

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE RENATO ALBAO @ JUN AND JOSE ALENO, ACCUSED-APPELLANTS.

G.R. No. 117481. March 06, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Self-defense must be established by clear and convincing evidence. Likewise, the fact that the victim initiated the unlawful aggression does not give the person defending an absolute license to kill. Where unlawful aggression on the part of the victim is not proven, there can be no self-defense. On the other hand, denial and alibi, while inherently weak, assume relevance when the evidence of the prosecution linking the accused to the crime is inconclusive.

[The Case]

These are the doctrines we apply in resolving this joint appeal of Renato Albao and Jose Aleno[1] before this Court challenging the March 14, 1994 Decision[2] of the Regional Trial Court of Puerto Princesa City, Palawan, Branch 47, in Criminal Case No. 9215 convicting them of murder and sentencing each of them to reclusion perpetua.[3]

On February 22, 1991, Prosecutor III Clarito A. Demaal filed against appellants an Information dated February 18, 1991 which reads:

“That on or about the 28th day of October, 1990 at the Reservation, Poblacion, Municipality of Quezon, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another with evident premeditation and treachery, all armed with bladed weapons and with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault, hack TANGKOY, hitting him in various vital parts of his body and inflicting upon him multiple hack and stab wounds, thereby causing internal and external hemorrhage that cause[d] shock which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW.”[4]

At their arraignment on May 9, 1991, the two accused, assisted by Counsel R. D. Vigonte, pleaded not guilty.[5] After trial in due course, the court a quo rendered its assailed Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, the prosecution having successfully proven its case, the Court hereby finds the two (2) accused herein, RENATO ALBAO and JOSE ALEÑO guilty beyond reasonable doubt as co-principals of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, and there being no mitigating circumstance to attenuate the offense committed, the Court hereby sentences each of them to RECLUSION PERPETUA which shall be served at the national penitentiary, Muntinlupa, Metro Manila; to indemnify the heirs of the victim Onsing Tangcoy the sum of FIFTY THOUSAND PESOS (P50,000.00) as actual, moral and exemplary damages; and to pay the costs.

The herein convicted prisoners are ordered immediately shipped to the New Bilibid Prison, Muntinlupa, Metro

Manila to serve their sentence there and not at the Iwahig Prison and Penal Farm or any of the sub-colonies in this City, as they are 'barless' prisons.

IT IS SO ORDERED."

In view of the penalty imposed upon them, the two accused filed separate appeals before this Court.[6]

[The Facts]

[Version of the Prosecution]

The prosecution presented three witnesses: (1) Albinio Usa and (2) Tabita Tangkoy, who were both eyewitnesses, as well as (3) Dra. Josieveline Abiog, who testified on the results of her medical examination and autopsy report. The prosecution's version of the facts, as narrated by the solicitor general, is as follows:

The following facts are culled from the testimony of the victim's widow, Tabita Tangkoy:

On 28 October 1990, Tabita went to buy rice at the market place of Poblacion, Quezon, Palawan. After doing her errand, she proceeded home to Barrio Tagbae, also of the same municipality. (p. 5, TSN, 14 November 1991)

Upon reaching Reservation (still within the Poblacion), at or around 5:30 p.m. of even date, she chanced upon her husband, Onsing Tangkoy, and Albinio Usa, who were also on their way home. Together, the three of them proceeded on foot. (p. 27, TSN, 14 November 1991).

After some time, they reached a place where appellants were drinking. Appellant Albao called Onsing. Tabita dissuaded him from responding to the call. Heedless, Onsing approached appellants. Tabita then decided to proceed on her way. (pp. 28-30, TSN, 14 November 1991)

Momentarily, Tabita looked back and saw her late husband facing appellant Aleño, with his back turned to appellant Albao. The latter, then, suddenly hacked Onsing at the back. Tabita ran away upon seeing this, and when she looked back while running away, she saw her husband sprawled on the ground. When Onsing shouted for help, she saw appellant Aleño come out and raise his bolo in a hacking gesture at her late husband. This was the last scene she saw, as she continued her sprint for home. (pp. 31-38, TSN, 14 November 1991)

Around eighteen (18) hours after the incident, the victim's cadaver was autopsied by Dr. Josieveline Abiog, the Municipal Health Officer of Quezon, who stated in her autopsy report (Exh. 'D') that the cause of the victim's death is 'brain injury, internal and external.' (p. 21, TSN January 1992)"[7]

On the other hand, the trial court summarized the testimonies of the prosecution witnesses, viz.:

"Testifying for the prosecution, Albenio[8] M. Usa, 19 years old, single, out-of-school youth, and residing in Tagbae, Tabon[,] Quezon, Palawan since birth, elicited the following facts.

On September 28, 1990, at 5:30 o'clock p.m., he was at Salvacion, Quezon, Palawan in company with Onsing Tangkoy. There was an unusual incident that happened wherein Onsing Tangkoy was hacked by Jun or Renato Albao. He saw the backing [sic] and killing and he identified and pointed to Jun Albao at the courtroom as the killer of Onsing Tangkoy.

While they were walking and Jun or Renato Albao was having a drinking spree with his co-accused Aleño, he (Jun Albao) called for Onsing Tangkoy. They were on the ground and he saw Jun or Renato Albao hacked [sic] Onsing Tangkoy with a bolo at a distance of about 7 armlengths [sic]. There was still sunlight when this happened. Onsing Tangkoy was hacked at his back. After he saw this hacking he ran away.

He knows the wife of the victim Tabita Tangkoy. She was there when the incident happened. She also saw the incident. He executed a sworn statement about this case (Exhibits 'A', 'A-1' and 'A-2') before the police in

Quezon, Palawan in Tagalog and in question and answer form which he signed. He confirmed the truth of the contents of his statement.

On cross examination, he elicited [sic] the following facts:

The hacking incident he mentioned above happened at the reservation, poblacion, Quezon, Palawan. They came with Onsing Tangkoy from a certain Taliog and the two (2) of them were walking. Onsing Tangkoy is not related to him but he is his friend. Onsing Tangkoy was not armed at that time. Renato Jun Albao was bringing a bolo and he saw him hacked [sic] Onsing Tangkoy who died right away as a result. It was the victim's wife, Tabita who told him that the victim had died because she waited and she also saw Jun Albao hacked [sic] her husband. Onsing, Tangkoy who was wounded at the right side of his back, near his shoulder (the witness demonstrated a wound about 4 inches long). [sic] The bolo used by Renato Jun Albao is about one and a half (1 1/2) feet long. He saw plenty of blood that came from the victim's wound. He knows the accused Renato Jun Albao long time ago as he is his neighbor.

The next prosecution witness presented is [sic] Tabita Tangkoy, 33 years old, farmer, widow, and residing at Tagbae, Tabon, Quezon, Palawan since birth. She testified as follows:

On October 28, 1990 at about 5:00 o'clock p.m., she bought rice from the market, poblacion, Quezon. Her husband is Onsing Tangkoy who died October 28, 1990 because he was hacked by Jun Albao and Joe Aleño which she saw on her way home. She saw Jun Albao and Joe Aleño already drunk. She knows them and she identified and pointed to them inside the courtroom. Her husband was hacked at his back. After she saw the first hacking of her husband by Renato Albao, she ran away and heard her husband asked [sic] for help. Then Jose Aleño went out immediately from the place where they were drinking bringing a bolo and he hacked her husband suddenly after her husband shouted, hitting him although she does not know the exact area of the body her husband was hit. Albao used a bolo in hacking her husband which she demonstrated to be about one and a half (1 1/2) feet long. The bolo brought out by Joe Aleño which she saw is an ordinary bolo. Her husband was hacked once by Renato and then Joe Aleño approached him (her husband) also with a bolo but she did not see if he used that bolo against her husband because she already ran away. Albao and Aleño are relatives, Aleño being Albao's uncle. The following morning she saw her husband, Onsing Tangkoy in the place where he was hacked. She does not know how many wounds were inflicted upon him. Her husband's companion while walking during the hacking incident is Albenio Usa. She knows how to sign her name a little and she executed a sworn statement (Exhibits 'B', 'B-1' and 'B-2') about her husband's death which she narrated to the police, who explained the contents thereof to her.

She cried when her husband died of hacking as his life is priceless. She spent P5,000.00 which she borrowed for his wake and transportation in going to Puerto Princesa. They have two (2) children, one 16 years old and the other, 5 years old. Her husband's ears were detached and his right arm was lamost [sic] severed or disconnected.

On cross-examination, he [sic] elicited [sic] the following facts.

Her husband was a farmer. Before the hacking incident she came from the market where she bought rice and sold her corn. Her husband was arm less [sic] or without a bolo or knife. His companion, Albenio Usa did not also have any bolo. She passed by the place where the accused were drinking and then she heard her husband called by Renato Albao to join them. She saw her husband got near and when he approached them she saw Albao hacked [sic] him. Her husband drank a little liquor and was a little drunk. When her husband was called she prevented him from going there but Jun Albao told her: 'I will take case [sic] of your husband' and then advised her to go ahead of him (her husband). Her husband got near the accused upon being called. Then, she saw her husband hacked by Jun Albao with the bolo he was bringing. Her husband was looking at Aleño when hacked by Albao. She saw Albao hacked [sic] her husband at his back and then she ran away looking backwards. She did not see Joe Aleño hacked [sic] her husband. After her husband was hacked by Renato

Albao he faced Albao and told him he would not fight him. She did not see Joe Aleño hack her husband although she saw Aleño in the act of hacking her husband (which the witness demonstrated). As she was in an elevation she saw Aleño 'in the act of hacking' her husband while Aleño was getting near him. She knows it was her husband Joe Aleño wanted to hack. Aleño and Albao were together. While Joe Albao was 'in the act of hacking' her husband, Albao thrust the bolo forward.

The prosecution presented the Death Certificate of the victim, Onsing Tangkoy (Exhibits 'C', 'C-1', 'C-2' and 'C-3'), the existence, contents, genuineness and due execution of which the defense admitted.

The next prosecution witness who testified is [sic] Dr. Josieveline Abiog, 32 years old, M.D., single and a Government Health Officer of the Municipal Health Office of Quezon, Palawan, since March, 1987, and residing in Quezon, Palawan.

She testified that she examined the cadaver of Onsing Tangkoy and prepared an Autopsy Report on her examination (Exhibit 'D', 'D-1', 'D-3' and 'D-4').

Her findings on the cadaver of the victim as stated in the Autopsy Report (Exhibit 'D-3') are: 'wound, stabbed, 2.5" throat; wound incised, severing the muscles of the face, left; wound incised palm, left; wound incised 1.5", dorsum, arm, left; wound incised elbow, left; wound incised 2", dorsum, forearm, left; wound stabbed, 2.5 cm., scapular area, right; wound stabbed, paraumbilical area, left with intestinal evisceration fracture, comminuted, temporo-occipital area, left, with brain tissues coming out'.

She said that the intestine of the victim came out; that there is [sic] a fracture of the occipital area of the victim; and that the victim's brain tissues came out; that the victim sustained nine (9) injuries all in all, and that the fracture in the victim's head is the most fatal, followed by the injury in the paraumbilical area; that the first eight (8) wounds were caused by a sharp instrument, while the 9th injury was caused by a blunt instrument, that the assailant's position in inflicting wound No. 8 is at the back of the victim, causing the fracture of his head; that the first eight (8) wounds were caused by a sharp pointed instrument and this [sic] could have been inflicted by two (2) assailants.

The cause of Death of the victim as reflected in said Autopsy Report (Exhibit 'D-4') is hemorrhage, internal and external and brain injury. About eighteen (18) hours had already elapsed from the death of the victim to the time the autopsy examination was conducted on his cadaver. The victim was muscular and young but the cadaver already started to smell.

On cross-examination, she declared the most fatal injury is the fracture in the victim's head. The assailant might be embracing the victim and moved backward in inflicting the back wound. There is no way to determine which wound was inflicted first. The prosecution formally offered its evidence and rested its case, on January 18, 1992."[9]

The Autopsy Report contained the following findings:

"Preliminary Findings:

The body when examined was in the state of rigor mortis wearing dark colored pants stained with blood sprawled in the grass.

Post-mortem findings:

wound, stabbed, 2.5." throat

" incised, severing the muscles of the face, left

" " palm, left

“ “ 1.5”, dorsum, arm, left

“ “ elbow, left

“ “ 2”, dorsum, forearm, left

“ stabbed, 2.5 cm., scapular area, right

“ stabbed, paraumbilical area, left with intestinal evisceration fracture, comminuted, temporo-occipital area, left, with brain tissues coming out

Cause of Death:

BRAIN INJURY

HEMORRHAGE, INTERNAL AND EXTERNAL”[10]

[Version of the Defense]

In contrast to the prosecution’s theory that the two appellants conspired in the killing, the appellants in their separate briefs claim that it was only Renato Albao who singlehandedly killed Tangcoy and, even so, only in self-defense. The defense presented five witnesses, namely: (1) Nelly Mercader and (2) Jose Canale, who testified as eyewitnesses for the defense; (3) Renato Albao, who admitted killing the victim in self-defense; (4) Jose Aleno, who offered denial and alibi; and (5) Arturo Reño who corroborated Aleno’s defense.

Appellant Albao narrated his version of the facts as follows:

“On October 28, 1990, (Appellant Renato Albao) was already residing in that place. At about 5:30 o’clock p.m. that date he was in the ‘bodega’ of Nelly Mercader to get sacks for the corn Nelly Mercader was buying from him as he has been her corn seller since 1984. He got these sacks and carried them and asked permission from Nelly Mercader to leave. While going down the ‘bodega’, something happened where a person named Onsing Tangcoy challenged him by saying at a distance of about four (4) meters: ‘Thank you, Jun, that we met. Now I will finish your life!’ Tangcoy who was carrying a bolo at that time holding it upwards, approached Renato Albao who, on seeing this dropped the sacks he was carrying and then took out the scabbard containing a bolo from his waist and defended himself with the scabbard. Then, Onsing Tangcoy with a bolo raised in his hand approached him (Renato Albao) and hacked him twice but he (Albao) evaded the blow and was not hit. On the third blow he (Renato Albao) already unsheathed his bolo and simultaneously hacked Onsing Tangcoy (‘sinabayan ng taga’), hitting him (Onsing Tangcoy) on his left side above his left ear. They face [sic] each other and he (Renato Albao) again hacked Onsing Tangcoy as the latter embraced him but he was not able to hit him and they wrestled with each other, after which they both fell down and his (Renato Albao’s) bolo was thrown away but Onsing Tangcoy continued to hold his bolo which he wrestled and took it [sic] from him after that he (Renato Albao) moved four (4) steps backwards but followed him (Onsing Tangcoy) to grab his bolo. On stepping backwards he (Albao) waited for Tangcoy and then hacked and stabbed him (Tangcoy) several times even when the latter was already defenseless. Tangcoy tried to fight back by trying to grab the bolo from him (Albao) to no avail. Then Onsing Tangcoy fell to the ground and he (Renato Albao) shouted for help as he intended to surrender with his bolo to the police. (Decision[,], page 7)

(Nelly Mercader) is a resident of Reservation, Quezon, Palawan since 1978 and knows Renato Albao as he is her ‘suki’ in buying corn. On October 28, 1990 at around 5:30 o’clock p.m., while she was in her house, Renato Albao went to her house to get a sack. After getting sacks, Renato Albao asked permission from her to go home and suddenly Onsing (referring to the deceased Onsing Tangcoy) arrived and at a distance of 4 armslength said: ‘NANDITO KA LANG PALA JUN, KATAPUSAN MO NA NGAYON’ and pulled out his bolo and hacked Renato Albao who parried the hacking blow with the scabbard of his bolo. Because of this,

Renato Albao defended himself using his bolo and hacked Onsing Tangcoy who was hit and wounded on his head. She closed the door of her house when Onsing Tangcoy was hit for the first time on his head. (Testimony of Nelly Mercader[,], pages 4,5,6,7,8,9,11,12,13[,], hearing on July 13, 1992).

(Jose Canale) was already residing in Reservation, Quezon, Palawan, on October 28, 1990. In the afternoon of that date, he was walking on the road of Reservation, Quezon, Palawan for home from his farm at Tagpapasi, Quezon, Palawan about two (2) kilometers away without any companion. While walking an incident happened wherein at a distance of about ten (10) meters away he saw Renato Albao bringing sacks. He emerged from the 'bodega' of Nelly Mercader. He also saw Onsing Tangcoy walking and then shouted words which he did not understand. Onsing Tangcoy then suddenly hacked Renato Albao and the latter (Albao) pulled his bolo from its scabbard and also hacked Onsing Tangcoy. Albao defended himself with the scabbard of his bolo. He was not hit when Onsing Tangcoy hacked him twice. Renato Albao hacked Onsing Tangcoy, hitting him four (4) or five (5) times which he saw and as a result Onsing Tangcoy died. He did not do anything because he was shocked.

He knows Jose Aleno since 1979 when he arrived in that place, but he did not see him there during the incident. Renato Albao had no companion at that time. He (Jose Aleno) was already residing in Barangay Mangingisda, Puerto Princesa City since 1986 and he has not seen him there in Reservation, Quezon, Palawan on October 28, 1990. He knows Tabita Tangcoy, the wife of Onsing Tangcoy. The testimony of Tabita Tangcoy that Jose Aleno also came out of the store and likewise hacked Onsing Tangcoy is not true. He did not see Tabita Tangcoy there.”[11]

For his part, Jose Aleno simplifies the facts, as follows:

- “1. The victim died on 28 October 1990, at about 5:30 p.m., in Sitio Reservation, Poblacion, Quezon, Palawan;
2. The victim sustained several wounds, some of which were fatal while some were not, which wounds caused his death;
3. Albao inflicted the wounds on the victim;
4. Aleno has been a resident of Brgy. Mangingisda, Puerto Princesa City, Palawan continuously since 1986;
5. On 28 October 1990, Aleno was incumbent president of Purok Magsasaka, Brgy. Mangingisda, Puerto Princesa City;
6. On October 28 1990, there was a barangay assembly in Brgy. Mangingisda, Puerto Princesa City, which lasted from 1:30 p.m. until 5:00 p.m.;
7. Quezon, Palawan is about 150 kilometers away from Puerto Princesa City, Palawan. The travel time between the said places is from 4 to 5 hours; and,
8. When Albao showed Aleno a copy of their warrant of arrest, the latter immediately left Brgy. Mangingisda, Puerto Princesa City, and voluntarily surrendered to the police authorities of Quezon, Palawan;”[12]

[The Issues]

In his brief, Appellant Renato Albao imputes to the trial court the following errors:

“I. The lower court erred in not holding that the herein appellant acted in lawful self defense

II The lower court erred in declaring herein appellant guilty beyond reasonable doubt of the crime of murder and by imposing [sic] him to suffer an imprisonment of reclusion perpetua.”

On the other hand, Appellant Jose Aleno, in his separate brief, claims that the trial court committed the following errors:

“I. Giving full credence and weight to the testimony of prosecution witness Tabita Tangcoy who incurred material and substantial inconsistencies;

II. Concluding that Aleno mutually helped and therefore conspired with Albao to attack the victim on the basis of Tabita Tangcoy’s statement that Aleno approached Albao and the victim carrying a bolo, after the latter shouted for help;

III. Convicting Aleno of murder despite the marked absence of evidence showing his guilt beyond any reasonable doubt;

IV. Totally disregarding, without any reason, the testimonies of the other prosecution and defense eyewitnesses who positively declared that Albao was present, while Aleno was not, at the locus criminis when the victim was killed;

V. Disregarding Aleno’s defense of alibi[,] his doubtful identification and evidence satisfactorily showing the physical impossibility of his presence at the locus criminis when the victim was killed;

VI. Concluding the attendance of the qualifying circumstance of treachery in the killing of the victim on the basis of a non-fatal wound on the back of the victim; and,

VII. Declaring the absence of any mitigating circumstances despite evidence of voluntary surrender by Aleno.”

In the main, two principal issues are submitted for the consideration of this Court:

1. Whether Appellant Renato Albao established self-defense
2. Whether the prosecution proved beyond reasonable doubt the guilt of Appellant Jose Aleno

[The Court’s Ruling]

We acquit Appellant Aleno, but we find Appellant Albao guilty of homicide.

[First Principal Issue:]

[Did Appellant Albao Kill in Self-Defense?]

Appellant Renato Albao admits that he inflicted the injuries which led to the death of the victim, but claims that he “acted in lawful self-defense.”[13] In view of this admission, the burden of evidence shifts to him. Thus, he must prove the elements of self-defense with clear and convincing evidence.[14] This he failed to do before the trial court, and now before us.

The testimonies of the defense witnesses, specifically those of Albao himself, Nelly Mercader and Jose Canale, sought to prove that it was the victim, Onsing Tangkoy, who initiated a bolo attack on said appellant. Their testimonies, however, contain serious and irreconcilable inconsistencies. On the stand, Mercader and Canale claimed that Albao, on seeing the victim approach with a raised bolo, immediately pulled out his own weapon and parried the attack with his scabbard.[15] Mercader saw only one hack[16] while Canale witnessed two hacks.[17] In contrast, Albao himself alleged that he intentionally refrained from unsheathing his bolo but merely evaded the first two hacks of the victim. After the third attack, however, he pulled out the bolo from its scabbard and exchanged hacks with the latter.[18] Moreover, it is undisputed that only the victim was wounded in this deadly encounter. Appellant Albao was unscathed. This circumstance casts doubt on Albao’s theory that there was unlawful aggression on the part of the victim. In any event, it is significant that the trial court did not give credence to this claim of unlawful aggression.

Absent proof of such aggression, there can be no self-defense. Well-settled is the rule that the trial court’s

assessment of the credibility of witnesses and their testimonies is binding and conclusive, in the absence of any showing that it had overlooked, misapprehended or misapplied some facts of weight and substance which, if properly considered, would warrant a different conclusion.[19] In this case, Albao has not given us sufficient reason, as indeed we find none, to deviate from this doctrine.

There is an equally cogent reason for rejecting the claim of self-defense. Unlawful aggression, assuming arguendo its presence, does not give Albao any license to kill. He can put up only a reasonable response to the threat or peril posed on his life and limb. Hence, after Albao had already neutralized the threat and was no longer in peril, there was no more reason for him to kill the aggressor. After inflicting on the victim the first wound -- a mortal one at that, which fractured the skull, causing brain tissues to ooze out, thereby rendering the said victim defenseless and prostrate -- Appellant Albao took the bolo of the deceased and continued his vicious aggression. Clearly, the threat to Appellant Albao's life -- assuming there was any -- had ended. Nonetheless, appellant proceeded to stab the throat and the other parts of the victim's body. All in all, he inflicted nine wounds. The nature, the number and the gravity of said wounds speak not of defense but of a criminal intent to kill the deceased. Indeed, "(i)t may be that, after the first few blows, one who acts in self-defense might deal a few more blows without changing the character of his defense, if this was done out of confusion or fear, but, after delivering several blows, to inflict a stab wound in the victim's throat as a coup de grace would be to negate any semblance of good faith and manifest a deliberate and wanton intention to kill." [20] In this regard, it is also well-settled that "when the unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the former aggressor." [21]

We hold that Appellant Albao failed to prove with clear and convincing evidence that he had acted in lawful self-defense. Indeed, his manifest intent was not to defend himself but to kill the victim.

[Second Principal Issue]

[Appellant Jose Aleno Entitled to an Acquittal]

The totality of the evidence presented in the instant case fails to prove beyond reasonable doubt Jose Aleno's guilt. The two prosecution witnesses miserably failed to establish Aleno's participation in the criminal act.

Prosecution Witness Albinio Usa, who was the companion of the deceased that fateful afternoon, categorically stated that only Appellant Albao was at the crime scene, and it was he alone who hacked the victim. He testified:

"Q While you were walking with Oncing Tangcoy, do you remember of any unusual incident that happened?

A Yes, Sir.

Q What was that unusual incident about?

A A killing occurred [sic].

Q Who was killed?

A Oncing Tangcoy, Ma'am.

Q And who killed Oncing Tangcoy?

A June Albao, Ma'am.

COURT:

Q Did you see this killing?

A Yes, Sir.

Q Do you know the full name of June Albao?

A No, Your Honor.

COURT:

Proceed.

PROSECUTOR DELOVINO:

Q Did you know this June Albao?

A Yes, Sir.

Q If you see him in Court would you be able to identify him?

A He is that person seated, Ma'am.

INTERPRETER:

Person pointed to by witness identified himself as Renato Albao.

COURT:

Q This killing, how was it done?

A While we were walking, Your Honor, and June Albao was having a drinking spree, he called for him.

Q Jun Albao called for Oncing Tangcoy?

A Yes, Your Honor.

Q Then what happened?

A After and [sic] instant I saw them on the ground and they hacked Oncing Tangcoy.

Q Whom did you see hacked [sic] him?

A Jun Albao, Sir.

Q You said they.

A It was only Jun Albao whom I saw hacked [sic] him.

Q Hacked whom?

A Oncing Tangcoy.”[22] (Underscoring supplied.)

On the other hand, while Tabita Tangkoy testified that Aleno was at the crime scene, she did not categorically say that he participated in the slaying of her husband. True, she vaguely referred to Aleno as having brought a bolo, but she did not see him actually strike her husband or, for that matter, assist Albao in the criminal enterprise. She testified thus:

“Q When did your husband die?

A Last October 28, 1990.

Q Why did he die?

xxx

A Because he was hacked.

PROSECUTOR DELOVINO:

Q Who hacked him?

A Jun Albao, Ma'am.

COURT:

Q Who else?

A And Joe Aleno.

Q Did you witness this hacking?

A I saw it, Your Honor, when I was on my way home.

Q At what distance?

A A little bit far, Your Honor.

Q About how many meters away?

A It's far, Sir.

Q But you saw it?

A I saw them, Your honor.

xxx xxx xxx

Q Madam Witness, was your husband hit by the hacking?

A From what I saw, at first he was hit.

COURT:

Q Hit where? What part of his body?

A On his back because he had his back towards ... them.

Q How many times?

A After the first hack I already ran away and went home.

Q Who hacked your husband?

A Renato Albao hacked him first, Your Honor.

Q And then?

A When my husband shouted for help, Jose Aleno came out immediately bringing a bolo.

Q Coming from where?

A From the place where they were drinking.

Q What did he do with the bolo he was carrying?

A He also hacked, Sir. It happened suddenly.

Right after he shouted.

Q But you saw this?

A Yes, Sir, while I was running I saw it.

Q Hitting your husband where?

A I did not notice anymore, Sir.

Q Do you know whether your husband was facing Aleno or not?

A I cannot tell, Your Honor, because I was a little bit far already.

Q But you said suddenly Aleno hacked your husband after your husband asked for help, you don't know where your husband was hit?

A No, Sir.

COURT:

Go ahead.

PROSECUTOR DELOVINO:

Q What was the weapon used by June Albao in hacking your husband?

A A bolo, Sir.

Q Could you describe the bolo used by June Albao in hacking your husband?

A It was long and pointed, Ma'am.

COURT:

Q You demonstrate with your hands.

A I cannot estimate, Your Honor. About like this.

INTERPRETER:

Witness demonstrating a length of about one and a half feet.

PROSECUTOR DELOVINO:

Q How about the bolo used by Jose Aleno, could you describe it before this Honorable Court?

A I cannot estimate, Ma'am.

COURT:

Q Did you see that bolo being carried by Joe Aleno when he suddenly came out?

A It was just an ordinary bolo, Your Honor.

Q The question is if you saw it.

A Yes, Your Honor.

Q And it was an ordinary bolo?

A Yes, Your Honor.

COURT:

Go ahead.

PROSECUTOR DELOVINO

Q How many times was your husband hacked?

A I saw only once, Ma'am.

COURT:

Q By whom?

A By Renato Albao, Your Honor.

Q How about Joe Aleno, how many times did he jack [sic] your husband?

A I did not notice anymore because I already ran, Your Honor.

Q You cannot tell the Court whether Jose Aleno hacked your husband?

A No, Your Honor, but he got near carrying a bolo.

Q You did not see whether he used that volo [sic] in hacking your husband?

A I did not see because I ran away, but he got near the place where my husband was.

PROSECUTOR DELOVINO:

Q You said, Madam Witness, you saw Joe Aleno went [sic] near your husband bringing a bolo, can you describe to this Honorable Court how this Joe Aleno was bring that bolo when he went near your husband?

A He went near and he was bringing that bolo with his right hand, Ma'am.

COURT:

Q Can you tell the Court why you did not see what Joe Aleno did with that bolo?

A I did not see anymore because I already ran away.”[23] (Underscoring supplied.)

Indeed, Tabita admitted that her testimony regarding Aleno's participation in the crime was based on a mere presumption or supposition:

Q You said that while you were running and looking back, tyou [sic] saw Joe Aleno approaching the two, Renato Albao and your husband, yet you did not see whether he also hacked your husband, correct?

A Yes, Sir.

Q In fact you did not know whether Aleno would hack your husband or Albao, correct?

A Of course, if he was about to hack June, Jun would have been wounded.

Q But the fact is, you did not see Aleno hack anybody?

A In my opinion, Aleno went near in order to hack somebody.

COURT:

Q That's only your "haka-haka". The question is, did you see him hack or not?

A Not yet, Your Honor.

Q You should be truthful if you really saw or not.

A I saw him in the act of hacking, Your Honor, because I already ran away. But I presumed that he was going to hack somebody." [24] (Underscoring supplied.)

It is well-settled that "mere suspicions and speculations can never be the bases of a conviction in a criminal case." [25] But this is not all. The prosecution eyewitnesses not only failed to prove Aleno's participation in the criminal act; they also contradicted each other on a fundamental fact -- Tabita Tangkoy testified that said appellant was present at the crime scene, with bolo in hand, but Usa categorically stated that "it was only June Albao whom I saw hacked [sic] him," without mentioning that Aleno was at the same place.

Moreover, Tabita Tangkoy's claim that she saw Aleno at the locus criminis is less than credible. She testified that, after seeing the first wound inflicted, she was still able to observe Jose Aleno, who was allegedly armed with a bolo, approach the victim. Albinio Usa, on the other hand, averred that he immediately fled after the first hack. However, Tabita testified that she left her husband while Usa was still with him; in other words, she fled from the scene ahead of Usa, [26] who testified that only Albao attacked the victim. How then could she have seen Aleno when Usa, who stayed longer at the crime scene, did not?

Tabita's subsequent conduct further diminishes the credibility of her account. She stated that, after seeing her husband hacked and in mortal danger, she just ran away to their house located "far from the place of the incident." [27] She made no attempt to help him or to report the incident to the police or to the barangay officials. She did not even return to the situs of the crime that same night.

When asked by the prosecutor how she felt upon learning of her husband's death, she answered, "I was shocked and I became sad and I cried, Ma'am." [28] If Tabita saw the mortal wound sustained by her husband at 5:30 in the afternoon of the previous day, why would she be shocked at all upon learning about his demise the next morning, when she should have been worrying over and fearing for his fate the whole night? We reiterate the well-recognized rule that "evidence, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself -- such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance." [29]

In any event, we stress that the prosecution has the burden of proving Appellant Aleno's guilt beyond reasonable doubt. The law requires "no less than moral certainty or proof beyond reasonable doubt to offset the presumption of innocence." [30] No such proof was mustered by the prosecution against Appellant Aleno.

[Appellant Aleno's Alibi Relevant]

In view of the weakness of the prosecution's evidence against Aleno, his denial and alibi assume importance. Significantly, the testimonies of Defense Witnesses Nelly Mercader and Jose Canale convincingly show that they did not notice said appellant at the crime scene. [31] Canale narrated the facts which occurred from the moment the attack began until the victim's death, and he never mentioned Aleno's presence, much less, his participation. [32] Hence, we cannot lightly dismiss the claim of said appellant that he was at Purok Magsasaka, Barangay Mangingisda, Puerto Princesa City, attending, in his capacity as purok president, a barangay assembly meeting from 1:00 to 5:00 in the afternoon of October 28, 1990. [33] Appellant Aleno's alibi is corroborated by the simple and unbiased testimony of Arturo Reño:

“ATTY. CRUZAT:

Q By the way, Mr. Witness, this Jose Aleno, do you know if he has some official designation in the Purok where he stays in Barangay Mangingisda?

A Yes, sir.

Q And what is his designated position in the purok?

A He is the Purok president, sir.

Q What purok?

A Purok Magsasaka, sir.

ATTY. CRUZAT:

Q By the way, Mr. Witness, do you remember where you were on October 28, 1990 in the afternoon?

A Yes, sir.

Q Where were you, Mr. Witness?

A We were at Purok Magsasaka attending an assembly meeting together with Jose Aleno.

Q And by the way, Mr. Witness, what was the meeting about?

A About lands and distribution of lots.

Q And you are certain, Mr. Witness, that Jose Aleno was there attending the assembly meeting?

A Yes, sir.

Q You are very certain of that, Mr. Witness?

A Yes, sir.

Q By the way, Mr. Witness, what time did the meeting start?

A At about 1:30 o'clock in the afternoon, sir.

ATTY CRUZAT:

Q And what time did it end, Mr. Witness?

A About 5:00 o'clock [sic] in the afternoon, sir.

Q And Mr. Jose Aleno was there from 1:30 to 5:00 o'clock in the afternoon of October 28, 1990?

FISCAL GUAYCO:

Leading, your Honor.

COURT:

Witness may answer.

A Yes, sir.

COURT:

Q How many people were attending that meeting?

A Many, your Honor.

Q You name five of them.

A Popoy Lanzanas, Barangay Capt. dela Rosa, Jolly Baba, Bernand Mahinay, and others. I was new in the place, your Honor and that time was the first time that I attended a meeting in that barangay.

xxx xxx xxx

Q And how sure are you that the meeting was held on October 28, 1990, exactly when the incident in question took place?

A Because we were present then during that meeting, your Honor.

Q Yes, but that was four years ago.

Q Did you jot this down in your calendar or you have a habit of memorizing the date in the calendar?

A I can still remember that date, your Honor, because that was the time when I received my lot.”[34]

As found by the trial court, the distance between Puerto Princesa and the crime scene in the Municipality of Quezon is 150 kilometers and it would take about 3-1/2 to 4 hours to travel this distance by public transport, and about 3 hours by private vehicle.[35] Since Appellant Jose Aleno left Puerto Princesa about 5:00 p.m., and the crime was committed at approximately 5:30 p.m., his presence at the crime scene was a physical impossibility.

[Conspiracy Not Sufficiently Proved]

In light of the foregoing, the trial court clearly erred in finding that the two appellants conspired in killing the victim. Like the elements of an offense, conspiracy must be established by proof beyond reasonable doubt. To establish conspiracy, there must be proof that two or more persons agreed to commit the crime. Direct proof of the said agreement is not indispensable, because conspiracy may be inferred from the concerted acts of the accused indubitably revealing their unity of purpose, intent and sentiment in committing the crime.[36] In the present case, there was no proof of such prior agreement between the two appellants. Indeed, conspiracy could not be inferred, for, as discussed above, there was no sufficient evidence that Appellant Jose Aleno was present at the crime scene at all.

[Homicide Not Murder]

Finally, we disagree with the conclusion of the trial court that alevosia qualified Albao’s crime. Relying on the testimonies of the two prosecution witnesses, the court a quo found that Albao “hacked [the victim] at his back where he has no eyes to see and evade the attack.”[37] Because of the evidentiary rule that the prosecution must prove treachery as clearly as the crime charged,[38] we cannot sustain the trial court. The physical evidence on record does not support the finding of treachery. The victim did not sustain any wound in his back, and the wounds referred to in the autopsy report imply an assault from the front or the side, an angle of attack well within the view of the victim. Moreover, the prosecution failed to describe the events that immediately preceded the alleged attack. In other words, the qualifying circumstance of treachery cannot be based on the mere allegation that Albao hacked the back of the deceased, especially when this is not corroborated by the physical evidence. We cannot conjecture or assume that Albao, who was drunk at the time, adopted such means as to deprive his victim of any chance to defend himself or of any avenue for escape. In view of the deficient evidence presented by the prosecution on this point, we cannot ascribe treachery since, as already stated, this qualifying circumstance must be proven as clearly and as cogently as the crime itself.

Likewise, we cannot appreciate evident premeditation. To establish this qualifying circumstance, it must be

shown that there was a period sufficient to afford full opportunity for meditation and reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will.[39] The premeditation to kill must be sufficiently proven by evidence of outward acts showing the intent to kill.[40] In the present case, there is no evidence of planning or preparation to kill. It was not shown that there was a prior incident between the deceased and Albao. The evidence clearly demonstrates that the fatal encounter between Albao and the victim was casual and unplanned. Prosecution Witness Albinio Usa testified that the victim was simply passing by when Albao allegedly called him – to his death, as it turned out.

[Damages]

The trial court ordered appellants to pay to the heirs of the victim the amount of P50,000 as actual, moral, and exemplary damages. The trial court, however, did not indicate the basis for the award, and we have not found any from the records. We, therefore, cannot sustain it. In line with jurisprudence, however, we award to the heirs of the victim the same amount of P50,000 as indemnity. This award requires no proof other than the fact that a crime has been committed, and that appellant was responsible for it.[41]

WHEREFORE, the appealed Decision is MODIFIED. Appellant Renato Albao is hereby CONVICTED of homicide. Applying the Indeterminate Sentence Law, Appellant Albao is SENTENCED to an indeterminate penalty of eight years and one day of prision mayor as minimum to fourteen years, eight months and one day of reclusion temporal as maximum. Appellant Albao is also ordered to pay the heirs of the victim the sum of P50,000 as indemnity. Appellant Jose Aleno is ACQUITTED. His immediate RELEASE from confinement is ORDERED, unless he is being detained for some other legal cause. The director of prisons is DIRECTED to inform this Court, within five days from receipt of this Decision, of the actual date the appellant is released. No costs.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug and Quisumbing, JJ., concur.

[1] In his Brief, he spelled his name as “Aleno” but the trial court referred to him as “Aleño.”

[2] Rollo, pp. 28-41.

[3] Penned by Judge Eustaquio Z. Gacott, Jr.

[4] Record, p. 1.

[5] Rollo, p. 10.

[6] The case was deemed submitted for resolution on April 8, 1996 upon receipt by this Court of the Appellee’s Brief.

[7] Appellee’s Brief, signed by SG Raul I. Goco, ASG Amparo M. Cabotaje-Tang and Assistant Solicitor Leopoldo Mario P. Legaspi, pp. 5-6; Rollo, pp. 179-180.

[8] Spelled as “Albenio” by the trial court but as “Albinio” in the TSN and the OSG’s brief.

[9] Decision , pp. 1-5; Rollo, pp. 28-32.

[10] Record, p. 57.

[11] Brief of Appellant Renato Albao, prepared by Atty. Zoilo C. Cruzat, p. 3-5; Rollo, pp. 144-146.

- [12] Brief of Appellant Jose Aleño, prepared by Atty. Tomas Miguel R. Timbangan, pp. 7-8; Rollo, pp. 80-81.
- [13] Albao's Brief, p. 6; Rollo, p. 147.
- [14] People vs. Maceda, 197 SCRA 499, 502, May 27, 1991, per Regalado, J.
- [15] TSN, p. 11, July 13, 1992 and TSN, p. 7, October 27, 1993.
- [16] Ibid., p. 13, July 13, 1992.
- [17] Ibid., p. 8, October 27, 1993.
- [18] Ibid., pp. 6-7, October 28, 1993.
- [19] People vs. Rubio, 257 SCRA 528, 533, June 20, 1996; People vs. Del Prado, 253 SCRA 731, 738, February 20, 1996.¹⁹
- [20][20] People vs. Broncano, 260 SCRA 724, 737, August 22, 1996, per Mendoza, J.²⁰
- [21][21] People vs. Santos, 255 SCRA 309, pp. 318-319, March 29, 1996, per Francisco, J.²¹
- [22][22] TSN, pp. 9-12, November 13, 1991.²²
- [23][23] TSN, pp. 6-13, November 14, 1991.²³
- [24][24] TSN, pp. 34-35, November 14, 1991.²⁴
- [25][25] People vs. Binamira, G.R. No. 110397, September 5, 1997, p. 19, per Panganiban, J.²⁵
- [26] TSN, p. 15, November 14, 1991.
- [27] TSN, p. 14, November 14, 1991.
- [28] Ibid., p. 16.
- [29] People vs. Talisic, G.R. No. 97961, p. 12, September 5, 1997, per Panganiban, J
- [30] People vs. Binamira, supra, p. 19.
- [31] TSN, p. 36, June 13, 1992 and TSN, p. 10, October 27, 1993.
- [32] TSN, pp. 7-9, October 27, 1993.
- [33] TSN, pp. 1-6, 20, 56-60, January 7, 1994.
- [34] TSN, pp. 56-60, 63-64, January 7, 1994.
- [35] Decision, p. 12; Rollo, p. 39.
- [36] People vs. Orehuela, 232 SCRA 82, 93, April 29, 1994. See also Francisco, Evidence, 3rd ed., (1996), pp. 716-717.³
- [37] Decision, p. 13; Rollo, p. 40.
- [38] People vs. Obzunar, supra, pp. 569-570.
- [39] People vs. Cordero, 217 SCRA 1, 7, January 5, 1993; People vs. Salvador, supra, p. 826; People vs. Rivera, 221 SCRA 647, 656, May 10, 1993 and People vs. Buela, 227 SCRA 534, 539-540, November 8, 1993.
- [40] People vs. Estrella, 221 SCRA 543, 548, April 28, 1993.

[41] People vs. Cayabyab, G.R. No. 123073, June 19, 1997, p. 22.

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