

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. WILFREDO BAUTISTA Y NIELES, ACCUSED-APPELLANT.

G.R. No. 109800. March 12, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

WILFREDO BAUTISTA y NIELES appeals from the decision of the court a quo finding him guilty of murder and imposing upon him a prison term of reclusion perpetua.[1] No award for civil indemnity however was made in view of the reservation of the heirs of the victim to file a separate civil action.

The Information alleged that on 2 April 1992, in Pasay City, accused-appellant Wilfredo Bautista y Nieves and the other accused, namely, Gayak Usman y Adzed, Richard Doe, John Doe, Peter Doe, William Doe, Vincent Doe and Edward Doe, in conspiracy with one another, with treachery, evident premeditation and taking advantage of superior strength, feloniously shot Alfonso Davila y Velasco with a firearm hitting him at the back of his head which caused his death.[2]

The evidence shows that at ten o'clock in the evening of 2 April 1992 victim Alfonso Davila y Velasco, a flight steward of the Philippines Airlines (PAL), went to the Inflight Center of PAL at the MIA Road, Pasay City, to inquire about his flight schedule. Before his car could enter Gate 1 it was stopped by accused Gayak Usman y Adzed and other security guards of the Asian Security and Investigation Agency assigned in that area. Usman told the victim that he could not enter the gate because he had no PAL sticker. Davila showed Usman his ID placed in his wallet and thrust it on his face. The latter simply told Davila that he should have pinned his ID on his chest. The verbal confrontation however continued. At this point, accused-appellant Wilfredo Bautista, another security guard of the Asian Security and Investigation Agency assigned at the entrance for pedestrian at Gate 1, approached Usman and Davila[3] and remarked, "Sir, bakit nanampal ka ng guardiya?" The victim retorted, "Bakit ka nakikialam. Itong kausap ko." [4] Accused-appellant then took the shotgun slung on the shoulder of Usman and stepped back. The argument between Usman and Davila continued. Then accused-appellant went to the back of the car of Davila and cocked the shotgun. As he went near Davila the latter said, "Putang ina ka. Huwag kang makikialam dito." [5] Then accused-appellant fired at the victim hitting him on the left side of his head which caused his death.

Dr. Valentine T. Bernales, NBI Medico-Legal Officer, conducted a post mortem examination of the victim. He gave the cause of death as gunshot wound on the head.[6]

On 22 March 1993 the accused appealed. But for failure of his counsel to file his brief despite three (3) extensions granted him this Court dismissed his appeal. However, upon motion for reconsideration, this Court on 3 August 1994 treated the motion as appellant's brief and directed the Solicitor General to file appellee's brief.

In his motion for reconsideration, appellant contends that he should have only been charged with and convicted for homicide and not murder. He submits that the victim slapped with his wallet containing his ID appellant's fellow security guard Usman, who was one of the accused before the trial court, which incident caught

appellant's attention and because of the victim's gauche remarks he (appellant) lost his composure and shot the victim. Appellant also argues that treachery, conspiracy and abuse of superior strength were not established by the prosecution because the shooting was accidental and/or committed under a mistake of fact that the victim was about to reach for a gun inside his car. Further, appellant alleges that if he should be made to answer for his act he should only be guilty of homicide and entitled to the mitigating circumstances of voluntary surrender, passion and obfuscation and/ or incomplete self-defense.[7]

The arguments of accused-appellant are not without merit. Once accused-appellant has admitted that he killed the victim, the burden is on him to establish the presence of any circumstance which may relieve him from responsibility or mitigate the offense committed.[8] To prove justification the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it be weak, it could not be disbelieved after the accused has admitted the killing. In a plea of self-defense, it must be shown that there was a previous unlawful aggression that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the unprovoked attack of which he was the object. Accused-appellant failed to prove the presence of these circumstances. Instead, he presented inconsistent allegations as to why he killed the victim.

Accused-appellant claims that he acted under a mistake of fact that the victim was about to get a gun from his clutch bag inside the car.[9] At the same time he also argues that he lost his equanimity when he saw the victim slap his co-accused security guard and when he (appellant) tried to intervene he was also rudely treated by the victim.

The trial court found that the allegation about the presence of a clutch bag inside the car is not supported by the evidence. In fact, all the personal belongings of the deceased in his car were inventoried and the alleged clutch bag was not one of them; neither was there a gun or any other weapon inside his car. These findings of fact bear great weight and consideration supported as they are by the evidence on record.

The claim of appellant that the act of the victim in reaching for a clutch bag and slapping his fellow security guard constitute unlawful aggression is devoid of merit. The aggression must be real or at least imminent and not merely imaginary. A belief that a person is about to be attacked is not sufficient. Even an intimidating or threatening attitude is by no means enough. A mere push or shove not followed by other acts placing in real peril the life or personal safety of the accused is not unlawful aggression. In the instant case, the victim slapped another person and not accused-appellant. The slapping could not therefore have given him a well grounded or reasonable belief that he was in imminent danger of death or great bodily harm to compel him to defend himself by killing the victim. If no unlawful aggression attributed to the victim is established there can be no self-defense, complete or incomplete.[10]

Notwithstanding the failure of accused-appellant to prove self-defense, the Court finds him guilty only of homicide and not murder as found by the trial court. Not a single circumstance alleged in the information qualifying the crime to murder is present.

We find no evident premeditation in the killing of the victim. The records show that when appellant went near the victim, who was then arguing with a fellow security guard he got the latter's shotgun, walked towards the rear of the car of the victim, cocked his firearm and suddenly shot the latter. There was no proof of the time when the intent to commit the crime was engendered in the mind of accused-appellant, the motive and all those facts and antecedents which when combined would show that the crime was knowingly premeditated or that accused-appellant acted not only with a pre-existing design, but with that cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose.[11]

No abuse of superiority was established. The fatal shot was fired by only one of two (2) accused, there being no proof that they cooperated to take advantage of their superior strength. The fact that they did not conspire to kill the deceased implies that they did not jointly exploit their superior strength.[12]

Treachery was conspicuous in its absence. The victim knew of the oncoming danger when appellant approached him and took Usman's shotgun. That was why the victim asked appellant, "Bakit ka nakikialam. Itong kausap ko." [13] And as he cocked his gun and walked towards the victim the latter even remarked, "Putang ina ka. Huwag kang makikialam dito." [14] The circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself. [15] When it does not appear that the shooting was premeditated nor that the accused had consciously chosen a method of attack directly and especially to facilitate the perpetration of the homicide without danger to himself, and his decision to shoot the victim seemed to be so sudden and the position of both the victim and the accused was entirely accidental, treachery cannot be imputed to the appellant. [16] Moreover, there is no treachery when the killing resulted from a verbal altercation between the victim and the assailant such that the victim must have been forewarned of the impending danger. [17]

We cannot appreciate the circumstance of passion and obfuscation invoked by appellant to mitigate his criminal liability. The obfuscation must originate from lawful feelings. [18] The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control, because the cause of this condition of mind must necessarily have preceded the commission of the offense. [19] However, the voluntary surrender of accused-appellant to a police authority four (4) days after the commission of the crime as found by the trial court may be considered attenuating. [20]

Under Art. 249 of the Revised Penal Code, homicide is punishable by reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law and appreciating the mitigating circumstance of voluntary surrender which is not offset by any aggravating circumstance, the maximum of the penalty shall be taken from the minimum period of reclusion temporal, the range of which is twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor, in any of its periods, the range of which is six (6) years and one (1) day to twelve (12) years.

WHEREFORE, the decision appealed from is MODIFIED and accused-appellant WILFREDO BAUTISTA y NIELES is declared GUILTY of HOMICIDE, not murder, and sentenced to an indeterminate prison term of six (6) years, four (4) months and ten (10) days of prision mayor minimum as minimum, to twelve (12), years six (6) months and twenty (20) days of reclusion temporal minimum as maximum. In view of the reservation to file separate civil action, no civil indemnity is awarded.

SO ORDERED.

Padilla (Chairman), Vitug, and Kapunan, JJ., concur.

[1] Decision penned by Judge Alfredo J. Gustilo, RTC-Br. 116, Pasay City.

[2] Rollo, p. 8.

[3] TSN, 19 June 1992, p. 10; 3 July 1992, p. 650.

- [4] "Sir, why do you slap a security guard?" x x x "Why do you interfere? This is (the person) I am talking to;" TSN, 3 July 1992, p. 2.
- [5] "Son of a whore. Do not interfere here;" Id., p. 11.
- [6] Records, p. 114.
- [7] Rollo, pp. 48-59.
- [8] *People v. Boholst-Caballero*, No. L-23249, 25 November 1974, 61 SCRA 180.
- [9] Rollo, p. 55.
- [10] *People v. Galit*, G.R. No. 97432, 1 March 1994, 230 SCRA 486.
- [11] Aquino, Ramon C., *The Revised Penal Code*, 1987 ed., Vol. I, p. 353.
- [12] *People v. Ybañez*, No. L-30421, 28 March 1974, 56 SCRA 210.
- [13] See Note 3.
- [14] See Note 4.
- [15] *People v. Unay*, 97 Phil. 969 (1955); *People v. Namit*, 38 Phil. 926 (1918).
- [16] *People v. Abalos*, 84 Phil. 771 (1949).
- [17] *People v. Alacar*, G.R. Nos. 64725-26, 20 July 1992, 211 SCRA 580.
- [18] *People v. Silang Cruz*, 53 Phil 635 (1929).
- [19] *People v. Giner*, 6 Phil. 406 (1906).
- [20] *People v. Yecla and Cahilig*, 68 Phil. 740 (1939).

CONCURRING AND DISSENTING OPINION

HERMOSISIMA, JR., J.:

With all due respect to the majority opinion, while I fully agree that the evidence on record has sufficiently established that accused-appellant Wilfredo Bautista is guilty beyond reasonable doubt for the killing of the victim, Alfonso Davila, it is my opinion that the killing was attended by the aggravating circumstance of treachery that should qualify the crime committed from one of homicide to that of murder.

In order that the aggravating circumstance of treachery can be appreciated, the following requisites must concur:

- (1) that, at the time of the attack, the victim was not in a position to defend himself; and
- (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[1]

There is no dispute that as to the first requisite, evidence on record has clearly established that, at the time of the shooting, the victim was in no position to defend himself. He was then busy arguing with the co-accused, Gayak Usman. Nowhere in the record has it been shown that the victim was aware that accused-appellant will shoot him. The altercation was between the victim and Usman and, if harm was to be expected, it would have been expected to come from Usman and not from accused-appellant who was a bystander during the incident. The victim was unarmed and the attack was sudden and not at all expected.

The act of the accused-appellant in taking the shotgun from Usman cannot be taken by the victim as an indication that he will be shot by the accused-appellant, since there was clearly no warning from the accused-appellant. The attack was sudden. The accused-appellant even went to the back of the victim's car where he cocked the gun before approaching the victim in order to shoot. The manner of attack adopted by the accused-appellant clearly established treachery. The acts of the accused-appellant upon commencing the execution of his design to kill the deceased constitute treachery, inasmuch as they tended to avoid every risk to himself arising from the defense which the deceased might make.[2] The fact that an exchange of words preceded the assault would not negate the treacherous character of the attack[3] since the altercation was between the victim and Usman.

Anent the second requisite, that is, whether the accused-appellant consciously adopted the particular means employed in the execution of his criminal act, was very well established from the records. It was undisputed that the accused-appellant used a shotgun and fired at a close range, hitting the victim on the head which caused his instantaneous death. By aiming at the victim, knowing fully well that the latter was unarmed, intent to kill was clearly manifested. The victim was not only unarmed but was also deprived of all means to defend himself from or evade the sudden and unexpected assault.[4] This Court has held in the case of *People vs. Lualhati*[5] that there is treachery where the victim was clearly not in any position to defend himself from the unreasonable and unexpected attack of the accused.

WHEREFORE, in view of the foregoing, I vote for the affirmance in toto of the decision appealed from.

[1] Reyes, Revised Penal Code, Book I, 1981 Edition, p. 420.

[2] *People vs. Parana*, 64 Phil. 331.

[3] *People vs. Ricohermoso*, 56 SCRA 431.

[4] *People vs. Mendoza*, 236, SCRA 666.

[5] 234 SCRA 325.

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