

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL PONAYO Y VILLANUEVA, ACCUSED-APPELLANT.

G.R. No. 111523. August 10, 1994

Ponente: MELO, J.

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MELO, J.:

Charged with murder in an Information reading -

That on or about 12:30 o'clock early in the morning of January 26, 1991, at Barangay Mampurog, municipality of San Lorenzo Ruiz, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with deliberate intent to kill with treachery and evident premeditation assault, attack and stab one ROLANDO GAZA Y SABAS with a deadly weapon (knife), thereby inflicting upon the latter serious and mortal stab wounds which were the proximate cause of the death of said Rolando S. Gaza, to the damage and prejudice of the heirs of the victim.

(p. 7, Rollo.)

accused, after trial, was convicted by the trial court in a decision the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of murder, and hereby sentence him to suffer imprisonment of 16 years and 1 day to 20 years medium degree of reclusion temporal to death.

He is likewise ordered to pay the heirs of the victim the amount of P50,000.00.

(p. 17, Rollo; p. 112, Record.)

From the above verdict of conviction, the instant appeal was interposed, with accused-appellant arguing that the trial court erred -

I

. . . in giving full faith and credence to the inconsistent and improbable testimonies of the prosecution witnesses Rodel Labag and Leny Cao.

II

. . . in concluding that there was treachery even if the same was not proven clearly as the crime itself.

III

. . . in finding the accused guilty beyond reasonable doubt of the crime charged despite the clear and convincing evidence of self-defense which justifies the killing of the victim Rolando Gaza.

IV

. . . in disregarding the mitigating circumstance of voluntary surrender despite clear evidence on the matter.

(p. 29, Rollo.)

The facts of the case as established by the evidence were summarized by the Office of the Solicitor General in its brief as follows:

At around 12:30 o'clock in the morning of January 26, 1991, prosecution witnesses Leny Cao and Roel Labag, together with the victim Rolando Gaza and one Anna Rose Gantong, were walking home to Barangay Mampurog, San Lorenzo Ruiz, Camarines Norte. Labag and Gantong were a few steps ahead of Cao and Gaza. The group just came from a dance at Barangay Dagutdutan. Suddenly, appellant, who came from behind, stabbed the victim on the left side near the spinal cord. Upon being hit, the victim ran towards Barangay Mampurog. Appellant chased him. Labag, who got frightened, went straight home, while Cao and Gantong stopped walking for a while and thereafter continued. After walking a certain distance, Cao and Gantong saw the victim, sprawled on the ground bathed in his own blood and already dead. Cao sought help from the residents but no one responded. Cao and Gantong proceeded to the nearby police station and reported the incident (pp. 14-22, tsn, November 20, 1991, testimony of Leny Cao).

(pp. 4-5, Appellee's Brief; ff. p. 54, Rollo.)

Accused-appellant impugns the testimony of prosecution witnesses Leny Cao and Rodel Labag as characterized by inconsistencies and contradictions. He points out that on the witness stand prosecution witness Leny Cao testified that after seeing the victim, Rolando Gaza, sprawled on the ground and already dead, Leny Cao immediately called out for help and that, since nobody responded to her cry for help, she and her companion, Anna Rose Gantong, left and reported the matter to the police. This is contrasted to Cao's affidavit where she declared that she went home and did not report the killing to the police. With regard to prosecution witness Rodel Labag, it is argued that his testimony that after being stabbed, Gaza ran, leaving accused-appellant behind who then approached the witness is inconsistent with Labag's subsequent testimony that he was approached by accused-appellant before the stabbing happened. Further, accused-appellant asserts that Cao's testimony that while they were walking, Labag and Gantong were ahead of Gaza who was beside her while accused-appellant was behind the group, is at variance with the testimony of Labag that at the time of the stabbing he was walking on the left side of Gaza.

The above inconsistencies and contradictions are minor, trivial, and inconsequential, and cannot impair the credibility of the witnesses. On the contrary, it has been held, inconsistencies and discrepancies on minor details of the testimony of a witness serve to strengthen the credibility of the witness (*People vs. Buka*, 205 SCRA 567 [1992]). They are badges of truth rather than indicia of falsehood. Whether Leny Cao called out for help after the stabbing and immediately reported the stabbing to the police or went home is clearly immaterial for she in fact reported the matter to the police as she executed her affidavit at the police station of San Lorenzo Ruiz, Camarines Norte on January 28, 1991 (pp. 6-7, Original Record). Whether accused-appellant approached Rodel Labag before or after the stabbing is likewise immaterial. Due to the occurrence of the startling event, said witness might have confused the sequence of events. What can not be erased is the fact that this witness actually saw the stabbing. Again, the particular positions of the victim, Cao, Labag, and Gantong while they were walking home are inconsequential for they could have changed positions while conversing and walking. Further, whenever there is an inconsistency between the affidavit and the testimony of a witness, the testimony commands greater weight (*People vs. Loveria*, 187 SCRA 47 [1990]).

Accused-appellant next assails the findings of the trial court that the attack upon the victim was characterized by

treachery.

The contention is devoid of merit.

The evidence unquestionably supports the findings of the trial court that treachery attended the killing. Rodel Labag testified that while he, the victim, Ana Rose Gantong, and Leny Cao, were walking towards home in Barangay Mampurog, coming from a dance at Barrio Dagutdutan, accused-appellant, approaching from behind suddenly stabbed the victim, Roland Gaza, at the back and pursued the victim when the victim tried to escape (pp. 5-8, t.s.n., September 19, 1991), and that he, the witness, was only an arm's length away from the victim when accused-appellant stabbed the latter (p. 5, id.). Leny Cao fully corroborated the testimony of Labag that the attack was sudden and unexpected and came from behind (pp. 14-19, t.s.n., November 20, 1991). These declarations indisputably establish that the attack of accused-appellant upon the victim was sudden, unexpected, and without warning coming from behind upon a totally unarmed victim, thus insuring accused-appellant's safety from any defensive or retaliatory act on the part of the victim.

The attendance of treachery as a qualifying circumstance is found in the concurrence of two conditions: (1) the employment of means, method, or manner of execution which would insure the offender's safety from defensive or retaliatory acts on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and (2) that such means, methods, or manner of execution was deliberately or consciously chosen (*People vs. Samonte, Jr.*, 64 SCRA 319 [1975]; *People vs. de la Cruz*, 207 SCRA 632 [1992]). Said conditions are undoubtedly present in this case. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim (*People vs. Alcantara*, 206, SCRA 662 [1992]; *People vs. Gonzales*, 210 SCRA 44 [1992];

Finally, accused-appellant sets up the defense of self-defense in his bid for reversal. To prove self-defense, an accused must establish three concurring requisites, namely: (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 (Article 11, No. 1, Revised Penal Code; *People vs. Aquino*, 54 SCRA 409 [1973]; *People vs. Morato*, 224 SCRA 361 [1993]). The foremost element that must be proved to establish self-defense is unlawful aggression, for the absence of this essential element negates the validity of the plea of self-defense (*People vs. Morato*, supra; *People vs. Curaraton*, 224 SCRA 372 [1993]). A review of the facts of the case clearly shows the absence of unlawful aggression on the part of the victim who was coming from a barrio dance in the company of friends, conversing with them along the way, when suddenly accused-appellant, coming from behind the group, stabbed the victim, who was unarmed and totally unaware of the impending attack. There was, therefore, no hint of aggression whatsoever, much less unlawful aggression, initiated by the victim. Absent this essential element, there is thus no need to discuss the other elements of self-defense for if there is no unlawful aggression there is nothing to prevent or to repel and the second element of self-defense would have no basis (*People vs. Morato*, supra; *People vs. Curaraton*, supra).

The Solicitor General recommends that the mitigating circumstance of voluntary surrender should be appreciated. We concur. The Chief of Police of the Municipality of San Lorenzo Ruiz, Chief Police Inspector Gil Gangan, testified that accused-appellant, accompanied by his aunt, walked into the police, a few hours after the stabbing and voluntarily surrendered himself without having been arrested and without any physical compulsion by any person. In order that the mitigating circumstance of voluntary surrender may be properly appreciated it must appear that (a) the accused had not been actually arrested; (b) he surrendered himself to a person in authority or his agent; and (c) his surrender is voluntary (*People vs. Molo*, 88 SCRA 22 [1979]). All the requisites are present in this case. An accused was held to be entitled to the mitigating circumstance of voluntary surrender where he proceeded to the municipal building where he was placed under arrest (*People vs. Besara, Jr.*, 64 SCRA 84

[1975]). The fact that herein accused-appellant was accompanied by his aunt when he surrendered does not detract from his act of voluntary surrender for there is no evidence to show that his aunt compelled him to surrender.

Under Article 248 of the Revised Penal Code, murder is punishable by reclusion temporal in its maximum period to death (Republic Act No. 7659 amending said article cannot be given retroactive effect as it would be unfavorable to accused-appellant for said Republic Act imposes the graver penalty of reclusion perpetua to death). There being the mitigating circumstance of voluntary surrender, the imposable penalty is the minimum of said penalty or 17 years, 4 months, and 1 day to 20 years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor in its maximum period to reclusion temporal in its medium period (10 years and 1 day of prision mayor to 17 years and 4 months of reclusion temporal).

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, but with the modification that the penalty imposed on accused-appellant is hereby reduced to 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. (People vs. Sarol, 139 SCRA 125 [1985]).

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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