

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OMAR CLETO VARONA, JR. AND TOM BARONA, ACCUSED. OMAR CLETO VARONA, JR., ACCUSED-APPELLANT. D

G.R. No. 119417. October 09, 1996

Ponente: VITUG, J.

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VITUG, J.:

From the decision of the Regional Trial Court of the National Capital Judicial Region, Branch 170[1] (Malabon, Metro Manila), convicting him of murder, Omar Cleto Varona, Jr., has appealed to this Court.

The appellant, along with his brother Tom Barona (Varona),[2] was charged[3] with the crime of murder in an amended information that read:

"That on or about the 8th day of February, 1993, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, with intent to kill, and with treachery and evident premeditation, while armed with a knife and bolo, did then and there, wilfully, unlawfully and feloniously stab and hack one EDUARDO M. ALBERTO, hitting the latter on the different parts of his body, which directly caused his death.

"CONTRARY TO LAW."[4]

The accused pleaded, "not guilty," to the charge.

The trial court, after hearing, gave credence to the evidence presented by the prosecution which the Solicitor General briefly narrated in the appellee's brief. Thus -

"Between 7:00 to 8:00 in the morning of February 8, 1993, the victim Eduardo Alberto, a.k.a. Buddha, approached Carlos Asuncion, a tricycle driver, and asked him if he would bring him to Dampalit, Malabon, Metro Manila. The latter agreed on condition that he would drive first his other passenger who was then already on board to his destination (TSN, September 6, 1992, p. 1). After the other passenger alighted, Eduardo transferred inside the cab and directed him to proceed to Doña Juana subdivision in Dampalit. Upon reaching Doña Juana, Eduardo met with someone and they conversed for a while. He then returned to the tricycle and sat behind Carlos (Ibid., p. 2). While still inside the subdivision, Omar Cleto Varona, a.k.a. Tongging, appeared from their left and, without uttering a word, hit Eduardo's cheek with a dustpan (Ibid.; TSN, August 22, 1994, p. 10; TSN, August 27, 1994, p. 6). Startled by the attack, Carlos swerved the tricycle to the right which caused it to fell on its side and it landed near a canal. Eduardo tried to escape but was chased by appellant. Carlos, in turn, hid in one of the alleys (TSN, September 6, 1994, p. 29).

"The commotion caught the attention of Mario Soliman Zosimo who was then resting inside his house. He came out to inquire what was happening (TSN, August 22, 1994, p. 3). He saw Omar Cleto chasing Eduardo. Suddenly, his brother Tom appeared from the direction where Eduardo was going and hit the latter on the chest. Tom handed Omar Cleto a bolo and they pursued Eduardo (Ibid., p. 7). When they finally outran him, Eduardo knelt down before Omar Cleto and begged him to stop as he would not put up a fight (Ibid., p. 8).

Omar Cleto remained deaf to his pleas and he hacked him several times even while he was already lying down. Omar Cleto left only when he realized that Eduardo was no longer moving. Mario Zosimo approached the sprawled body to verify if it was indeed Eduardo. After ascertaining the victim's identity, he went home feeling weak and sick at the sight of the mangled body of the victim."[5]

The trial court rejected the claim of self-defense. The testimonial evidence offered by the defense, summarized by the trial court and quoted in appellant's brief, was to the following effect:

"Testifying for the defense, Librada Yema, the sister-in-law of the accused, stated that on the date and time of the commission of the offense, she heard Lita called accused Omar Cleto from his house because the victim who was onboard a tricycle was looking for him. The accused went out and talked to the victim. Later on, she saw the deceased was about to pull out a bolo, whereupon, accused Omar Cleto held his hand and hit him with a dustpan.

"Accused Omar Cleto claimed that his sister Lita told him that someone was hunting (humahanting) for him, who turned out to be the victim Eduardo; that he wondered why the latter would hunt for him since after all, he have not done anything wrong to him; that he went out to approach Eduardo who in turned, told him that he could no longer get away from him and then begun to unsheath a bolo; that upon seeing a dustpan, he hit Eduardo at once and immediately, they scuffled for the bolo; that in the process, he sustained a wound at the back of his left ear and in the head; that he could no longer recall how many times he hacked the deceased because his mind went blank at that precise moment; and that he killed Eduardo in self-defense."[6]

Finding the accused "guilty beyond reasonable doubt of the crime of Murder," the trial court imposed "the penalty of reclusion perpetua" and ordered the payment to the heirs of Eduardo Alberto "the amount of P25,000.00 as actual damages and (an) additional sum of P50,000.00 as civil indemnity for the death of (the) victim."

The accused-appellant raises in this appeal a single assignment of error, i.e., that the trial court has erred in not considering favorably the claim of self-defense.

The defense admits that appellant has caused the death of Alberto, and it does not question the established jurisprudence that where, the accused has admitted to having inflicted the wounds on the murdered victim, it becomes incumbent upon him (the accused) to convincingly prove any justifying circumstance that is conjured in order to negate his liability.

Self-defense is an affirmative allegation and offers an exculpation from liability for crimes only if satisfactorily shown. Self-defense requires (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed by the accused to repel it, and (c) lack of sufficient provocation on his part.

The defense relies, in invoking the justifying circumstances of self-defense, primarily on the basis of the testimony of appellant and that given by his sister-in-law. Regrettably, the trial court has refused to give any credit to their asseverations. So strongly did the court feel about its findings in this regard that it has declared the self-defense theory to be "an out and out fabrication." The issue concerning the credibility of witnesses has almost always been considered to be a matter that is best addressed to the sound judgment of the trial court. Its vantage point over that of an appellate court in that determination can hardly be doubted. The Court here adds that, in reviewing the records, it has seen nothing to make it conclude that the trial court has overlooked any fact of substance and value to warrant a reversal of its factual assessments.

The alternative plea for the Court to reduce the trial court's sentence on appellant by appreciating the mitigating circumstances of incomplete self-defense and of the accused having allegedly "acted upon an impulse so powerful as naturally to have produced passion or obfuscation," unfortunately cannot also be favorably considered. These mitigating circumstances are dependent on proof of facts that, among other things, includes the attendance of

unlawful aggression in self-defense and an act that is both unlawful and sufficient to produce the circumstance of passion and obfuscation. Appellant's contention of a supposed encounter between him and the victim with the latter being the unlawful aggressor, as already so adverted to, simply has not been established.

Treachery was correctly appreciated; the trial court said:

"However, it is crystal clear that the crime committed is murder qualified by treachery. It was held that if there was a break in the continuity of the aggression and at the time the fatal wound was inflicted on the deceased, he was defenseless, the circumstance of treachery must be taken into account. (US vs. Baluyot 40 Phil. 385).

"In the case at bar, prosecution witness Mario Soliman testified that after the accused hit the victim in the cheek with a dustpan (tsn, 22 Aug. 1994, p. 6), the latter ran away but was still pursued by the former. Upon meeting his brother, he got hold of the bolo which accused Tom Barona handed to him and in the ensuing segment, accused Omar Cleto was seen by the witness hacking the deceased while he was kneeling and pleading to the accused even up to the time the body of the deceased was already lying motionless on the ground. Obviously, the stand taken by the victim posed no risk to the accused as he was unarmed, begging for his life and utterly defenseless. Accused Omar Cleto deliberately executed the act of killing Eduardo by taking advantage of the situation. Treachery then was manifested in that manner of assault because it insured the killing without any risk to the assailant. Furthermore, the autopsy report strongly shows the cruel and merciless attack by the accused with clear intent to kill the victim. The number and location of the hack wounds coupled with the deep and gaping incised wounds, lead to no other conclusion that accused Omar Cleto employed all the means to ensure success of the crime without any threats to himself. Death was instantaneous rendering prompt medical attention inutile due to the multiple hack wounds inflicted on the deceased." [7]

All considered, the Court finds no valid ground for varying the appealed judgment.

WHEREFORE, the decision of the court a quo is hereby **AFFIRMED** in toto. Costs against appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosissima, Jr., JJ., concur.

[1] Hon. Benjamin T. Antonio, presiding.

[2] At large.

[3] Criminal Case No. 14664-MN.

[4] Rollo, p. 3.

[5] Rollo, pp. 67-69.

[6] Rollo, pp. 32-33.

[7] Rollo, p. 17.

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