

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICANDRO ABRIA, ACCUSED-APPELLANT.

G.R. No. 113445. December 29, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

On February 12, 1992, appellant Nicandro Abria and his co-accused, Fernando Abria, were charged before the Regional Trial Court of Manila with the murder of Lutgardo Fumar under an information stating the following:

"The undersigned accuses NICANDRO ABRIA and FERNANDO ABRIA of the crime of Murder, committed as follows:

That on or about May 8, 1991, in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one LUTGARDO V. FUMAR, by then and there stabbing him with a knife on the chest and hitting him with a steel several times, thereby inflicting upon the latter mortal stab wound which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW."

As both accused were at large, the case was temporarily archived.

On June 15, 1992, Nicandro Abria was arrested in his home at Western Samar and was immediately transported to Manila and committed to the City Hall of Manila on July 22, 1992. Upon arraignment, appellant pleaded "not guilty."

During trial, the prosecution presented its version of the facts:

On May 8, 1991, at around 9:30 p.m., lone prosecution witness Marilou Fumar went out of her Tondo residence to fetch water.[1] Her husband, the deceased Lutgardo Fumar, was then fast asleep inside their residence as he had been suffering from hernia for almost a week.[2] While waiting for her container to fill up, she overheard Fernando Abria taunt and jeer her sister-in-law, Ayleen. Slightly peeved, Marilou admonished Fernando to stop annoying Ayleen and to treat the latter like his own relative.[3]

However, instead of stopping his taunting, Fernando scoffed at Marilou saying, "Bakit, sinong pinagmamalaki mo, ang asawa mo? Sige, palabasin mo." [4]

Esteban Fumar, Lutgardo's brother, was then purchasing an item from an adjacent "sari-sari" store [5] and when he heard Fernando's rude reply, joined the conversation and told Fernando, "Kung kayo ni Marilou ay mag-aaway, kayo-kayo (na) lang. Huwag (ninyong) idamay ang kapatid ko dahil natulog na siya." [6]

Overhearing this, appellant, who was in his house nearby, [7] angrily came out armed with a bladed instrument. He raced after Esteban, but failing to catch him, appellant returned to his house.

Aroused from his sleep due to the commotion, Lutgardo stepped out of his house to investigate what was going on. Upon seeing him, appellant wasted no time in venting his ire on him by stabbing him in the right chest.[8]

Lutgardo dashed inside the house of his sister Alicia Elligue, got a bolo,[9] and was about to defend himself when he suddenly dropped prostrate on the ground.[10] Marilou rushed to her husband to try to repel the attack of appellant but was herself stabbed in the anterior portion of her waist.[11]

At this moment, appellant's brother-in-law Hugo Perante, arrived and tried to pacify appellant.[12]

With blood gushing alarmingly from Lutgardo's chest, Marilou rushed him to the Jose Reyes Memorial Medical Center. Two days later, Lutgardo expired.

Post mortem findings revealed the following:

"Pallor, lips and nailbeds.

Stab wound, chest, right side, anterior aspect, level of 5th intercostal Space, 3.5 cm. from anterior median line, oriented upward and laterally, fusiform, 2.0 cm. long, edged, clean-cut, upper extremity sharp, lower extremity contused, lateral border, bevelled, directed backward, upward and medially, penetrating middle mediastinum, perforating heart, right, ventricular wall, sutured, infarcted, with an approximate depth of 12.0 cm.

Lungs, bilateral, dark-purple, firm. Pillowly texture, lost. Cut-sections transude dark-red blood.

Brain and other viscera, pale.

Thoraco-abdominal incision, sutured, 34.0 cm.

Sternotomy.

Drainage incision, chest, right side.

Stomach contents, liquid, small amount."

The cause of death of the deceased, "Pneumonia, lobar, secondary to stab wound of the chest"[13] proved to be fatal.

On July 16, 1991, Marilou Fumar filed her affidavit-complaint with the Office of the City Prosecutor of Manila, stating therein that she spent the amount of P10,000.00 for the funeral services of her husband.

On the other hand, appellant's version of the incident follows:

The Abria brothers and Marilou Fumar are relatives. The Abrias lived three houses away from Marilou. On May 8, 1991, appellant was on his way home from the Pinausukan Restaurant on West Avenue, Quezon City, where he worked as a security guard. Upon reaching his house, he saw the victim drinking in front of his house, together with Esteban Fumar and a certain Romy. Esteban Fumar invited appellant to join them and offered him a glass of wine which the latter declined saying that he was tired. Suddenly, Esteban swung a foot-long knife at him hitting him on the left forearm and below the elbow. Appellant managed to wrest the knife away. Lutgardo then stood up, brandishing a 2 1/2 foot long bolo at appellant and hacked him with it on the bridge of his nose. Appellant parried Lutgardo's thrust with the knife he had grabbed from Esteban. In fighting Lutgardo, appellant lost three of his teeth and sustained injuries on his shoulder and armpit. Appellant then experienced a mental blackout and could no longer recall what happened.

The trial court discounted appellant's version of the incident and rendered a decision, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered finding the Accused Nicandro Abria guilty beyond reasonable doubt of the crime of "Murder" qualified by treachery, defined in Article 248 of the Revised Penal Code and, there being no other modifying circumstances in the commission of the crime, hereby metes on said Accused

the penalty of RECLUSION PERPETUA, with the accessory penalties of the law and hereby condemns him to pay to the heirs of Lutgardo Fumar the amount of P10,000.00 as actual damages and indemnity in the amount of P50,000.00. The period during which the Accused was detained shall be credited to him in full provided that he agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail of Manila.

The Accused Fernando Abria, on the other hand, is hereby acquitted of the charge, the Prosecution having failed to prove his guilt therefor beyond reasonable doubt. The Court cannot likewise render judgment on the civil aspect of the case in view of the aforementioned disquisitions of the Court. With costs against the Accused Nicandro Abria.

SO ORDERED."

Appellant assigns the following errors in the decision of the trial court:

"THE TRIAL COURT ERRED IN FINDING THAT TREACHERY ATTENDED THE STABBING OF THE DECEASED BY THE ACCUSED NICANDRO ABRIA

THE TRIAL COURT ERRED IN GIVING UNMITIGATED EVIDENTIARY WEIGHT TO THE TESTIMONY OF MARILOU FUMAR

THE TRIAL COURT ERRED IN FINDING ACCUSED'S CLAIM OF SELF-DEFENSE 'PREPOSTEROUS AND SHEER INFANTILISM'

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA"

We find no merit in the petition.

The trial court was correct when, in its decision, it said that although appellant and Lutgardo were facing each other when the stabbing occurred, the attack was so sudden and unexpected that the latter (who was unarmed) was unable to ward off and thwart the assault and put up any semblance of defense.

This is in accord with the doctrine we laid down in the case of *People v. Basadre*,^[14] wherein we said:

"The sudden and unexpected attack on the victim Alfonso Rayray which ensured the commission of the killing without any risk to the assailant constitutes treachery. It may be true that the attack was made by assailant face to face with the victim, but We should consider the fact that the latter was unarmed, was totally unaware of the coming attack from someone he did not even know and was not in a position to defend himself against him. Treachery may be appreciated in a sudden frontal attack (*People vs. Reyno*, 77 Phil. 93)."

Although the attack on Lutgardo was frontal, it caught him off-guard and defenseless as he had just been roused from sleep and was not aware of what was happening outside his house. Thus, even if the attack was frontal, it is treacherous when it is sudden and unexpected and the victim is unarmed.^[15]

As for appellant's claim that Marilou Fumar's account of the incident is "non sensical," the same is equally unmeritorious. Well-settled to the point of being elementary is the doctrine that on the issue of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial court, which is in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial.^[16]

This doctrine does not change even if the witness is the victim's own wife. In fact, we have said that the fact that the principal witness is the victim's wife even lends more credence to her testimony as her natural interest in securing the conviction of the guilty would deter her from indicating persons other than the culprits for otherwise the latter would thereby gain immunity.^[17]

We also discount appellant's claim that he merely acted in self-defense as defying belief. As the trial court held:

"The Accused wanted the Court to believe that while he and Esteban Fumar were struggling for possession of the knife of the latter, Lutgardo Fumar who was armed with a 2 1/2 feet long bolo and Romy, merely stood by, without moving a finger so to speak, to give succor to the beleaguered Esteban Fumar. For sure, Lutgardo Fumar and Romy would have assaulted the Accused and mortally stabbed him to enable Esteban Fumar to extricate himself from the grip of the Accused and, at the same time, easily disable the Accused considering that the latter was unarmed. The Court cannot believe that Lutgardo Fumar and Romy would tarry a minute longer before helping Esteban Fumar and disabling the Accused."

The trial court also found it unbelievable that, after the victim allegedly assaulted him, appellant claimed to have had a blackout and yet could recall wresting the knife away from Lutgardo and throwing it into the estero. As the trial court said:

". . . if, as claimed by the Accused, he had a complete mental blackout, for sure, Romy and Lutgardo Fumar could have, with facility, overpowered the Accused and stabbed him with impunity. And yet, the Accused remained practically unscathed because he merely sustained an avulsion on the tip of his nose, a lacerated wound, and a couple of incised wounds on the deltoid anterolateral aspect, 2nd and 3rd intercarpal space and on the antero-lateral aspect D/3rd arm left (Exhibit '1') which are, by all accounts, superficial wounds. The Accused has not enlightened the Court who inflicted the stab wound on the right chest of Lutgardo Fumar and how the said wound was inflicted on the deceased. As it was, aside from the Accused, there were only three (3) people at the scene, namely, Esteban Fumar and his brother, Lutgardo Fumar and the latter's 'bilas', Romy."

It is crystal clear that appellant's claim of suffering a mental blackout after having hacked Lutgardo was merely an afterthought to escape responsibility for his criminal act.

Lastly, the fact that appellant fled to his home in Western Samar a day after he was brought to the hospital and in the process, abandoning his job, is a clear indication of guilt. We find implausible appellant's claim that he left Manila to escape the wrath of Lutgardo's relatives. If this were true, appellant should have immediately reported the incident to the police and complained about the assault. The fact that he did not do so is proof that appellant fled to escape arrest and prosecution for his crime.

WHEREFORE, the judgment of the trial court finding accused Nicandro Abria guilty beyond reasonable doubt is hereby AFFIRMED.

SO ORDERED.

Kapunan, Purisima, and Pardo, JJ., concur.

[1] TSN, October 2, 1992, pp. 16-17.

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

[3] TSN, October 2, 1992, p. 18.

[4] Ibid., p. 19.

[5] Ibid., p. 20.

[6] Ibid.

[7] Ibid., p. 21.

- [8] Ibid., p. 22.
- [9] Ibid., p. 23; TSN, November 16, 1992, p. 10.
- [10] Ibid., p. 10; Ibid., p. 7.
- [11] Ibid., p. 24; Ibid., p. 12.
- [12] Ibid., p. 35.
- [13] Autopsy Report No. 91-1198.
- [14] 128 SCRA 641 (1984), citing *People v. Reyno*, 77 Phil. 93.
- [15] *People v. Javar*, 226 SCRA 103, 111 (1993).
- [16] *People v. Lacatan*, G.R. No. 121532, September 7, 1998.
- [17] *People v. Villalobos*, 209 SCRA 304 (1992).

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