

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ROBINSON TIMBLOR, ACCUSED-APPELLANT.

G.R. No. 118939. January 27, 1998

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

On automatic review before this Court is the decision of Branch 49 of the Regional Trial Court (RTC) of Palawan, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, as the prosecution has successfully proven the crime it has charged against the accused, the Court hereby finds the said accused, ROBINSON TIMBLOR guilty beyond reasonable doubt of the crime of “MURDER” in the above-entitled case as defined and penalized by Article 248 of the Revised Penal Code, in relation to and as amended by Republic Act No. 7659 and accordingly, he is sentenced to the penalty of DEATH by the electric chair or the gas chamber, and ordered to indemnify the heirs of the victim actual or compensatory damages amounting to P50,000.00 and moral and exemplary damages amounting to P120,000.00; and to pay the cost.”[1]

It appears from the records that in the evening of February 20, 1994 in Malcampo, Roxas, Palawan, the appellant, Robinson Timblor hacked Juan Martinico with a bolo thereby causing the latter’s death. The events leading to the fatal killing of Juan may be gleaned from the testimony of eyewitness, Merlita Martinico-Ramos and Reynaldo Miran (also known as Ronnie Miran), to wit:

Between the hours of 6:30 and 7:00 o’clock in the evening of February 20, 1994, while Merlita was in her store situated in San Dionisio, Malcampo, Roxas, Palawan, she witnessed a fist fight between appellant and Juan right outside her store. The fight did not last long as the two were pacified by the barangay tanod, Dionisio Magbanua. Thereafter, the appellant proceeded home while Juan went to the house of Reynaldo Miran[2] which was some ten (10) meters across the store of Merlita.[3] After a while, appellant who was now armed with a bolo went back to the store of Merlita where she was showing a betamax movie for a fee on the second floor. The appellant asked the viewers if Juan was there and someone answered in the negative. He then left and walked towards the house of the barangay captain. Later on, appellant returned to Merlita’s store and asked her if the betamax movie was already halfway through. When Merlita said that the movie was not yet halfway through, appellant asked if he could go upstairs. Merlita responded by asking to first leave the bolo behind as he might scare the viewers of the betamax show. The appellant did not mind her and went back instead to the barangay captain’s house. When the appellant returned a second time from the barangay captain’s house he passed near Merlita’s store.[4]

Meanwhile, Juan was in the house of Reynaldo Miran whom he frequently visited.[5] According to Reynaldo, Juan arrived at his house at around 8:20 in the evening of February 20, 1994. They were engaged in a conversation until 8:30 in the evening when they both went downstairs to urinate.[6] After answering the call of nature, they went back to Reynaldo’s house. Juan went ahead while Reynaldo followed three (3) or four (4) meters behind. While Juan was on the third step of the stairs going up to the balcony, Reynaldo saw the appellant approaching with an eighteen (18) inch bolo.[7] As appellant was about to hack Juan, Reynaldo tried to stop him

by exclaiming, “don’t do that (Huwag mong gawin iyan,) I am tanod,”[8] but to no avail. The appellant hacked Juan from behind hitting the latter on his waistline and thereby causing a “through and through wound which exited in from of Juan’s body.”[9] He then turned his ire on Reynaldo and hacked-off a piece of the latter’s left ear.[10] The blow caused Reynaldo to feel dizzy and fall to the ground, and it was only after about twenty (20) seconds that he regained his composure. Seeing Juan already wounded and struggling to go up the stairs, Reynaldo summoned help from the former’s brothers and sisters who were in their house some twenty (20) meters away when Juan’s brothers and sisters arrived they carried him to their resthouse. Together with Reynaldo, Juan’s brothers and sisters then boarded a tricycle and brought Juan to the Baptist Hospital at Roxas, Palawan where he was admitted to the operating room at 9:00 o’clock in the evening. Despite medical assistance, Juan died the next day at 5:30 in the morning.[11]

For his part, the appellant claims that he merely acted in self-defense and gave his version of the antecedent facts in this wise:

At around 4:00 o’clock in the afternoon of February 24, 1994, while appellant was on his way home from the ricemill, Juan Martinico “embraced” him and invited him to drink wine (bilog) in waiting shed located at San Dionisio, Malcampo, Roxas, Palawan.[12] When he declined the invitation, Juan struck him on the head with a bottle of gin. Thereupon, the companions of Juan namely, Ronnie Miran, Gregorio Saclet, Danilo Magbanua and Protacio Vallejo also punched him on his breast, ears, and waistline. After he was able to stand-up, he ran towards his house. Later that day at around 8:00 o’clock in the evening, he decided to report the incident to Barangay Captain Rodolfo Gabuat[13] but he was waylaid by Juan and his companions, Gregorio Saclet and Ronnie Miran who were all drunk.[14] Upon nearing the store of Pinang which was in front of Ronnie Miran’s house, Juan came out and said, “so you are here”[15] then drew a stainless knife and tried to stab him. The appellant fled and came across a pile of bottles about four (4) meters away. He intended to use the bottle to defend himself but when he saw the bolo among the bottles he picked it up instead. Appellant then faced Juan who was holding a short knife, and hacked him with a bolo. At this point however, Juan turned around to escape appellant’s attack and was hit at the back by the bolo. Gregorio Saclet then struck appellant with a piece of wood, and the latter retaliated by striking at Ronnie Miran and slicing-off a piece of the latter’s left ear.[16] After the incident, appellant went directly to the house of the barangay captain to give the bolo to him and to surrender. The barangay captain then brought the appellant to the Philippine National Police (PNP) Station at Roxas.[17]

The trial court accorded credence to the testimony of the prosecution witnesses vis a vis the appellant’s lame denials, and said that: “There are two eye-witnesses (sic) to the stabbing of the victim by the accused. Being direct evidence, the version of these witnesses which has all the earmarks of truth, has a strong probative value. The [c]ourt has no reason to doubt the veracity of their testimonies, for they are positive, straightforward, and convincing.”[18] This Court has consistently desisted from interfering with conclusions of fact and assessment of witnesses’ credibility by the trial court since the same is best arrived at by the trial court judge because of his unique position of having observed that elusive and incommunicable evidence of the witnesses’ deportment on the stand, which opportunity is obviously denied to this court.[19]

Now to the appellant’s vigorous assertion that he was justified in killing Juan as he was only defending himself.

To be appreciated as a circumstance justifying the killing of a victim, self-defense must be proven by establishing clearly and convincingly the concurrence of the following: (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.[20] In the case at bench, the positive testimony of the eye-witnesses, Merlita and Reynaldo, leave no room for doubt that the foremost element of unlawful aggression on the part of the victim, Juan, is absent. Both Merlita and Reynaldo point to the appellant as the one who initiated the aggression against

the unwarned and defenseless Juan. Thus, they testified,

Reynaldo Miran:

“ATTY. BAGUYO

(to witness)

Q

Mr. Witness, I am showing to you this Malayang Salaysay ni Reynaldo Miran Y Alcaraz na kuha sa pagtatanong ni SPO2 Roselito Cervantes Abis tagapagsiyasat ng Roxas PNP Ngayong ika-22 ng Pebrero 1994 ganap na ika-3:00 ng hapon sa harap ni SPO2 Alfredo B. Golifardo and I will read to you portion number 8 and I quote: Tanong – Maaari mo bang isalaysay ang buod ng mga pangyayari? Sagot – Opo. Noong pong ika 20 ng Pebrero 1994, ganap na ika humigit kumulang 8:20 ng gabi ay pumunta sa bahay itong si Juan Martinico at kami ay nagkukuwentuhan at mga bandang ika humigit kumulang ika 8:30 ng gabi siya at bumaba ng aming at ako naman ay sumunod ding bumaba sa kanya at pagkababa namin ng hagdan ay nakita ko itong si Robinson Timblor na parating at may dalang gulok at bigla na lang niyang sinaksak ng nasabing gulok si Juan Martinico at ako ay napasigaw at ang sabi ko “huwag mong ituloy iyan, Barangay Tanod ako” subalit sa halip na siya ay magpasaway, ay ako pa nga ang kanyang binalingan at inundayan din ng taga habang itong si Juan ay nagpipilit na umakyat sa aming bahay sapagkat may tama na siya at ako ay tinamaan din ng taga sa aking tainga, braso, at leeg, na ang aking tainga ay tumalsik at hindi ko na nakita.” Unquote.

Can you tell this Honorable Court if you stated that portion that I read before you?

A

Yes, maam.

Q

So Mr. Witness when you saw Robinson Timblor, you and Juan Martinico were already downstairs, is it not?

A

Yes, maam, as we were together with Juan Martinico in going downstairs to answer the call of nature or in urinating.

Q

But Mr. Witness, before you went downstairs this Juan Martinico told you that the accused was about to pass by your house?

A

No maam.

COURT:

(to witness Miran)

But the incident you describe (sic) on direct examination by the Fiscal this victim was going upstairs and at that time had his back against Timblor and that is the time that Timblor stab (sic) his back?

WITNESS MIRAN:

Yes, your Honor.

COURT:

(to witness Miran)

Meaning to say after urinating you went upstairs to your house?

WITNESS MIRAN:

When we urinated he was immediately stabbed. I saw Robinson Timblor.

COURT:

(to witness Miran)

But the Court thought that the victim was going upstairs to the balcony and that was the time that he was stabbed he was not urinating you did not state that a while ago?

WITNESS MIRAN:

We were together in going downstairs to urinate then while we were going upstairs I saw this Robinson Timblor stabbed (sic) Juan Martinico at his back, your Honor.

COURT:

(to witness Miran)

So it is not correct that while the victim was urinating that he was immediately stab (sic) by the accused?

WITNESS MIRAN:

No your Honor, he was going upstairs.”[21]

Merlita Martinico-Ramos:

“Q After that what happened next, madam witness?

A After a while ago (sic), Robinson Timblor again returned back (sic) bringing a bolo with him, sir.

Q After that what happened next?

A When Robinson Timblor return (sic) from the house of the barangay captain for the second time he did not pass our house anymore but he just passed near our house more or less five meters away from our house more or less five meters away from our house and then that was also the time when my brother (Juan Martinico) went downstairs in front of our house more or less five meters and that was also the time that my brother went downstairs from the house of Reynaldo Miran.

Q Now, how far were you from your brother at the time that you saw him coming downstairs?

ATTY. VIGONTE:

There is no showing that the witness saw his brother going downstairs, your Honor.

COURT:

(to Prosecutor Guayco)

Lay the basis.

COURT:

(to witness de Ramos)

Did you see your brother going down the house of Miran?

WITNESS DE RAMOS:

Yes, your Honor.

COURT:

(to witness de Ramos)

Why, where were you when you saw this?

WITNESS DE RAMOS:

During that time I was outside our store, your Honor.

COURT:

(to witness de Ramos)

You are saying that your house and your store is near the house of Miran?

WITNESS DE RAMOS:

10 meters apart, your Honor.

PROSECUTOR GUAYCO:

(to witness)

Q Now you said you have seen your brother went (sic) downstairs and Timblor went also at a distance of more or less five meters from you and Timblor, the question is, the place from where Timblor is, was it lighted?

A A little bit dark because of the shadow of the banana plantation, sir.

PROSECUTOR GUAYCO:

(to witness de Ramos)

Q Now, after that madam witness, what happened next?

A The incident happened so sudden that I saw my brother going upstairs and then also saw Robinson Timblor ran (sic) towards my brother and stabbed (sic) him, sir.

COURT:

(to witness de Ramos)

Was your brother hit?

WITNESS DE RAMOS:

Yes, your Honor.

COURT:

(to witness de Ramos)

Where? What part of the body?

WITNESS DE RAMOS:

Left back waistline, your Honor.

INTERPRETER:

Witness pointing her back portion left side.

COURT:

(to witness de Ramos)

You really saw the actual stabbing at the back of your brother?

WITNESS DE RAMOS:

Yes, your Honor.

PROSECUTOR GUAYCO:

(to witness de Ramos)

Q Now, this is nighttime, how were you able to see this, madam witness?

A Because during that night the moon was bright and the light of this Reynaldo Miran was placed on top of the table at the balcony and also our fluorescent lamp was bright also, sir.

COURT:

(to witness de Ramos)

So there was electricity in your place?

A Generator, sir.

Q Electricity?

A Yes, your Honor.

Q You saw this stabbing at what distance, how far were you?

A About 10 meters and I was outside our store, your Honor.”[22]

Well-settled is the rule that self-defense shifts the burden of proof in criminal cases from the prosecution to the defense. The rule is reversed as the accused must now rely on the strength of his own evidence and not on the weakness of that of the prosecution. When the accused has admitted that he is the author of the death of the victim and his defense is anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court.[23] This onus probandi the appellant failed miserably to discharge. The unwavering and consistent testimony of the prosecution witnesses abovementioned constitute damning evidence of the aggression perpetrated by the appellant against Juan.

Further, the fatal nature of the wound suffered by Juan renders more implausible the appellant's claim of self-defense. The findings of Dr. Leo Salvino who examined the body of the victim reveals the following:

“Q

Dr. you personally examined the body of Juan Martinico, will you tell the Honorable Court your findings in layman's language?

A

At the back I found a stab wound 4 cm. Left flank, penetrating the posterior wall hitting the left kidney with 6 cm. laceration, posteromedial border, distal pole. (Witness pointed the location of the wound on the left side waistline back portion). The other findings were Transverse colon, 1 cm. laceration mesentric border; jejunum, 4 stab wound through and through. The wound is through and through, that is why the small and large intestines were penetrated and damaged.

... Probable cause of death is Hypovolemic shock secondary to stab wound.

COURT:

Q Which is the entry wound and exit wound?

A The entry wound is left flank, back portion, and the exit wound is in the right portion of the abdomen.

PROSECUTOR GUAYCO:

May I pray further that the entry wound as appearing in the findings be bracketed and marked as Exhibit B-3 and the exit wound in the abdomen be bracketed and marked as Exhibit B-4.

COURT:

Q So the wound is through and through, doctor?

A Yes, your Honor.

PROSECUTOR:

Q With this kind of wound doctor, even with medical assistance or attendance, will the victim survive?

A Possibly not, that is a fatal wound.

Q Why do you say that?

A The big arteries of the kidney was (sic) severed including the left kidney.

COURT:

Q But there is only one wound?

A Yes, Your Honor.

PROSECUTOR:

We pray also that the cause of death be bracketed and marked as Exhibit B-5

Q What could have been used in inflicting this through and through wound?

A Probably a sharp bladed instrument like a bolo, a long one.” [24]

Considering that the wound was “through and through” penetrating the small and large intestines and severing the big arteries of the kidney including the left kidney, the appellant must have employed maximum force in inflicting the wound.[25] This is inconsistent with a mere act of self-preservation and suggests instead that the appellant struck at Juan with resolve to cause serious if not mortal damage to the latter’s person.[26]

Not only did the trial court debunk the appellant’s claim of self-defense, it also found that consistent with Merlita’s and Reynaldo’s testimony, the killing of Juan was attended by treachery. As correctly held by the trial court:

“There is more that sufficient evidence established in the record that the attack of the victim by the accused was sudden and unexpected and hence treacherous x x x. There is likewise clear evidence presented that the accused rushed up and stabbed the victim at the left portion of his back (Exhibit “A”) exiting at the right side of his (victim’s abdomen or stomach (Exhibit “B-4”)[27]

In *People vs. Ombrog*, [28] where the victim, Arnel Quilang, was stabbed in his back, this Court Stated that the deliberate, sudden and unexpected attack of the accused-appellant upon the totally unarmed victim from the rear, without giving the latter any opportunity to defend or repel the assault, was treacherous. That the attack was preceded first by a scuffle between the appellant and the victim at 4:00 o’clock in the afternoon and later by a fist fight early in the evening does not negate treachery. This Court’s pronouncement in the case of *People vs. Tobias* [29] is to the effect that treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or retaliate as in this case where the appellant rushed from behind and struck the oblivious and unarmed

victim.

This Court, however, agrees with the appellant that the crime was not committed with evident premeditation. The elements of evident premeditation are the following: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that the accused had clung to his determination to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.[30] The trial court concluded that the appellant decided to commit the crime after the occurrence of the fist fight between him and the victim at around 6:30 in the evening of February 24, 1994. Merlita testified that the appellant who was armed with a bolo returned to her store at 7:30 in the evening looking for Juan. According to the trial court, the foregoing circumstance and the logical presumption that the appellant was looking for Juan in order to avenge himself from their earlier fight constitute the first element of evident premeditation. We differ with this ratiocination. The act of the accused in looking for Juan while he was armed with a bolo cannot be considered as a definite demonstration that he had determined at that time to kill Juan. Neither may it be inferred therefrom that the appellant sought to perpetrate an act of revenge by killing Juan. All that has been proven by Merlita's testimony is that the appellant who was armed sought Juan after their earlier fight, nothing more nor less. It bears reiterating that a qualifying circumstance such as evident premeditation must be proven as clearly as the crime itself. Corrolarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.

Finally, we find that the appellant should be given the benefit of the mitigating circumstance of voluntary surrender. The trial court rejected appellant's claim that he had voluntarily surrendered to the authorities and held that the idea of surrendering came from the barangay captain and not from the appellant. For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority; and (3) the surrender is voluntary.[31] In this case, the appellant admittedly went to the house of the barangay captain brought the appellant to the PNP Station at Roxas, Palawan. The appellant placed himself in the hands of the barangay captain who, for purposed of the Revised penal Code is a person in authority, as provided for in Section 388 of the Local Government Code (R.A. No. 7160).[32] That the idea of surrendering came from the barangay captain and not from the appellant does not detract from the voluntariness of the latter's surrender. What is important is that the appellant voluntarily went with the barangay captain to the PNP Station before any warrant of arrest was issued against him.

Anent the civil liability imposed on the appellant, we find that only the amount of Forty-one Thousand Nine Hundred and Twelve Pesos (P41,912.00) was proven by the prosecution as hospitalization and burial expenses,[33] thus, the award of actual and compensatory damages of Fifty Thousand Pesos must be modified accordingly. Furthermore, the award of One Hundred Twenty Thousand Pesos (P120,000.00) as moral and exemplary damages is exorbitant and not warranted by the circumstances attending the victim's death and is therefore decreased to Fifty Thousand Pesos (P50,000.00). Lastly, in accordance with existing jurisprudence, the amount of Fifty Thousand Pesos (P50,000.00) must be imposed on appellant as indemnity for the death of Juan Martinico.

WHEREFORE, the appellant ROBINSON TIMBLOR is found guilty beyond reasonable doubt of the crime of murder qualified by treachery with the mitigating circumstance of voluntary surrender appreciated in his favor. He is sentenced to suffer the penalty of Reclusion Perpetua, and to pay the heirs of the deceased JUAN MARTINICO the amount of Forty-one Thousand Nine Hundred and Twelve Pesos (P41,912.00) as actual and compensatory damages, Fifty Thousand Pesos (P50,000.00) as moral and exemplary damages and Fifty Thousand Pesos (P50,000.00) as indemnity for the death of Juan Martinico.

SO ORDERED

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, and Martinez, JJ., concur.

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- [1] DECISION in Criminal Case No. 11694, December 19, 1994, p. 15; Rollo, p. 33.
- [2] TSN, MERLITA DE RAMOS, November 11, 1994, p. 5; Records, p. 48.
- [3] TSN, *ibid.*, p. 13; Records, p. 56.
- [4] TSN, *ibid.*, pp. 6 - 10; Records, pp. 49 - 53.
- [5] TSN, REYNALDO MIRAN, December 10, 1994, p. 17; Records, p. 17.
- [6] TSN, *ibid.*, p. 39, Records, p. 39.
- [7] TSN, *ibid.*, pp. 34-35; Records, pp. 34-35.
- [8] TSN, *ibid.*, p. 36; Records, p. 36.
- [9] TSN, *ibid.*, p. 7; Records, p.7.
- [10] TSN, *ibid.*
- [11] TSN, MERLITA DE RAMOS, *supra*, p. 18; Records, p. 61.
- [12] TSN, ROBINSON TIMBLOR, December 9, 1994, p.3; Records, p. 101.
- [13] TSN., *ibid.*, pp. 4-6; Records, p.102-104.
- [14] TSN., *ibid.*, p 14; Records, p. 112.
- [15] TSN., *ibid.*, p. 8; Records, p. 106.
- [16] TSN., *ibid.*, pp. 8-14; Records, p. 106-112.
- [17] TSN., *ibid.*, pp. 15-16; Records, p. 113-114.
- [18] DECISION, *supra.*,p.13; Rollo, p.31.
- [19] People vs. Rodencio Narca, et al., G.R. No. 108488, July 27, 1997; People vs. Sapurco, 315 Phil. 561 [1995]; People vs. Vitor, 315 Phil. 419 [1995]; People vs. Quinones, 315 Phil. 48 [1995].
- [20] People vs. Magallanes, G.R. No. 114264, July 8, 1997; People vs. Rodencio Narca, et al., *ibid.*: People vs. De Gracia, G.R. No. 112984, November 14, 1996; People vs. Tampon, G.R. No. 105583, July 5, 1996.
- [21] TSN, Reynaldo Miran, *supra*, pp. 20-23; Records, pp. 20-23.
- [22] TSN, Merlita de Ramos, *supra*, pp. 10-13; Records, pp. 53-56.
- [23] People vs. Alvarez, et al., G.R. No. 117689, January 30, 1997; People vs. Magallanes, *supra*, People vs. Tampon, *supra*.
- [24] TSN, Dr. Leo Salvino, November 17, 1994, pp. 4-6; Records, pp. 88-90.
- [25] TSN, *ibid.*, p. 8; Records, p. 92.

[26] People vs. Magallanes, supra.

[27] DECISION, supra, p. 14, Rollo p.32

[28] G.R. No. 104666, February 12, 1997.

[29] G.R. No. 114185, January 30, 1997.

[30] People vs. Rodencio Narca, et al., supra; People vs. Deopante, G.R. No. 102772, October 30, 1996; People vs. Cabodoc, G.R. No. 118320, October 15, 1996; People vs. Danilo Layno, et al., G.R.No.110833, November 21, 1996.

[31] People vs. Amaguin, 229 SCRA 166 [1994]; People vs. Decena, 235 SCRA 67 [1994].

[32] SEC. 388. Person in Authority – For purposed of the Revised Penal Code, the punong barangay, sangguniang barangay members, and members of the lupong tagapamayapa in each barangay shall be deemed as persons in authority in their jurisdictions, while other barangay officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment, and any barangay member who comes to the aid of persons in authority, shall be deemed agents of persons in authority.

[33] TSN, November 25, 1994, p.2; Records, p. 96.

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