he admitted that when appellant attacked the victim, the latter was not without a chance to defend himself. The prosecution failed to establish that the appellant employed means, methods or forms which tended directly and specially to insure the commission of the killing without risk to himself arising from the defense which the offended party might make.[35]

The record is also bereft of proof that appellant and his companions took advantage of their collective strength to overwhelm their victim.[36] Superior strength is not appreciated by the mere fact of superiority in the number of malefactors, but rather by the deliberate employment of excessive force which is out of proportion to the means of defense available to the person attacked.[37] Note also must be made of the fact that the victim was not alone.

In sum, appellant's testimony suffers seriously from want of credibility. Even if we ascribe credibility to appellant's testimony, however, we still cannot accept his plea of self-defense, for he failed to prove all the requisites thereof. While the appellant failed to prove self-defense, the prosecution likewise failed to show any qualifying circumstance. In this light, appellant should be convicted only of homicide under Article 249 of the Revised Penal Code without any generic aggravating or mitigating circumstance.

WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant is CONVICTED of homicide, not murder, and is SENTENCED to eight (8) years and one (1) day of prisión mayor as minimum and fourteen (14) years, eight (8) months and one (1) day of reclusión temporal as maximum. The trial court's disposition requiring the appellant "to indemnify the heirs of Reynaldo Laureano in the sum of P50,000.00 and to pay the costs" is AFFIRMED.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, and Francisco, JJ., concur.
Davide, Jr., J., did not take part on deliberation; was on sick leave.

The name of "Romeo Nell alias "Omeng" is being included.

[1] Penned by Judge Teresita Dizon-Capulong.

[2] Rollo, p. 2.

[3] RTC Decision, p. 7; rollo, p. 22.

[4] Ibid., pp. 1-2; rollo, pp. 16-17.

[5] Ibid., pp. 2-3; rollo, pp. 17-18.

[6] Certificate of Post-Mortem Examination, Folder of Exhibits, p. 6.

[7] TSN, September 21, 1992, pp. 11-12.

[8] Ibid., p. 10.

[9] RTC Decision, pp. 5-6; rollo, pp. 20-21.

[10] Appellant's Brief, pp. 4-6; rollo, pp. 40-42.

[11] Appellant's Brief, p. 1; rollo, p. 37.

[12] People vs. Obzunar, G.R. No. 92153, December 16, 1996, p. 21; People vs. So, 247 SCRA 708, 718, August 28, 1995; People vs. Nuestro, 240 SCRA 221, 227, January 18, 1995; Bitalac vs. Court of Appeals, 241 SCRA 351, 354, February 15, 1995; People vs. Camahalan, 241 SCRA 558, 569, February 22, 1995; People vs. Morin, supra., p. 714; People vs. Silvestre, 244 SCRA 479, 490, May 29, 1995; People vs. Ganzagan, Jr., 247 SCRA 220, 233, August 11, 1995.

[13] People vs. Ombrog, G.R. No. 104666, February 12, 1997, pp. 11-12; People vs. Cogonon, G.R. No. 94548, October 4, 1996, pp. 13-14; People vs. Gamiao, 240 SCRA 254, 260, January 19, 1995; People vs. Morin, 241 SCRA 709, 716, February 24, 1995.

[14] People vs. Morin, *ibid.*; People vs. Cogonon, *ibid.*

[15] People vs. Dela Iglesia, 241 SCRA 718, 732, February 24, 1995; and People vs. Torres, 247 SCRA 212, 218, August 11, 1995.

[16] TSN, November 6, 1992, p. 14.

[17] See, Footnote No. 7.

[18] *Op. Cit.*

[19] *Ibid.*, p. 16.

[20] People vs. Asoy, 251 SCRA 682, 688, December 29, 1995; and People vs. Lopez, Jr., 245 SCRA 95, 105, June 16, 1995.

[21] People vs. Desalisa, 229 SCRA 35, 47, January 4, 1994; and People vs. Inocencio, 229 SCRA 517, 523-524, January 27, 1994.

[22] *People vs. Caras*, 234 SCRA 199, 210, July 18, 1994; and *People vs. Jotoy*, 222 SCRA 801, 806, May 31, 1993.

[23] *People vs. Torres*, *supra.*, p. 217; *People vs. Villanueva*, 242 SCRA 47, 55, March 1, 1995; *People vs. Legaspi*, 246 SCRA 206, 212, July 14, 1995; and *People vs. Lopez*, 249 SCRA 610, 621, October 30, 1995.

[24] *People vs. Isleta*, G.R. No. 114971, November 19, 1996, p. 18; *People vs. Daquipil*, 240 SCRA 314, 329, January 20, 1995; and *People vs. Camahalan*, *supra.*

[25] *People vs. Gerolaga*, G.R. No. 89075, October 15, 1996, pp. 26-27; and *People vs. Deopante*, G.R. No. 102772, October 30, 1996, p. 14.

[26] *De Luna vs. Court of Appeals*, 244 SCRA 758, 763, June 2, 1995.

[27] *People vs. Ganzagan, Jr.*, *supra.*

[28] *People vs. Daquipil*, *supra.*, p. 330.

[29] *People vs. Boniao*, 217 SCRA 653, 667, January 27, 1993; *People vs. Galit*, 230 SCRA 486, 496, March 1, 1994; *People vs. Manlulu*, 231 SCRA 701, 708, April 22, 1994.

[30] *People vs. Nuestro*, *supra.*, p. 230; and *People vs. Amania*, 220 SCRA 347, 358, March 23, 1993.

[31] *Tapalla vs. Court of Appeals*, 222 SCRA 825, 828, May 31, 1993.

[32] *People vs. Layno*, G.R. No. 110833, November 21, 1996, pp. 20-21; *People vs. Deopante*, G.R. No. 102772, October 30, 1996, pp. 8-9; *People vs. Ganzagan, Jr.*, *supra.*, pp. 235-236; and *People vs. Lopez*, *supra.*

[33] *People vs. De la Cruz*, 242 SCRA 129, 142, March 2, 1995; and *People vs. Deopante*, *supra.*, p. 8; *People vs. Silvestre*, *supra.*, pp. 494-495.

[34] *People vs. Ganzagan, Jr.*, *supra.*; and *People vs. Soldao*, 243 SCRA 119, 127-128, March 31, 1995.

[35] Article 14, no. 16, Revised Penal Code; *People vs. Camahalan*, *supra.*, p. 571; and *People vs. De la Cruz*, *supra.*, pp. 142-143.

[36] *People vs. Waggay*, 218 SCRA 742, 755, February 9, 1993; and *People vs. Asoy*, *supra.*, pp. 688-689.

[37] *People vs. Empacis*, 222 SCRA 59, 69, May 14, 1993; and *People vs. Escoto*, 244 SCRA 87, 98, May 11, 1995.

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