

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUILLERMO CRUZ @ “MOMOY,” ACCUSED-APPELLANT.**

G.R. No. 116989. September 20, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Guillermo Cruz was charged with the crime of murder, as defined and penalized in Article 248 of the Revised Penal Code, in an information whose accusatory portion reads as follows:

That on or about the 13th day of June 1991, in the municipality of Pulilan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Guillermo Cruz @ Momoy, with intent to kill one Albert C. Bundoc,[1] did then and when wilfully, unlawfully and feloniously, with evident premeditation and treachery, with the use of a bladed weapon, attack, assault and stab the said Albert C. Bundoc, hitting the latter on his body, thereby causing him stab wounds which directly caused his death.

That the crime was committed in the nighttime purposely sought by the above-named accused to ensure its successful commission.

Contrary to law.[2]

This information was filed with the Regional Trial Court (RTC) of Bulacan on 24 July 1991; docketed therein as Criminal Case No. 1377-M-91; and assigned to Branch 18 in Malolos, Bulacan.

After due trial on the merits, the trial court found the accused guilty beyond reasonable doubt of the crime of murder and sentenced him "to suffer the penalty of reclusion perpetua to pay the amount of P22,000.00 as actual damages, to indemnify the heirs of the accused[3] [sic] in the amount of P50,000.00 and to pay the costs." The decision, dated 1 February 1994,[4] was promulgated on 9 February 1994.[5]

Aside from Dr. Purification Alto, the witnesses presented by the prosecution were Antonio Cruz, Giovanni Bondoc, and Alberto Bondoc, Sr., an uncle, a brother, and the father, respectively, of the victim Alberto Bondoc, Jr.

The evidence for the prosecution upon which the conviction was made to rest is summarized by the trial court in this wise:

The version of the prosecution on the incident tends to show that on or about 12:00 midnight of June 12, 1991 while Giovanni Bondoc and Antonio Cruz were conversing at the kitchen of Bondoc's house they heard the barking of a dog as if it was being stoned in front of the said house. Antonio Cruz stood up to investigate and what he saw was accused Guillermo Cruz standing inside the garage located between the houses of Antonio Cruz and Giovanni Bondoc but he did not pay attention to him and went back to the kitchen where Giovanni Bondoc was and resumed their conversation. Then, moments later they heard again the same cry of the dog and this time both of them went out of the kitchen to investigate and they saw the accused Guillerino Cruz stabbed Alberto Bondoc, the victim, on the lower part of his abdomen. After that they chased the accused but they were not able to overtake him because he went inside his house which was just a few meters away from the scene of

the crime and after that they brought Alberto Bondoc inside their house and sought the help of the other members of the family and brought the victim to the Jose Reyes Memorial Hospital. After staying one (1) week in the said hospital they brought Alberto Bondoc at his home to recuperate but at home the wound bled and he was rushed to the Provincial Hospital in Bulacan where he died. Dra. Purificacion who attended the victim at the Provincial Hospital in Malolos, testified that she was the one who issued the death certificate of the victim, Alberto Bondoc, and that the cause of death was Cardio Respiratory Arrest secondary to hypovolemia which means that the patient suffered shock from loss of blood volume due to stab wound.

The father of the victim, Alberto Bondoc, Sr., testified that he spent P22,000.00 for medical, burial and wake of his son; P12,000.00 for funeral expenses (Exhibit "D"); P6,500.00 for medical expenses (Exhibit "D-21") and P2,500.00 unreceipted expenses during the wake.[6]

The trial court also summarized the testimony of the accused, who was the sole witness for the defense, as follows:

Accused testified on direct examination that on June 12, 1991 at about 12: 00 midnight he stoned the dog of the Bondocs house because it was always barking. After that, Antonio Cruz and Jimmy Bondoc came out of the latter's house and chased him but they were not able to overtake him because he ran into his house and closed the door. However, on the next hearing of this case, still on direct examination, accused twisted his previous testimony, this time, he said that Antonio Cruz and Jimmy Bondoc overtook him because he was not able to close the door as Antonio was closely following behind him and Jimmy Bondoc was already inside his house. Once inside their house he was hit with a 2 by 2 what happened next because Antonio Cruz and Jimmy Bondoc ran away and he just stayed inside his house with his children. On cross examination by the State Prosecutor he again reverted to his original testimony that Antonio Cruz and Jimmy Bondoc did not overtake him because he went inside his house, and that they did not hit him with 2 by 2.[7]

These summaries faithfully reflect the testimony of the witnesses as borne out by the transcripts of the stenographic notes. Furthermore, on cross-examination, the accused admitted that before 12 December 1991, he had a heated altercation with the deceased Alberto Bondoc, Jr., about a "deep-well partition," and that since then they no longer talked to each other.[8]

The trial court gave full faith to the version of the prosecution for being "credible and believable,"[9] and characterized that of the accused as ridiculous because:

It can be gleaned from the testimony of the accused that it is full of flaws and inconsistencies and the court is not inclined to believe it. Moreover, according to accused only Antonio Cruz and Jimmy Bondoc chased him, then how could he explain the wound inflicted on Alberto Bondoc which resulted to the death of the latter unless he was referring to circumstances which transpired subsequent to the stabbing incident. How did it come that Alberto Bondoc was stabbed when the latter was not even one of those who chased him.[10]

It appreciated the qualifying circumstance of treachery because of the "sudden, unexpected and unprovoked attack by the accused on the victim, not to mention the fact that accused purposely sought nighttime to accomplish his intention at the residence of the victim." [11] It made a brief discussion on the unacceptability of the accused's claim of self-defense due to lack of proof of the requisites therefor.[12]

The accused seasonably appealed from the decision indicating in his notice of appeal[13] that he was appealing therefrom to the Court of Appeals, despite the penalty involved which made the judgment appealable to this Court.[14] The trial court, guided by the notice of appeal, erroneously transmitted the record of the case to the Court of Appeals, which, in turn, forwarded the record to this Court on 20 September 1994.[15] This Court accepted the appeal.

The accused pleads in his Appellant's Brief that this Court reverse the judgment appealed from and that he be

acquitted because the trial court erred (a) in finding that the qualifying circumstances of treachery and nighttime were present or attendant in the killing of the victim Alberto Bondoc, Jr., and (b) in finding the accused guilty beyond reasonable doubt of the crime of murder.

In the Appellee's Brief filed by the Office of the Solicitor General, the People prays that we reject the accused's postulations and affirm, instead, the impugned judgment.

We find the accused guilty beyond reasonable doubt of the crime of homicide only and not of murder as charged.

When the accused took the witness stand, he openly admitted on direct examination that he "hurt" Albert Bondoc. Thus:

Q You are being charged of [sic] a crime of Murder by means of attacking and stabbing one Albert Bondoc, what can you say about that charge against you?

A I don't know anything about the charge, Sir.

Q Do you mean to say that on June 12, 1991 you did not harm this Albert Bondoc?

A I hurt him, Sir.[16] (emphasis supplied)

Realizing forthwith the predicament of the defense, the accused's counsel moved for a continuance, which the trial court granted. At the continuation of his testimony, the accused, as correctly noted by the trial court in its summary of the evidence quoted above, never mentioned anymore about Alberto Bondoc, Jr. Verily, the accused might have been confused, or he simply avoided direct confrontation with facts likely to inculcate him for the death of Alberto Bondoc, Jr. In the process, however, he confirmed the account of prosecution eyewitnesses Antonio Cruz and Giovanni Bondoc.

We do not, however, agree with the trial court's conclusion that the attack was "sudden, unexpected and unprovoked." No convincing evidence supports it. The eyewitnesses' account was unclear in details, and we cannot fairly deduce or draw a conclusion therefrom that, indeed, the attack was sudden and unexpected. Antonio Cruz, who was at a distance of 7 to 8 meters from the crime scene,[17] merely declared as follows:

PROSECUTRIX TIENZO:

Q

Now what did you do?

A

Giovanni Bondoc and I went out thru the same place where I first went out.

Q

And where did you proceed?

A

While we were going out we saw the victim also going out in front of my house and we saw that the victim was stabbed.

Q

Now, who saw first the stabbing?

A

I and Giovanni Bundoc saw the stabbing because we went out together.[18]

x x x

Q

In what part of the body was Albert Bundoc hit?

A

He was hit at the lower left portion of his abdomen, Ma'am.[19]

Giovani Bondoc declared as follows:

PROSECUTRIX TIENZO:

Q

And what did you see?

A

I saw Guillermo Cruz stab my brother.

x x x

Q

Will you describe how was your brother stabbed by Guillermo Cruz?

A

(Witness demonstrating by swaying his arms towards the victim)[20]

Absent any particulars as to the manner in which the aggression commenced or how the act which culminated in the death of the victim began and developed, treachery cannot be appreciated to qualify the killing to murder.[21]

Neither can evident premeditation be appreciated against the accused, for although there is proof that the deceased and the accused had an altercation and were thereafter no longer in talking terms, no attempt was made to establish the requisites of evident premeditation, viz.: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused has clung to his determination, and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[22]

Nighttime cannot be considered to aggravate the accused's criminal liability. The testimonies of prosecution witnesses Antonio Cruz and Giovanni Bondoc that there was a light coming from the post near the scene of the crime[23] negate a notion that nighttime was especially sought for or taken advantage of by the accused to facilitate the commission of the crime.

The evidence then for the prosecution had established beyond reasonable doubt the guilt of the accused for the crime of homicide only, not murder. The penalty imposed for homicide in Article 249 of the Revised Penal Code is reclusion temporal.

Considering the absence of any aggravating or mitigating circumstances and applying in his favor the Indeterminate Sentence Law, we may thus sentence the accused to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of

reclusion temporal, as maximum, with all the accessory penalties prescribed by law.

WHEREFORE, the instant appeal is granted in part and the challenged decision of the Regional Trial Court of Bulacan, Branch 18 (Malolos), in Criminal Case No. 1377-M-91 is MODIFIED. As modified, accused-appellant GUILLERMO CRUZ @ "Momoy" is hereby declared GUILTY beyond reasonable doubt of the crime of homicide, as defined and penalized in Article 249 of the Revised Penal Code. Considering the absence of any aggravating or mitigating circumstances and applying the Indeterminate Sentence Law, the accused-appellant is hereby sentenced to suffer an indeterminate penalty ranging from a minimum of EIGHT (8) years and ONE (1) day of prision mayor to a maximum of SEVENTEEN (17) years and FOUR (4) months of reclusion temporal, with all the accessory penalties provided by law. The rest of the challenged decision is affirmed.

Costs against the accused-appellant.

SO ORDERED.

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

[1] Spelled "Bondoc" in some of the transcripts of the stenographic notes and in the decision in Criminal Case No. 1377-M-91.

[2] Original Records (OR), Criminal Case No. 1377-M-91, 1-2; Rollo, 5-6.

[3] Should be the heirs of the victim.

[4] OR, 264-267; Rollo, 17-20. Per Judge Demetrio B. Macapagal, Sr.

[5] OR, 268.

[6] Id., 264-265.

[7] OR, 265-266.

[8] TSN, 3 November 1993, 4-5.

[9] OR, 266.

[10] Id.

[11] Id.

[12] Id., 266-267.

[13] Id., 270.

[14] Section 5(2)(d), Article VIII, 1987 Constitution; Section 3(c), Rule 122, Rules of Court.

[15] Rollo, 1.

[16] TSN, 2 September 1993, 6.

[17] TSN, 6 November 1991, 4.

[18] TSN, 2 October 1991, 6.

[19] TSN, 2 October 1991, 9.

[20] TSN, 31 January 1992, 4.

[21] *People vs. Tiozon* 198 SCRA 368 [1991]; *People vs. Barba*, 203 SCRA 436 [1991]; *People vs. Devaras*, 205 SCRA 676 [1992]; *People vs. Castor*, 216 SCRA 410 [1992]; *People vs. Lug-aw*, 229 SCRA 308 [1994].

[22] *People vs. Narit*, 197 SCRA 334 [1991]; *People vs. Barba*, *supra* note 21; *People vs. Buka*, 205 SCRA 567 [1992].

[23] TSN, 2 October 1991, 8; TSN, 31 January 1992, 4.

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