

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR CARAS, ACCUSED-APPELLANT.

G.R. No. 112731. July 18, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

After affirming the judgment of the Regional Trial Court of Calbayog City, Branch 32, which convicted accused-appellant Salvador Caras, alias "Badong," of murder in Criminal Cases Nos. 735 and 736 thereof, but with modifications increasing the penalty imposed to reclusion perpetua and ordering appellant to indemnify the heirs of the victims, the Court of Appeals certified and elevated the records of this case to this Court pursuant to Section 13, Rule 124 of the Rules of Court.

Appellant was indicted in two cases of murder for the deaths of Pfc. Elinio Apolinario and Guillermo Carcellar under two separate informations which alleged:

Criminal Case No. 735

That on or about the 28th day of August, 1984, in the evening, at the Poblacion of Sto. Niño, Province of Samar, Philippines, and within the jurisdiction of this Court, the above-named accused, together with six (6) other members of the Philippine Constabulary, Samar Command, conspiring, confederating together and mutually helping one another with deliberate intent to kill, taking advantage of superior strength and with cruelty, did then and there wilfully, unlawfully and feloniously attack, assault and sho(o)t one ELINO APOLINARIO with the use of firearm (armalite), (with) which the accused and said companions conveniently provided themselves for the purpose, thereby inflicting upon the latter wounds on the different parts of his body which caused the death of said Elinio Apolinario.[1]

Criminal Case No. 736

That on or about the 28th day of August, 1984, in the evening at the Poblacion of Sto. Niño, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with six (6) other members of the Philippine Constabulary, Samar Command, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and sho(o)t one GUILLERMO CARCELLA with the use of firearm (armalite), (with) which the accused and said companions conveniently provided themselves for the purpose, thereby inflicting upon the latter, (a) wound on his body which caused the death of said Guillermo Carcellar.[2]

At his arraignment on March 29, 1989, duly assisted by counsel, appellant pleaded not guilty. After joint trial of the aforesaid cases, the court below rendered judgment on October 15, 1991, with the following dispositive portion:

WHEREFORE, in Criminal Case No. 735 for killing Elinio Apolinario, the Court finds and declares the accused, Salvador Caras @ "Badong," GUILTY BEYOND REASONABLE DOUBT of the crime of murder,

defined and penalized by Art. 248 of our Revised Penal Code with reclusion temporal in its maximum period to death. Due to the abolition of capital punishment in our 1987 Constitution, the Court hereby imposes upon him an Indeterminate Penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to pay the costs.

In Criminal Case No. 736 for (the) killing of Guillermo Carcellar, the Court finds and declares the same accused, Salvador Caras @ "Badong," GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, defined and penalized by Art. 248 of our Revised Penal Code with reclusion temporal in its maximum period to death. Due to the abolition of capital punishment in our 1987 Constitution, the Court hereby imposes upon him an Indeterminate Penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to pay the costs.

It appearing from the records that the accused in both cases has not agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with only 4/5 of the time during which he has undergone preventive imprisonment, in accordance with Art. 29 of our Revised Penal Code, as amended by R.A. No. 6127.[3]

From that judgment, appellant sought relief from the Court of Appeals which, as stated at the outset, rendered its confirmatory but modified judgment. For purposes thereof, the antecedent facts capsulized by the trial court were adopted by the Court of Appeals and, finding the same to be evidentiarily sound, we reproduce at length those factual foundations of this case:

x x x At around seven o'clock in the evening of 28 August 1984, in Sto. Niño, Western Samar, a member of the Integrated National Police, Pfc. Elinio Apolinario and a civilian named Guillermo Carcellar were shot dead allegedly by the appellant. Two separate informations for murder were filed (Records of Criminal Case No. 736, p. 1). Upon arraignment, appellant pleaded not guilty (Records of Criminal Case No. 736, p. 28). The two cases were tried jointly.

At the trial, the prosecution presented Evelyn Santos, Francisco Apolinario (brother of victim Elinio), Mario Casio, and Dolores Ramirez as witnesses. Their version of the incident is as follows: On the night in question, Francisco Apolinario was invited by Sgt. Antonio Cabasares (then the Station Commander of the INP station at Sto. Niño, Samar), the superior of victim Elinio, for a few drinks at the house of Troadio Ramirez. Ramirez also operated a store at his residence. The drinking spree inside the residence was attended by said Cabasares, Francisco, appellant, a certain Nicart, and the owner of the house, Ramirez. Cabasares sent appellant and Nicart on an errand to buy some "pulutan."

While the drinking session was going on inside the house, Francisco, Elinio and Guillermo Carcellar arrived, intending to purchase half a case of beer from the store. When Cabasares saw Elinio, he beckoned him to go inside the house. Elinio entered the house and Cabasares offered him a shot of whisky. Elinio drank it and then asked for leave to go home claiming that he had visitors waiting for him. Cabasares would not let him and instead, he gave Elinio another shot of whisky. Elinio drank the liquor after which he begged to be excused. He managed to go out of the house. However, Cabasares followed him. When Cabasares caught up with Elinio, he (Cabasares) hit Elinio on the head. Elinio asked his superior why he was hit and then knelt before him (Cabasares). Cabasares grabbed the kneeling Elinio and pulled him away about 45 to 50 meters across the street where it was dark (as it could not be reached by the illumination from the petromax lamps which lit the inside of the Ramirez residence). Elinio clung to the leg of Cabasares as the latter (Cabasares) dragged him causing Cabasares to fall. When both were on the ground, they rolled about ("paligod--ligod", TSN, 06 September 1989, p. 14). In the struggle that ensued, Elinio was able to maneuver himself on the top of Cabasares, pinning down the enemy's arms to the ground. Cabasares then shouted to appellant who had by then arrived from an errand: "Badong, tabang!" ("Badong, help!", TSN, 11 October 1990, p. 11). Elinio told Cabasares he was not

going to fight him (Cabasares). With that statement, he released Cabasares and fled towards his house.

Meanwhile, Elino's brother Francisco helped Cabasares up on his feet. Responding to Cabasares' call for help, appellant together with Sgt. Cesar Ilaw, Militar Nicart, Pat. Javate, a certain Boy, and one Monsanto arrived at the scene. Appellant was toting an armalite rifle. When Cabasares was up, he ordered Francisco at gunpoint to lead them to Elino's house. Francisco begged for his brother's safety and asked Cabasares to let the incident pass. But, Cabasares was unmoved. Francisco accompanied the group including appellant to his brother's house. When they reached Elino's residence, its entrance was closed. Cabasares instructed Francisco to knock at the door and call on to (sic) his brother. Elino opened the door and Cabasares pushed Francisco inside the house. He then dragged Elino towards the outside. As they reached the bamboo fence of the residence, Elino held on to one of its posts. At that point Francisco embraced his brother. Seeing appellant aiming an armalite rifle at Elino from his arms, Francisco pleaded with him not to shoot his brother, and even gestured with an open palm motioning appellant to stop. When Francisco released Elino from his arms, Cabasares uttered the order to kill. A volley of bullets emanated from the appellant's armalite riddling Elino's body. Elino, however, managed to stagger inside his house. Cabasares and appellant followed him. Using the armalite he had grabbed from appellant, Cabasares pumped some more bullets into Elino's body after which the body was dragged outside the house. Then Cabasares went back inside the house. Seeing Guillermo hiding in a corner, Cabasares shot Carcellar with one bullet in the head using the same weapon he had shot Elino with. As this was going on, appellant had gone to Elino's bedroom and found the service armalite issued to Elino. Using this armalite, appellant strafed the inside of Elino's house with bullets. Then, the attackers left.

The Medico-Legal Necropsy Report dated 12 September 1984, issued by the Calbayog City General Hospital (Annex "D", Records of Criminal Case No. 735, p. 8) determined the cause of death of victim Elino as "cardio pulmonary failure due to hemopneumothorax, massive hemorrhage, multiple punctured wound (gunshot), neurogenic shock." In a similar report, the cause of death of victim Carcellar was declared to be "crushing injury head to gunshot." (Annex "A", Records of Criminal Case No. 736, pp. 7).

Appellant admitted having killed the two victims, but invoked the justifying circumstance of defense of stranger provided in Article 11, paragraph 3 of the Revised Penal Code. Defense witnesses Sgt. Antonio Cabasares, Sgt. Pablo Enguerra, Sgt. Ray Basas, Sgt. Cesar Ilaw, and appellant testified to this effect: Appellant was a provincial guard at Catarman, Samar. He was sent to Sto. Niño on a mission to re-arrest an escapee-prisoner. He stayed there for a few days lodging in the house of one Saling Hechanova. Several other men were boarders in the same house, namely: Sgt. Ilaw, Sgt. Javati and Pali Javati who were soldiers assigned at Catbalogan, Samar. On the date and time in question, when they were about to take supper in the second floor of the Hechanova house, a voice which the other soldiers recognized as that of Sgt. Cabasares' called out for help. Two soldiers CIC Javati and Ilaw immediately rushed downstairs and outdoors with their armalites, leaving behind appellant. The latter found an armalite inside one of the rooms in the house, picked up the weapon and then went out of the house. As he stepped out of the Hechanova residence, he heard the screaming voice of a woman coming from a house (which later turned out to be the house of victim Elino) about a hundred meters away. He walked towards the house and peeped through its window. From where he stood, he saw a man (later identified as the victim Elino) trying to seize a pistol from a second man (later identified as Cabasares). Then he saw a third man (later identified as victim Carcellar) with an armalite. Appellant witnessed Carcellar cocked (sic) the armalite. Perceiving Carcellar to be on the verge of killing Cabasares, appellant shot Carcellar. Appellant claimed to have heard only two shots from the rifle he fired. Then, appellant went inside the house and picked up the armalite rifle of Carcellar. Elino (the one who was trying to seize the pistol from Cabasares) was, in the meantime, able to wrestle the gun from Cabasares. Elino was about to shoot Cabasares. Sensing the urgency of the situation, appellant fired the armalite which was then set to "fully-automatic" towards the would-be assailant. These two killings had a short interval of five seconds in between. Cabasares (whose life appellant appears to have saved) could not see appellant as the latter fired from the outside of the house through the window, as it was very dark outdoors.

As the gun battle was going on, soldier Ilaw ducked on the ground for safety. He could not see anything as it was very dark.

After the shooting incident, appellant entered the house where he had shot two persons, and took the armalite of Carcellar as well as the pistol of Cabasares. The latter and appellant then went out of the house. Cabasares informed appellant of the names of the two people he had shot after appellant had told him that he did so to defend his (Cabasares') life.

Subsequently, Cabasares put appellant under arrest. Cabasares, together with appellant, left Sto. Niño at 4:00 a.m. the next day. Appellant was brought to Camp Lucban in Catbalogan. There he surrendered to a certain Col. Almaden. Two M16 Armalite rifles with Serial Nos. 067625 and 9007111 were also turned over to the aforementioned military officer. It appears that the M16 Armalite Rifle Serial No. 9007111 was issued to Cabasares (TSN, 04 July 1990, pp. 7-8).

Witness Cabasares' testimony echoed the version of the prosecution. It varied however with respect to the events that transpired after Cabasares and Elino grappled. Cabasares claimed that after Elino released him, the latter left for his (Elino's) house. As soon as he (Cabasares) stood up, he went to Elino's house accompanied by Francisco. The latter knocked on the door of the house, and Elino opened the door. Elino held an armalite rifle on his right hand with his finger on the trigger. Thinking that Elino was angry at him, Cabasares immediately grabbed the barrel of the weapon with his left hand, as he held his .38 caliber pistol in his right hand, his finger also on its trigger. Seeing this, Francisco shouted "Don't do that." (TSN, 24 January 1990, p. 23), and ran inside the house. Using his left hand, Elino grabbed Cabasares' right hand (which held the handgun). As the two of them grappled with each other's weapon, a gunshot was heard from behind Cabasares. Cabasares felt something hit him on the head, and he fell to the ground. He lost his grip on his gun and Elino took it. At that point, Cabasares heard a volley of gunfire coming from behind him, and Elino fell on top of Cabasares. At the time the shooting occurred, Cabasares did not know who the triggerman was. However, when he turned around in the direction where the shots had come after the actual firing, he saw appellant who was outside Elino's house. He (Cabasares) asked appellant why he shot Elino, and the latter replied that it was because Elino was about to shoot him (Cabasares).

An Examination of the 10 empty cartridge cases (marked "JNA-1" to "JNA-10" submitted to the PC/INP Crime Laboratory in connection with the killing of the two victims was made by comparing said cartridge cases with those fired from the M16 Rifle with Serial No. 9007111 and those fired from the M16 Rifle with Serial No. 067626 (sic). Ballistics Report No. B-326-84 (Records of Criminal Case No. 735, p. 167) made the following conclusion: "The specimens marked "JNA-1" - to "JNA-10" were fired from the caliber 5.56 mm. rifle with Serial No. 9007111.[4]

In our resolution of January 12, 1994,[5] we duly apprised appellant, inter alia, that -

After deliberation, and in line with the resolution of the Court En Banc dated November 23, 1993 in *People vs. Francisco, et al.*, the Court RESOLVED to INFORM appellant that he may file an additional appellant's brief with this Court within a NON-EXTENDIBLE PERIOD OF TWENTY (20) DAYS from notice hereof; and, if such additional brief is filed, to REQUIRE the Office of the Solicitor General to file an additional appellee's brief before this Court within a NON-EXTENDIBLE PERIOD OF TWENTY (20) DAYS from receipt of appellant's additional brief.

In a manifestation dated February 21, 1994,[6] counsel for appellant stated that a "perusal of the appellant's brief filed by Atty. (C)hiong with the Court of Appeals show(s) that Atty. Chiong had already exhaustively discussed the case in the said brief," hence "the accused-appellant, thru the undersigned counsel, hereby manifest(s) (his) intention not to file an additional appellant's brief." In view thereof, any mention or citation herein of the briefs of the parties refer to those filed by them in the Court of Appeals.

In his recourse to said appellate court, appellant Caras would want it, and now this Court, to believe, first, in his version of the incident; second, that the testimony of the eyewitness of the prosecution was biased and inconsistent; and, lastly, that he acted in defense of a stranger.[7]

The first and second assigned errors raise the question of credibility of witness Francisco Apolinario. Appellant contends that Apolinario's narration, on which the judgment of conviction was predicated, "reveals the witness' penchant (for) telling (an) incredible story borne (sic) out probably by his bias, exaggeration or special interest in the outcome of this case, he being the brother of the deceased Elinio Apolinario." [8] We have conscientiously reviewed and assayed the evidence, and we are sufficiently persuaded to reject appellant's propositions.

In fact, the trial court even enumerated details which reveal that "the evidence adduced by the accused show the same to be tainted with irreconcilable inconsistencies with other facts established on record, while the testimonies of the accused himself and Antonio Cabasares and Cesar Ilaw are at loggerheads with each other, rendering the defense of stranger unreliable, unconvincing and untenable." [9] The efforts exerted by the lower court to clearly point out the evidence upon which the verdict was based indubitably show that its presiding judge made an exhaustive review of the transcripts of the stenographic notes.

This Court has time and again reiterated the doctrinal rule that it will not interfere with the findings of the trial court on the issue of credibility of witnesses and their testimonies, unless said court had plainly overlooked undisputed facts of substance and value which would have altered the result of the case. The findings of the trial court are accorded great respect by an appellate tribunal for the latter can only read in cold print the testimonies of the witnesses. [10] If we appear doctrinaire by now repeating this precept, it is because of its unquestionable applicability to the present case.

The fact that the prosecution witnesses are relatives of the victim does not necessarily indicate bias as would impair their trustworthiness. In the absence of proof of ill motive on the part of witnesses, relationship between them and the victim does not undermine their credibility. On the contrary, it would be unnatural for persons such as the relatives of the victim who themselves seek justice to commit injustice by imputing the crime to persons other than those who are actually responsible therefor. [11]

The trial court gave weight and credence to the testimony of Francisco Apolinario and we do not feel that we should disturb its appraisal thereof, unless some facts or circumstances might have been overlooked and which may affect the adjudication of the case. Appellant, however, has not submitted or demonstrated any compelling reason for us to depart from this rule. No evidence was presented by the defense to show that prosecution witness Apolinario harbored any vindictive feeling against appellant, or any circumstance as would affect the weight of his testimony, except the inconsequential fact that Francisco was the brother of the victim Elinio.

As to whether or not appellant acted in self-defense is essentially a question of fact. Again, in the absence of any showing that the court a quo failed to appreciate facts and circumstances of weight and substance that would have altered its conclusion, and it having observed the demeanor of and heard the witnesses as they testified, said court was decidedly in a better position to evaluate their testimonies. No compelling reason, therefore, exists for this Court to impinge upon matters more appropriately within the province of the trial court.

Furthermore, where an accused has admitted that he is the author of the death of the victim and his defense is anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, especially so since he himself has admitted the killing. The burden is upon the accused to prove clearly and sufficiently the elements of self-defense which is an affirmative allegation, otherwise his conviction is inescapable. [12]

After a judicious review of the case, the Court of Appeals categorically held that there was no unlawful aggression on the part of the victim. It buttressed its conclusion with this telling observation: "The situation posed no actual, imminent and real danger to a stranger's life. Cabasares' testimony that he had grappled with Elino in the latter's house and, in the process, something hit him on his head and injured him making him lose his grip on his handgun and thereby putting him in danger of being shot by Elino, is totally fabricated. The Physical Injuries Report issued by the Calbayog City General Hospital submitted by the defense as Exhibit 2 to show that Cabasares sustained injuries from the grappling and to prove unlawful aggression on the part of Elino indicates that the contusions complained of by Cabasares were committed on 08 August 1985, as found in the examination conducted on 29 August 1985. Clearly the aforesaid report does not cover any injuries supposedly sustained on 28 August 1984, the date in question. x x x The absence of unlawful aggression negates the applicability of the justifying circumstance of defense of stranger. x x x." [13]

The Court of Appeals likewise concurred in the findings of the trial court that the victims were unarmed. This Court cannot likewise believe the allegation of the defense that Elino was armed with an armalite. As readily perceived by said appellate court, if Elino was indeed so armed, he would have been able to protect himself from the aggressors who had come for him in his house. On the contrary, Elino was helplessly dragged out of his house, without any resistance from him. Carcellar, too, who had been hiding in a corner was unquestionably unarmed. Both the trial court and the Court of Appeals thus correctly held appellant guilty of murder as the killing was attended by the qualifying circumstance of abuse of superior strength when the unarmed victims were mercilessly sprayed by him and Cabasares with bullets from high-powered firearms.

Finally, as pointed out by the trial court and the Solicitor General, appellant took flight after the filing of these criminal cases against him, which fact, by jurisprudential fiat, is a clear indication of appellant's guilt. The trial court noted that the accused fled, for which reason the cases were ordered archived for a time, and emphasized that his flight was not only an indication of guilt but also revealed appellant's awareness that his defense is untenable. [14] This adheres to our reiterative holding that if the accused honestly believed that their acts constituted self-defense against the unlawful aggression of the victim, they should have reported the incident to the police, instead of escaping and avoiding the authorities until they were arrested or prevailed upon to surrender. [15]

In light of applicable law and jurisprudence, the evidence was clearly sufficient to sustain the verdict holding appellant guilty of the crime of murder as charged and proved. Consequently, the Court of Appeals properly increased the impossible penalty for the crimes as explained in the decretal portion of its judgment, to wit:

"We note, however, that the penalty imposed by the court a quo is erroneous.

Article 248 of the Revised Penal Code provides that the crime of murder is punishable by reclusion temporal in its maximum period to death. Appellant admitted killing the two victims herein. The killings of the two persons were attended with the qualifying aggravating circumstance of abuse of superior strength. Hence, the killings reached the level of murder. Dwelling is considered as a generic aggravating circumstance. Appellant herein is entitled to the mitigating circumstance of voluntary surrender.

Considering that the generic aggravating circumstance of dwelling is offset by the mitigating circumstance of voluntary surrender, the penalty that should be imposed on the appellant is the medium period of the penalty provided for under Article 248, which is reclusion perpetua.

WHEREFORE, the appealed decision is affirmed with the modification that accused-appellant in Criminal Cases Nos. 735 and 736 is hereby sentenced to suffer two penalties of reclusion perpetua and to pay the heirs of the victims in each case (a) civil indemnity in the sum of P50,000.00 consonant with the ruling in the case of *People vs. Lacao* (201 SCRA 317 [1991]); (b) the amount of P20,000.00 to the heirs of each of the victims by

way of moral damages (People vs. Quilaton, 205 SCRA 279 [1992]); and (c) P10,000.00 to the heirs of each of the victims as exemplary damages, pursuant to Article 2230 of the New Civil Code by reason of the presence of two aggravating circumstance which attended the commission of the crimes. Costs against accused-appellant." [16]

ACCORDINGLY, the judgment of the Court of Appeals in the case at bar is hereby **AFFIRMED** in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Rollo, CA-G.R. CR No. 12571, 22.

[2] Ibid., 24.

[3] Ibid., 20-21; penned by Judge Roberto A. Navidad.

[4] Ibid., 118-122.

[5] Rollo, 2.

[6] Ibid., 5.

[7] Appellant's Brief, 1; Rollo, CA-G.R. CR No. 12571, 60.

[8] Ibid., 12.

[9] Rollo, CA-G.R. CR No. 12571, 19-20.

[10] People vs. Matrimonio, G.R. No. 82223-24, November 13, 1992, 215 SCRA 613.

[11] People vs. De Paz, G.R. No. 86436, August 4, 1992, 212 SCRA 56.

[12] Ortega vs. Sandiganbayan, G.R. No. 57664, February 8, 1989, 170 SCRA 38. See also People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149; People vs. De la Cruz, G.R. No. 68319, March 31, 1992, 207 SCRA 632.

[13] Rollo, 124.

[14] Rollo, CA-G.R. CR No. 12571, 20.

[15] People vs. Manlulu, G.R. No. 102140, April 22, 1994.

[16] Rollo, CA-G.R. CR No. 12571, 126.

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