

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID CABILES, SR., DAVID CABILES, JR., WILLIAM CABILES AND NOLITO CABILES ALIAS “LITO”, ACCUSED, DAVID CABILES, SR., ACC...

G.R. No. 115216. July 05, 1996

Ponente: MELO, J.

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MELO, J.:

Accused-appellant David Cabiles, Sr., and his sons, David, Jr., William Nolito, alias "Lito" were charged with murder under the following Information:

That on or about the 19th day of July, 1991, between 2:00 and 3:00 o'clock in the afternoon at Sitio Balyong Tulay, Brgy. Caranan, Municipality of Pasacao, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another with intent to kill, with treachery, taking advantage of superior strength and with evident premeditation armed with stones, spear (garod) and bolos did then and there wilfully, unlawfully and feloniously assault, attack and strike with said stones, spear and bolos for several times one Constancio Demesa, Jr. inflicting upon the latter several fatal injuries and as a result thereof sustained mortal wounds on the different parts of his body which caused his instantaneous death.

That as a result of the death of Constancio Demesa, Jr. his heirs suffered damages.

(p. 8, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty.

His co-accused were not apprehended and have remained at large up to the present time, for which reason the trial proceeded only against accused-appellant. Thereafter, the trial court found accused-appellant guilty in a decision dated February 16, 1994, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove beyond reasonable doubt the guilt of accused David Cabiles, Sr. of the crime of murder of which he is presently charged, judgment is hereby rendered whereby said accused, in the absence of any mitigating or aggravating circumstance is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the surviving heirs of the deceased the sum of FIFTY THOUSAND (P50,000.00) PESOS for his death, TWENTY THOUSAND (P20,000.00) PESOS as moral damages, FOURTEEN THOUSAND TWO HUNDRED FIFTY (P14,250.00) PESOS for the wake, coffin and burial expenses and to pay the costs.

(pp. 23-24, Rollo.)

From said decision, accused-appellant has interposed the instant appeal, contending that --

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ESTABLISHED FACT SHOWING THAT CONSTANCIO DE MESA IS THE UNLAWFUL AGGRESSOR.

II

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE CLAIM OF ACCUSED DAVID CABILES, SR. THAT THE WOUNDS WHICH CAUSED DE MESA'S DEATH WERE INFLICTED IN DEFENSE OF HIMSELF.

III

THE COURT A QUO GRAVELY ERRED IN DENYING THE MOTION OF ACCUSED COUNSEL TO POSTPONE THE CASE TO GIVE DR. SY THE CHANCE TO TESTIFY ON THE EXTENT OF THE WOUNDS SUFFERED BY WILLIAM CABILES.

IV

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED FOR THE CRIME OF MURDER.

V

THE COURT A QUO GRAVELY ERRED IN NOT CREDITING TO THE ACCUSED THE MITIGATING CIRCUMSTANCES MENTIONED UNDER PAR. 1, 4, 6, AND 8 OF ART. 13, OF REVISED PENAL CODE.

VI

ASSUMING WITHOUT CONCEDED THAT NOLITO, DAVID, JR. AND WILLIAM ALL SURNAMED CABILES ARE PRESENT DURING THE INCIDENT ALL ACTED IN DEFENSE OF THEIR FATHER DAVID CABILES, SR.

(pp. 59-60, Rollo.)

The prosecution's version of the case, as summarized by the trial court, is as follows:

The evidence adduced by the prosecution consist of the testimonies of Fredesminda Ocfemia, a barangay kagawad of Carana, Pasacao, Camarines Sur, Liderato Regnim, a barangay tanod, Dr. Melchor Baesa, the Municipal Health Officer of Pasacao, Camarines Sur, Jocelyn de Mesa, the daughter of the victim, and Benjamin San Juan, half brother of the victim.

Fredesminda Ocfemia testified that in the afternoon of July 19, 1991, she was in the house of David Cabiles, Sr. at Zone 8, Balyong Tulay, Caranan, Pasacao, Camarines. While she was there Constancio de Mesa, Jr. arrived and begun to have an argument with David Cabiles, Sr. When David Cabiles, Sr. went to the kitchen of his house she told de Mesa to leave the place. She held his hand and pulled him towards the road.

When Ocfemia and de Mesa were already about fifteen (15) meters away from the house of David Cabiles, Sr., the latter came out holding a bolo, shouting and telling de Mesa to come back. Then David Cabiles, Jr. threw a stone at de Mesa hitting the latter on the left leg. De Mesa picked up the stone that hit him, but Ocfemia held his arm and advised him to go home and not to retaliate anymore. De Mesa obeyed and dropped the stone.

Barangay Tanod Liberato Regnim arrived and he tried to help Ocfemia pacify the two, but David Cabiles, Sr. and de Mesa continued to shout at each other. David Cabiles, Jr. threw a stone again at de Mesa hitting the latter on the shoulder. Then William Cabiles suddenly came out from behind de Mesa and stabbed the latter with a spear, hitting de Mesa on the lower part of his back, below the waist.

After de Mesa was stabbed by William Cabiles on the back the former, though limping already, was still able to run towards the yard of the daughter of David Cabiles, Sr. which is located on the same side of the road of the house of her father. The four accused chased de Mesa there and surrounded him, then helped each other in

attacking him with their weapons. David Cabiles, Sr. and Nolito Cabiles were armed with bolos, William Cabiles had a spear and David Cabiles, Jr. with a stone.

When Ocfemia saw de Mesa fell down after being inflicted with plenty of wounds already, but without knowing whether he was still alive, she told Regnim not to leave the place as she would call the police. When she returned with elements of the seaborne of the Philippine Army, de Mesa was already dead with blood all over his body.

Liberato Regnim also testified that he was at Balyong Tulay, Caranan, Pasacao, Camarines Sur in the afternoon of July 19, 1991. When he arrived at that place near the house of David Cabiles, Sr. he saw the latter holding a bolo, having a confrontation with and challenging de Mesa. He tried helping Ocfemia pacify the two, but while doing so William Cabiles suddenly came from behind de Mesa and stabbed the latter with a spear, hitting de Mesa on the back.

After he was attacked by William Cabiles, de Mesa tried to run away but he was chased by the four accused who helped each other in attacking him with bolos, spear and stone. De Mesa was still able to stand up and move towards the place of the son-in-law of David Cabiles, Sr. but it was there that the four (4) accused finished him. Without knowing on his part whether de Mesa was still alive, David Cabiles, Sr. still hacked de Mesa on the back and then held his head and stabbed him once more on the right armpit. When Liberato Regnim noticed that de Mesa was already dead he left the place with the intention of going to the authorities. On his way, however, he met Eddie Cabiles, the chief of the barangay tanod, followed by the seaborne personnel of the Army.

Dr. Melchor Baesa who conducted the autopsy on the body of Melchor de Mesa declared that he found that de Mesa suffered fourteen (14) injuries and eleven (11) of them were stab wounds as listed in his autopsy report (Exhs. A and A-1). He declared that the injuries could have been caused by sharp instrument, such as knife, bolo or spear. The second injury he listed in his autopsy report, however, could have been caused by a stone and injuries number 3, 4 and 8 listed in his autopsy report were fatal and could have caused the death of de Mesa even with timely medical attention. He declared further that the cause of death was cardiac respiratory arrest. This means that the function of the heart and lungs ceased and stopped.

Jocelyn de Mesa who testified in this case is the eldest of the three (3) children of Constancio de Mesa. She represented her mother and the latter who is in Singapore working authorized her to represent her in this case (Exhs. B and B-1). She testified about her family, the loss of her father who supported and took care of the family and the mental anguish they suffered when her father was killed.

Benjamin San Juan who is the half-brother of Constancio de Mesa testified that since the wife of de Mesa was in Singapore and his children were not around when de Mesa was killed, he took charge of everything, the wake and the burial of de Mesa and he was the one who spent for them. The wake lasted for fifteen (15) days as they waited for the arrival of the wife of de Mesa from Singapore and he spent an average of One Fifty (P150.00) Pesos a day during the wake. The coffin and other services including the embalming cost Nine Thousand (P9,000.00) Pesos. The tomb and burial place cost Three Thousand (P3,000.00) Pesos also. Due to the confusion at that time and without knowing that they would be needed later in court he did not keep the receipts of the expenses incurred in connection with the death of Constancio de Mesa.

(pp. 19-21, Rollo.)

Accused-appellant invokes the justifying circumstance of self-defense. He asserts that it was the victim, Constancio de Mesa, Jr., then allegedly armed with a balisong (fan knife), who initiated the aggression. Accused appellant's contention carries no persuasive force. In the first place, both Barangay Kagawad Fredesminda Ocfemia and Barangay Tanod Liberato Regnim were consistent in their testimony that the victim was unarmed when he was ganged upon by accused-appellant and his equally criminally bent sons. Both prosecution witnesses

likewise testified that while the victim was arguing with accused-appellant, William Cabiles came out of nowhere and suddenly stabbed the victim at the back with a spear. The declarations of Ocfemia and Regnim totally negate the uncorroborated testimony of accused-appellant that he was attacked by the victim with a balisong in the kitchen of his house. Moreover, said testimony of the two prosecution witnesses utterly nullifies accused-appellant's contention that a balisong was found beside the body of the victim.

In order for self-defense to prosper, the following requisites must be present: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (*People vs. Galit*, 230 SCRA 486 [1994]). The facts of the case do not make out the existence of unlawful aggression on the part of the victim. The mere incident that the victim was arguing with accused-appellant when he was attacked does not constitute unlawful aggression. Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude (*People vs. Galit*, supra). In fact, the victim did not even assume a threatening or intimidating attitude when he was assaulted. In the absence of unlawful aggression, there cannot be any self-defense, complete or incomplete (*People vs. Guiño*, 232 SCRA 400 [1994]).

Accused-appellant further contends that the court a quo erred in convicting him of murder. Accused-appellant's contention is devoid of merit.

The elements of murder are:

1. That a person was killed;
2. That the accused killed him;
3. That the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and
4. The killing is not parricide or infanticide (*Luis B. Reyes*, *The Revised Penal Code*, 13th Ed., p. 424).

Obviously, from the facts hereinabove set forth, elements 1, 2, and 4 are present.

The facts of the case clearly manifest the presence of treachery to qualify the killing to murder. As aforesaid, Ocfemia and Regnim testified that William Cabiles suddenly and without warning stabbed the victim at the back with a spear when the victim was totally unaware of the impending attack as he was then having an argument with accused-appellant. Although accused-appellant was not the perpetrator of the initial attack on the victim, he is equally liable therefor for there was conspiracy among the accused. Due to the presence of conspiracy, the act of one conspirator is the act of all (*People vs. Pelones*, 230 SCRA 379 [1994]; *People vs. Calegan*, 233 SCRA 537 [1994]) and all the conspirators are liable as co-principals regardless of the extent of their participation because, in contemplation of law the act of one is the act of all (*People vs. Apawan*, 235 SCRA 355 [1994]).

That there is conspiracy, we entertain not an iota of doubt whatsoever. Direct proof of previous agreement to commit a crime is not necessary as conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused (*People vs. Canillo*, 236 SCRA 22 [1994]). The existence of conspiracy may be inferred and proved through the acts of accused, which point to a common purpose, a concert of action, and community of interest (*People vs. Merabueno*, 239 SCRA 197 [1994]). The concerted acts of the accused to obtain a common criminal objective signify conspiracy (*People vs. Silong*, 232 SCRA 487 [1994]). Copious evidence on records shows that the accused-appellant and his co-accused acted in concert to kill the victim. When the victim fled after he was wounded, all the accused pursued him until he stumbled and fell. Thereupon, the accused stabbed and hacked the victim until life oozed out of his mortal wounds, and accused-appellant and his sons stopped only when the victim was mangled and surely dead.

Finally, accused-appellant argues that his right to procedural due process was denied by the trial court since he was not allowed to present a certain Dr. Sy to testify on the extent of the wounds allegedly sustained by accused-appellant's son William from the supposed unlawful aggression of the victim. Accused-appellant's arguments are untenable. He was not deprived of his right to procedural due process for he was given ample opportunity to be heard and to present evidence for his defense. Moreover, the putative testimony of Dr. Sy is completely irrelevant as accused-appellant did not claim that he acted in defense of his son; he invoked self-defense. Thus, his son William's alleged injuries are immaterial. Worse yet is the circumstance that William was not called to the witness stand as he has, even up to the present time, refused to submit himself to the jurisdiction of lawful authorities.

WHEREFORE, the appealed decision is hereby **AFFIRMED**, without special pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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