

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIO SICCUAN, LITO BABARAN AND HERALDO (GERALDO) SIRIBAN, ACCUSED-APPELLANTS.

G.R. No. 113790. April 11, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the decision of the Regional Trial Court of Aparri, Cagayan, Branch 7, dated October 27, 1993,[1] convicting herein appellants of murder. The information dated July 5, 1990, originally charged appellants and another co-accused, Lito Dumana, with murder for the death of a certain Edgardo Amaba. Dumana died during the pendency of the case and before any judgment could be rendered by the lower court; thus, only appellants elevated the judgment to this Court.

The antecedent facts follow.

On April 12, 1990, Edgardo Amaba was having a drink with Dumana and appellants Siccuan, Babaran, and Siriban. At about 11:30 p.m., Amaba decided that it was time to go home and left the merry-making. After a few minutes, Siccuan went to Amaba's house to request the latter to accompany him home.[2]

Amaba acceded to Siccuan's request and accompanied the latter to his residence before returning home. Moments later, he heard Siccuan angrily calling for him, so he went out of his house and inquired what the problem was. Instead of answering, Siccuan hurled profanities and insults at him. The ensuing altercation attracted the attention of Amaba's wife Rosalinda and son Elmer, both of whom went out of their house to see what the commotion was all about. What they witnessed, however, would change the entire course of their lives. They saw Siccuan, Babaran and Siriban assaulting Amaba with a bolo and a bamboo stick. The unprovoked attack continued until the totally defenseless Amaba was stabbed in the chest by Dumana, killing him instantly.[3]

Initially, appellants denied the murder charge and tried to establish the following facts as their common defense.

On April 12, 1990, Amaba and appellants, together with a certain Roberto Costales, were engaged in a drinking spree at the latter's house.[4]To entertain his visitors, Costales decided to show an "adult film." Dumana suggested that the film be changed to a war movie. Amaba objected and issued a veiled threat that war may break out among themselves if they change the tape.

After a while, Amaba and Siccuan left Costales' house. Later, however, Siccuan returned to the Costales residence with his wife Esperanza to continue watching the film. Finding the movie distasteful, Esperanza asked her husband to take her home. On the way out, the couple met Amaba who offered to accompany them home, but his offer was declined. Feeling slighted by Siccuan's rejection, Amaba pummeled the latter's chest then got a long bolo and suddenly hacked him, but he was able to parry the blow.[5]During the struggle, Siccuan succeeded in disarming Amaba who immediately fled. While running away, Amaba met Dumana who suddenly stabbed him in the chest causing his death.[6]

On October 27, 1993, the trial court, finding the version of the prosecution more persuasive than that of the defense, rendered judgment finding appellants guilty of murder for the killing of Amaba, qualified by the circumstance of abuse of superior strength. The decretal portion thereof reads thus:

"WHEREFORE, based on the consideration of the evidence adduced in the trial of the instant case, this Court renders judgment:

(a) Finding the accused, CRESENCIO SICCUAN, LITO BABARAN and HERALDO (GERALDO) SIRIBAN GUILTY beyond reasonable doubt of the offense of MURDER and hereby sentences each of them to Reclusion Perpetua, including the accessory penalties therefor as provided by law;

(b) Ordering the said accused to pay, jointly and severally, the heirs of the victim Edgardo Amaba:

(1) P50,000.00, as death compensation;

(2) P100,000.00, as moral damages;

(3) P9,000.00, for the expenses in the nine-day wake of prayers; and

(4) P300.00 for the church service in the funeral;

(c) Also ordering the said accused to pay the costs; and

(d) Also further ordering that the estate of the deceased accused Lito (Joselito) Dumana be made to pay the civil indemnity, herein awarded, jointly and severally with the accused Cresencio Siccuan, Heraldito Siriban and Lito Babaran.

SO ORDERED."

In their brief, appellants no longer disown responsibility for the death of Amaba.[7] They contend, however, that the court a quo erred in considering the circumstance of abuse of superior strength in qualifying the crime to murder. At most, they argue, their crime should only have been homicide. They also allege that the trial court erred in ordering the estate of the deceased accused Dumana to pay civil indemnity to the heirs of the victim.

With respect to the first issue, appellants argue that there was no formal offer of evidence to prove that the killing was done with abuse of superior strength. Under Sections 34 and 35, Rule 132 of the Rules of Court, evidence not formally offered cannot be considered by the court.[8]

We find no merit in this argument. Assuming that there was indeed no formal offer of evidence to prove the qualifying circumstance of abuse of superior strength, such oversight could not be fatal to the People's case.

A review of the records reveals that in no instance during the course of the testimony of the prosecution witnesses narrating the facts and circumstances surrounding the death of Amaba did appellants' counsel object to such testimony. Where the proponent presents evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object, lest silence when there is opportunity to speak operate or be construed as a waiver of his objection.[9]

Under Section 36, Rule 132 of the Revised Rules on Evidence,[10] the purpose of making an objection is to warn and notify the court and the opposing counsel that a ruling is considered erroneous and, if not corrected, will be the basis of an appellate review.[11] If there had not been a proper offer of evidence, appellants' counsel should have timely objected thereto, but he did not. As we ruled in *Catuiria v. Court of Appeals*,[12] viz.:

"While it is true that the prosecution failed to offer the questioned testimony when private respondent was

called to the witness stand, petitioner waived this procedural error by failing to object at the appropriate time, i.e., when the ground for objection became reasonably apparent the moment private respondent was called to testify without prior offer having been made by the proponent."

The prosecution witnesses extensively testified during direct examination as to the events which transpired on April 12, 1990, specifically, the manner and means employed by appellants in attacking the victim. Appellants can no longer object to said testimony in this appeal,[13] lest they be allowed to benefit from their own omission.

To compound matters for appellants, not only did their counsel fail to interpose timely objections to objectionable testimony, but they even conducted their own cross-examination,[14] thereby waiving any defect in the presentation of the testimony of the prosecution witnesses.[15]

We agree with the trial court's finding that the killing of Amaba was qualified by abuse of superior strength. This circumstance is present not only when the offenders enjoy numerical superiority, or when there is a notorious inequality of forces between the victim and the aggressors, but also when the offenders use powerful weapons out of proportion to the defenses available to the offended party.[16] This is a factual finding which this Court will not disturb on appeal absent any showing that the trial judge overlooked facts of relevant value which, if considered, may affect the outcome of the case.

In this case, appellants were armed with a long bolo, bamboo poles and a twelve-inch knife which they used to attack and kill Amaba, giving them a clear advantage over their victim who was unarmed. To disregard the manner in which the victim was killed would be an affront to credulity, for not only did appellants outnumber the victim, but the latter was also utterly defenseless.[17]

Regarding the second issue raised by appellants, we are of the opinion that such argument is tenable both in principle and authority.

Since the crime for which Dumana was charged is murder and there is no dispute that he died before any judgment of conviction could be rendered by the lower court, the law dictates that he be relieved of criminal and civil liability due to his death before final judgment.[18]

Thus, the death of Dumana extinguished his criminal liability, as well as the civil liability based solely on the act complained of, i.e., murder.

WHEREFORE, the appealed judgment is hereby AFFIRMED with the MODIFICATION that award of moral damages is reduced to P30,000.00, in keeping with this Court's policy on indemnification, and the heirs of accused Lito Dumana are excused from paying his civil liability on account of his death before final judgment. Costs against accused-appellants.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1]Penned by Judge Antonio Aquilizan.

[2] TSN, June 27, 1991, pp. 7-9.

[3]TSN, July 9, 1991, pp. 16-20; July 30, 1991, p. 10.

[4] TSN, January 22, 1992, pp. 8-9; October 18, 1992, pp. 4-5; November 26, 1992, p. 3.

[5]TSN, November 26, 1992, p. 5.

[6] TSN, January 22, 1992, pp. 14-15.

[7] Rollo, p. 92.

[8] "Sec. 34. Offer of Evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Sec. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify."

[9] *People v. Marino*, 130 SCRA 595 (1984); *People v. Verger*, 105 SCRA 744 (1981).

[10] "Sec. 36. Objections - Objection to evidence offered orally must be made immediately after the offer is made. Objection to a question propounded in the course of oral examination of a witness shall be made as soon as the grounds thereof shall become reasonably apparent."

[11] *Martin*, Revised Rules of Court of the Philippines, Vol. 5., p. 603.

[12]236 SCRA 398 (1994).

[13] *Asombra v. Dao, et al.*, 36 Phil. 833 (1917); *Kuenzle & Strieff v. Siongco*, 22 Phil. 110 (1912); *Bersabal v. Bernal*, 13 Phil. 463 (1909).

[14] TSN, July 9, 1991, p. 3.

[15] *Abrenica v. Gorda and de Garcia*, 34 Phil. 739 (1916).

[16] *People v. Tiongson*, 130 SCRA 614 (1984); *People v. Atienza*, 198 SCRA 147 (1987).

[17] *People v. Caciller*, 30 SCRA 353 (1969).

[18] Art. 89 of the Revised Penal Code states, thus: "Art. 89. How Criminal Liability is Totally Extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, and as to pecuniary penalties, liability thereof is extinguished only when the death of the offender occurs before final judgment. x x x ."

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