

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL SOL, ACCUSED-APPELLANT.

G.R. No. 118504. May 07, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Despite appellant's lone assignment of error claiming that he should suffer only "eight (8) years and one day to ten (10) years of prisión mayor," instead of *reclusión perpetua* imposed by the trial court, this Court nonetheless resolved to review not only the length of the imprisonment adjudged against him, but also his very conviction pursuant to the doctrine that an appeal in a criminal case, particularly that mandated by the Constitution in regard to capital offenses, throws the whole case open for review.

This is an appeal from the Decision[1] dated October 3, 1994, rendered by the Regional Trial Court of Dumaguete City, Branch 33,[2] finding Appellant Joel Sol guilty of murder and sentencing him to *reclusión perpetua*.

Appellant was charged in an Information which reads:[3]

"That at about 6:00 o'clock in the evening of May 24, 1992, at sitio Maladpad, Barangay Bonawon, Siaton, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab ROMEO PALADAR, in the different parts of the body using a knife with which the accused was then armed and provided, thereby inflicting the hereunder described injuries, to wit:

- '1. Lacerated wound, approximately 2 cm. in length, lateral forehead, Right
2. Lacerated wound, approximately 4 inches in length, anterior neck
3. Stab wound, perforating, extending from the level of the right nipple to the level of the umbilicus, exposing some parts of the intestine
4. Stab wound, approximately 3 cm. in length, 5 inches in depth, lumbar area, Left
5. Stab wound, approximately 4 cm. in length, 4 inches in depth, mid-posterior chest, Right'

which injuries caused the instantaneous death of victim ROMEO PALADAR.

Contrary to Article 248 of the Revised Penal Code."

Assisted by counsel, he pleaded "not guilty" to the charge.[4] During the plea-bargaining stage and the course of the trial, he proposed to plead guilty to the lesser crime of homicide, claiming to have acted in self-defense.[5] But the prosecution rejected such offer. After trial, appellant was convicted as charged. The dispositive portion of the trial court's Decision reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the criminal offense of Murder as charged in the Information, with one mitigating circumstance attendant in the commission of the offense, that

of voluntary surrender, and the penalty imposable consisting of one divisible penalty of reclusion temporal and two indivisible penalties, that of reclusion perpetua to death, the accused is hereby sentenced to suffer a determinate penalty of reclusion perpetua; to indemnify the heirs of the victim Romeo Paladar, the sum of P50,000.00 as actual damages; P30,000.00 as moral damages; and P10,000.00 as exemplary damages; forfeiture of the weapon used in the commission of the offense in favor of the State; to suffer the accessory penalties imposed by law and to pay the costs.”

Hence, this appeal.

The Facts Version of the Prosecution

The trial court summarized the facts in this wise:[6]

“It was a Sunday, May 24, 1992, the victim Romeo Paladar and his daughter Rafaela Dorothy Paladar, 8 years old then at the time, were on their way home. As this child of the victim declared, they were walking together following a human foot trail, with her ahead, followed by her father and then the accused. All of a sudden there was a loud enough outcry of her father saying: “Aray!” and when she turned her back she saw the accused Joel Sol stabbed (sic) her father at the back. She was not afraid though of the incident but she had to cry. The weapon used by the accused was a stainless knife. A series of stabbings ensued while the victim fell with his back on the ground. All that she could do was simply to run away, crying. Then only to know later that her father died because of this incident. (TSN, January 4, 1993, pp. 3-11, and May 20, 1993-morning hearing, pp. 15-21).

x x x (T)wo weeks before this x x x incident x x x, the accused and the victim complained to the barangay captain having been mauled, but she did not know the result. (TSN, January 4, 1993, pp. 13-14)

The barangay captain, Isabelito Lucero of Barangay Bonawon, Siaton, Negros Oriental, corroborated the testimony of this daughter of the victim by telling the Court that two weeks before the incident the victim complained to him that the accused mauled him and wanted the accused summoned before him x x x which he did. The accused was summoned in the morning of May 24, 1992 for a conference, at 10:00 o’clock. Both protagonist (sic) appeared. The victim however, only requested for a reimbursement of the amount spent by him in treating his injuries which was a little over P200.00. But the accused refused. In the evening of the same day the stabbing incident occurred wherein the accused was allegedly the perpetrator of the offense. (TSN, May 20, 1993-afternoon hearing, pp. 2-11)

x x x x x x x x

The wounds of the victim were examined by the attending physician of the Siaton District Hospital, x x x Dr. Mitylene B. Tan, per her postmortem examination indicating the following wounds:

1st: Lacerated wound, approximately 2 cm. in length, lateral forehead, right; (which the doctor illustrated to be on top of the right eyebrow, and not fatal)

2nd: Lacerated wound, approximately 4 inches in length, anterior neck; (which the doctor illustrated to be in the neck and fatal to the body of the victim)

3rd: Stab wound, perforating, extending from the level of the right nipple to the level of the umbilicus, exposing some parts of the intestine; (which the doctor illustrated it to be from the right breast in the nipple to the level of the umbilicus, the center of the body, which wound was fatal to the victim)

4th: Stab wound, approximately 3 cm. in length, 5 inches in depth, lumbar area, left; (which the doctor illustrated it to be at the back, between the vertebrae and the sacrum and fatal to the body of the victim)

5th: Stab wound, approximately 4 cm. in length, 4 inches in depth, mid-posterior chest, right: (which wound is

likewise fatal to the body of the victim)

All the wounds inflicted were revelatory (sic) of a sharp instrument used, either a sharp pointed knife or a sharp pointed bolo, in the infliction of the same. And there is no way (of) telling that the wounds 2, 3, 4 and 5 entries were not the cause of death, it was (sic)." (TSN, November 19, 1992, pp. 11-14)

Version of the Defense

Appellant, as the sole witness for the defense, presented a totally different story, to wit:[7]

"x x x He claimed that while he was on his way home from sitio Maladpad, Barangay Bonawon, Siaton, this province, starting from the house of his sister-in-law Rosita, following a human foot trail, he was called by Romeo Paladar who was then following him, to wait for him because he had something to tell. So, he obligingly stopped and wait(ed). But then Romeo Paladar challenge(d) him to a fight saying: 'Do you want that we kill each other Dong?...' To this challenge, the accused retorted by simply saying: 'Why should we be killing each other when we don't have grudges.' Without much ceremony, the victim grabbed his hand and pulled him, struck him with his knees hitting him at the middle portion of his abdomen. Not noticing whether the victim had a weapon or not all he noticed was that he passed out, got dizzy. Continuously having held his hand, upon regaining consciousness, he pulled his knife and stabbed the victim Romeo Paladar. And at this precise moment of stabbing, the accused was already lying on the ground with his face up looking at Romeo Paladar. x x x (TSN-April 11, 1994, pp. 13, 14, 15 and 16)

x x x x x x x x

He went on to say that as he ran away he was still chased by the victim to a distance of fifteen meters after which he did not notice the victim anymore because of his speed in running."

Ruling of the Trial Court

The trial court found appellant's testimony incredible. It was contrary to human behavior and experience (a) for appellant to have noticed the deceased's daughter after stabbing the deceased, for it is unusual "to observe some unimportant activity" when "one is already preoccupied with a serious encounter";[8] (b) for appellant, who was lying on his back, to have stabbed the stomach of the victim, who was on his feet; (c) for the deceased to have allowed himself to be mortally stabbed several times before running away; and (d) for the deceased to have been capable of running away after being mortally stabbed. Further, the court a quo said:

"The theory of self-defense put up by the accused cannot be given credit. His 'denials being unsubstantiated by any clear and convincing evidence deserves no weight in law, it being negative and self-serving, as against the credible witnesses of the prosecution who testified on affirmative matters' (People vs. Martin, 193 SCRA 57), where the accused invokes self-defense it is incumbent upon him to prove by clear and convincing evidence that he did acted in defense of himself. He rely on the strength of his own evidence and not on the weakness of the prosecution. For even if the evidence of the prosecution is weak, it could not be disbelieved after the accused himself had admitted the killing. (People vs. Saxam, G.R. 89684, 18 Sept. 1990, Second Division, Regalado, J.)

Finally, the Court gives no credibility to the theory of self-defense invoked by the accused considering the number of wounds inflicted on the victim located at the different parts of the victim's body (five all in all). As our Supreme Court pronounced, now and then, 'in view of the number of wounds received by the deceased, nineteen (19) in number, the plea of self-defense cannot be entertained.' (People vs. Panganiban, 22 SCRA 817)"[9]

The trial court also appreciated one qualifying circumstance (treachery) and one generic aggravating circumstance (evident premeditation), as well as one mitigating circumstance (voluntary surrender). Treachery, which was

shown by appellant's attack from behind, qualified the crime to murder. Evident premeditation was proven by the fact that three days prior to the killing, appellant had mauled the deceased and the latter claimed restitution of his medical expenses which the former refused to pay. Voluntary surrender was appreciated in favor of appellant, but this was offset by evident premeditation. Thus, appellant was sentenced to *reclusión perpetua*.

Assignment of Error

In the Appellant's Brief, counsel for the defense raised this lone error: [10]

"The trial court gravely erred in imposing the penalty of *reclusión perpetua* against the accused-appellant x x x despite x x x the presence of modifying circumstances."

Appellant avers that the imposition of the penalty of *reclusión perpetua* is cruel and inhuman, per Section 19(1), Article III of the 1987 Constitution, in view of the presence of a mitigating circumstance in his favor and his not being a recidivist. He further claims that, with the suspension of the imposition of the death penalty by the same Constitution, the trial court should have imposed a penalty within the range of *prisión mayor* to *reclusión perpetua* considering that Article 248 of the Revised Penal Code prescribes a three-tiered penalty ranging from the maximum period of *reclusión temporal* to death.

The Court's Ruling

While appellant questioned only the penalty imposed, this Court, nonetheless, looked into appellant's conviction following the legal principle that an appeal in a criminal case throws the whole case open for review.[11] This is particularly true in constitutionally mandated appeals involving capital offenses. After examining the case in its entirety, the Court is satisfied that the guilt of the appellant had been proven beyond reasonable doubt. The Court holds, however, that the penalty imposed by the trial court should be reduced.

Consequences of Self-Defense

When an accused invokes self-defense, the burden of proof is shifted to him to prove that the killing was justified and that he incurred no criminal liability therefor.[12] Also, the requisites of self-defense must be proved by clear and convincing evidence.[13]

In this case, the evidence for the defense can hardly be characterized as clear and convincing. First, appellant's testimony is uncorroborated, as the defense presented no other witness. His testimony does not show unlawful aggression on the part of the victim. Absent such unlawful aggression, there can be no self-defense. Second, the number, location and gravity of the wounds inflicted on the deceased belie appellant's pretension that he acted in self-defense.[14] The deceased sustained five wounds according to the post-mortem examination report, two of which were at the back. If the deceased and appellant, according to the latter's testimony, were wrestling on the ground with the deceased tightly hugging him, how could appellant have stabbed the deceased at the back? Appellant vaguely answered that he could no longer remember because he had again lost consciousness. If indeed he lost consciousness, how could he have held the knife with which to strike the victim? If appellant was merely defending himself, he did not have to stab the deceased five times and at vital parts of the body. These unexplained circumstances seriously damage his credibility and hopelessly puncture his story. Third, the element of reasonable necessity of the means employed to repel the alleged unlawful aggression[15] directed at appellant is also absent. The deceased was over 40 years old while appellant was 22 years old -- a man at the prime of his youth. According to Barangay Captain Isabelito Lucero, appellant was huskier than the deceased.[16] Granting *arguendo* that the deceased was the unlawful aggressor, he, unlike appellant, was unarmed and thus it would have been incredible for the latter to use appellant's knife to repel the former. It was also strange for appellant to be carrying a 10-inch kitchen knife[17] with him. He claimed that he had delivered cut banana trunks to his sister's

house, but to do this, he would have needed a sturdier cutting instrument like a bolo, not a kitchen knife. And since he had cut the trunks in his house, he need not have brought the knife with him.

In sum, appellant failed to prove self-defense by clear and convincing evidence. His testimony suffers seriously from want of credibility; it is more of a denial which, like alibi, cannot prevail over positive identification.[18]

Appellant's plea for a lesser penalty shall now be discussed.

Treachery Was Proven

Treachery is present when an offender employs means in the commission of a crime against persons which tend to insure its execution without risk to himself arising from the defense which the offended party may make.[19] In the present case, established facts reveal that the attack on the deceased was sudden and unexpected. Appellant, pretending to be going in the same direction as the victim, stabbed the unarmed victim at the back instantly and without warning. Witness Rafaela testified:[20]

"Court:

Q. Now, where were you located at the time when this Joel Sol stabbed your father?

A. In front.

Q. In other words, you were being followed by your father walking or you were in a stopping motion when the incident occurred?

A. We were still walking.

Q. How were you able to notice that Joel Sol stabbed your father when you were in front of your father? Did your father shout for help or cry for pain and you were able to look back?

A. He said something.

Q. What did he say?

A. He said, "Aray!"

Q. And at that time he said "Aray!," you turned your back?

A. Yes.

Q. And what did you see?

A. He was stabbed at the back.

Q. By Joel Sol?

A. Yes.

Q. And Joel Sol was at the back of your father when you turned back?

A. Yes.

x x x x x x x x

Atty. Tizon:

Q. And when you... After you saw that Joel Sol stabbed your father from behind, what happened to your father?

Court:

Q. What did your father do to be specific?

A. He fell down.

Q. And when your father fell down, what did Joel Sol do to your father?

A. He stabbed him several times (witness demonstrated by making a thrust with the use of her right arm -- stabbing motion towards them).

x x x x x x x x

Q. And while you were on your way home, you were not able to meet this Joel Sol?

A. No.

Q. In other words, he just came behind your father and stabbed your father?

A. Yes.”

Thus, the trial court correctly ruled that treachery qualified the killing to murder.

Evident Premeditation Unproven

Evident premeditation is appreciated where the execution of a criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent.[21] Its elements are as follows: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the lapse of an interval of time between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[22]

The trial court, however, merely inferred evident premeditation from Barangay Captain Lucero’s testimony. Said the trial court:

“The Court observed that the evidence of the prosecution on evident premeditation relying on the testimony of the Barangay Captain of Bonawon, Siaton, this province, that a physical encounter between the accused and the victim three or two days before that fateful stabbing of the victim in the early evening of May 24, 1992, that reached his office, on the complaint of the victim having suffered injuries was never controverted except that simple denial of the accused that before such stabbing incident his relationship with Romeo Paladar was a good one.”

Although a “sufficient lapse of time” intervened between the stabbing and the conference between appellant and the deceased before said Barangay Captain, a perusal of said testimony reveals however no determination or intent to kill on the part of appellant. Evident premeditation is not presumed from mere lapse of time.[23] There should be an “act manifestly indicating that the offender had clung” to a previous determination to kill. The trial court, therefore, erred in appreciating evident premeditation as a generic aggravating circumstance because there was no sufficient evidence showing that appellant meditated and reflected upon his decision to kill the victim. At best, such testimony shows only a motive on appellant’s part to kill the victim.

The Proper Penalty

The lone issue raised by appellant was the allegedly erroneous penalty imposed by the trial court. Appellant incorrectly asserts that the proper penalty should be prisión mayor because the crime was committed after the imposition of the death penalty had been suspended by the 1987 Constitution, but before its reimposition by Republic Act No. 7659. Consequently, he argues, the prescribed penalty should range from prisión mayor to reclusión perpetua following the three-tiered penalty prescribed in the Revised Penal Code at that time.

Appellant’s argument had already been ruled upon by the Supreme Court. The Solicitor General rightly points out that said constitutional prohibition did not thereby change the penalties originally prescribed in the Code for certain offenses.[24] In other words, the Constitution did not effect a lowering of the range of the prescribed penalties in the Code for crimes with complex penalties.[25] In *People vs. Muñoz*, the Court clarified:[26]

“xxx Whatever the intention was, what we should determine is whether or not they also meant to require a corresponding modification in the other periods as a result of the prohibition against the death penalty.

It is definite that such a requirement, if there really was one, is not at all expressed in Article III, Section 19(1) of the Constitution or indicated therein by at least clear and unmistakable implication. It would have been so easy, assuming such intention, to state it categorically and plainly, leaving no doubt as to its meaning. One searches in vain for such a statement, express or even implied. xxx

x x x x x x x x

xxx (W)e hereby reverse the current doctrine providing for three new periods for the penalty for murder as reduced by the Constitution. Instead, we return to our original interpretation and hold that Article III Section 19(1) does not change the periods of the penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged.

The Court realizes that this interpretation may lead to certain inequities that would not have arisen under Article 248 of the Revised Penal Code before its modification. Thus, a person originally subject to the death penalty and another who committed murder without the attendance of any modifying circumstance will now be both punishable with the same medium period although the former is concededly more guilty than the latter. xxx That is the will not of this Court but of the Constitution. That is a question of wisdom, not interpretation. x x x.”

Considering that the crime was not attended by the generic aggravating circumstance of evident premeditation, the undisputed presence of the mitigating circumstance of voluntary surrender entitles appellant to the imposition of the minimum penalty for murder, i.e., reclusión temporal in its maximum period[27]pursuant to Article 64(2) of the Revised Penal Code. He is also entitled to the benefits of the Indeterminate Sentence Law (Act No. 4103, as amended).

The civil damages imposed by the trial court have no legal bases.[28] An alleged pecuniary loss must be established by factual evidence before actual damages may be awarded.[29]Proof of moral and mental suffering is similarly required before moral damages may be awarded. Exemplary damages can be awarded only when the crime is committed with one or more aggravating circumstances.[30] In this case, there was no testimony given regarding any expense incurred as a result of the death of the victim. Verily, the Court finds nothing in the record to support these awarded damages. However, in line with current jurisprudence, civil indemnity for the death of the victim (for which no proof is required) is imposed in the amount of P50,000.00.[31]

WHEREFORE, the appealed Decision is hereby AFFIRMED with the following MODIFICATIONS: a penalty of ten (10) years and one day of prisión mayor, as minimum, to seventeen (17) years, four months and one day of reclusión temporal, as maximum, is hereby IMPOSED on the appellant; the award of damages is DELETED; and a civil indemnity of P50,000.00 is ORDERED to be paid by appellant to the deceased’s heirs, pursuant to current jurisprudence.

SO ORDERED.

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

[1] Rollo, pp. 17-26.

[2] Presided by Judge Pacifico S. Bulado.

[3] Rollo, p. 10.

[4] Records, p. 37.

[5] Records, p. 216; TSN, May 20, 1993, p. 2.

[6] RTC Decision, pp. 2-4; rollo, pp. 18-20. TSN citations supplied.

[7] RTC Decision, rollo, pp. 19-21.

[8] RTC Decision, p. 7; rollo, p. 23.

[9] Ibid., pp. 9-19; rollo, pp. 24-25.

[10] Rollo, p. 62.

[11] Quemuel vs. Court of Appeals, 22 SCRA 44, 46, January 16, 1968; People vs. Villagracia, 226 SCRA 374, 381, September 14, 1993; and People vs. Godines, 196 SCRA 765, 773-774, May 7, 1991.

[12] People vs. So, 247 SCRA 708, 718, August 28, 1995; People vs. Nuestro, 240 SCRA 221, 227, January 18, 1995; Bitalac vs. Court of Appeals, 241 SCRA 351, 354, February 15, 1995; People vs. Camahalan, 241 SCRA 558, 569, February 22, 1995; People vs. Morin, 241 SCRA 709, 714, February 24, 1995; People vs. Silvestre, 244 SCRA 479, 490, May 29, 1995; People vs. Ganzagan, Jr., 247 SCRA 220, 233, August 11, 1995.

[13] People vs. Isleta, G.R. No. 114971, November 19, 1996, p. 18; People vs. Daquipil, 240 SCRA 314, 329, January 20, 1995 and People vs. Camahalan, supra.

[14] People vs. Nuestro, supra, p. 228; People vs. Camahalan, supra, p. 570; People vs. Morin, supra, p. 715; and People vs. So, supra, pp. 721-722.

[15] The elements of self-defense are as follows: (1) unlawful aggression on the part of the victim; (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. Gerolaga, G.R. No. 89075, October 15, 1996, pp. 26-27 and People vs. Deopante, G.R. No. 102772, October 30, 1996, p. 14.

[16] TSN, May 20, 1993, p. 17.

[17] Record, p. 12.

[18] People vs. Torres, 247 SCRA 212, 217, August 11, 1995; People vs. Villanueva, 242 SCRA 47, 55, March 1, 1995; People vs. Legaspi, 246 SCRA 206, 212, July 14, 1995; and People vs. Lopez, 249 SCRA 610, 621, October 30, 1995.

[19] People vs. Patrolla, 254 SCRA 467, March 7, 1996.

[20] TSN, January 4, 1993, pp. 8-11.

[21] People vs. Cascalla, 240 SCRA 482, 488, January 25, 1995; and People vs. Lopez, supra, p. 626.

[22] People vs. Lopez, ibid.; People vs. Ganzagan, Jr., supra, pp. 235-236; People vs. Maturgo, Sr., 248 SCRA 519, 529-530, September 27, 1995; and People vs. Dela Cruz, 242 SCRA 129, 142, March 2, 1995.

[23] People vs. Silvestre, supra, p. 495 and People vs. Layno, G.R. No. 110833, November 21, 1996, p. 21.

[24] Appellee's Brief, Rollo, pp. 107-108.

[25] People vs. De la Cruz, supra, p. 484; and People vs. Muñoz, 170 SCRA 107, 122-124, February 9, 1989.

[26] Ibid., pp. 123-124. See, however, the Separate Opinion in People vs. Echegaray, G.R. No. 117472, February

7, 1997.

[27] Article 248 of the Revised Penal Code in effect in 1992 when the crime was committed provided that the penalty for murder was reclusion temporal in its maximum period to death. Under RA 7659, which became effective on December 31, 1993, murder is now penalized with reclusion perpetua to death.

[28] People vs. Arguelles, 222 SCRA 166, 172, May 17, 1993.

[29] People vs. Rosario, 246 SCRA 658, 671, July 18, 1995.

[30]Article 2230, Civil Code.

[31] People vs. Añonuevo, G.R. No. 112989, September 18, 1996, p.18; People vs. Cogonon, G.R. No. 94548, October 4, 1996, p. 20; People vs. Gerolaga, G.R. No. 89075, October 15, 1996, p. 38; and People vs. Deopante, G.R. No. 102772, October 30, 1996, p. 22.

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