

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINIC, GERMAN AND HARVEY, ALL SURNAMED CAÑETE, ACCUSED-APPELLANTS.

G.R. No. 120495. March 12, 1998

Ponente: MELO, J.

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MELO, J.:

The circumstances obtaining in the present case bring to life the amended provisions of Section 13, Rule 124 of the Rules of Court. Being of the opinion that the penalty of reclusion perpetua should have been imposed in Criminal Case No. 994-M(88), the crime committed being murder and not simply homicide, the Court of Appeals rendered judgment, but in pursuance of the aforementioned rule, refrained from entering judgment and instead certified the case to this Court for review.

Since the conviction for the crime of murder resulted in the imposition of reclusion perpetua as the sentence, the Court resolved to order: (a) the bondsmen of accused-appellants to surrender them, within 10 days from notice, to the court of origin; and (b) the trial judge to commit accused-appellants to the Bureau of Corrections within 5 days from the time of surrender (p. 2, Rollo).

Accordingly, accused-appellants German and Harvey Cañete were committed for detention at the Davao Penal Colony. Dominic Cañete, due to minority, had been previously released upon recognizance undertaken by the Department of Social Welfare and Development. As he could not be re-arrested and remains at large, the Court, on July 24, 1996, resolved to dismiss his appeal. Said dismissal was later entered September 2, 1996 (pp. 59, et. seq., Rollo).

In the meantime, the Court afforded the two other accused-appellants opportunity to file a supplemental brief, but none was filed. Hence, the Court will not review the decision of the Court of Appeals only as it concerns accused-appellants German and Harvey Cañete based on the appeal certified and the record elevated to this Court.

The records shows that accused-appellants were charged under two Informations, one for Murder committed as follows:

[Criminal Case No. 994-M(88)]

That on or about the 11[TH] day of June, 1988, at about 8:30 o'clock in the evening, more or less, in Sitio Balongis, Barangay Silad, Municipality of Sugbongcogon, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos and Indian Pana, with intent to kill evident premeditation and superior strength conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab one Ramon Paculanan at the interspace mid-axillary line (below the nipple) left side, left eye lateral portion, right lumbar area and right buttock, thereby inflicting upon him fatal wounds which resulted the death of the victim.

(p. 5, CA Rollo.)

and the other for Frustrated Homicide committed as follows:

Criminal Case No. 995-M(88)

That on or about the 11[TH] day of June, 1988, at about 8:30 o'clock in the evening, more or less, in Sitio Balongis, Barangay Silad, Municipality of Sugbongcogon, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with the use of a sharp pointed bolo and a home made Indian Pana,, did then and there willfully, unlawfully and feloniously attack, assault and shot with Indian Pana one Arnold Margallo, as a consequence thereof the victim sustained physical injuries, to wit:

- stab wound about 1 inch in wide, 2 inches depth at right infrascapular area at 7[TH] rib.
- punctured wound at right gluteus maximus muscle lateral portion with home-made Indian Pana sticking in it.

thus the accused had performed all the acts of execution which would have produce the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused that is by the timely medical assistance rendered to said Arnold Margallo which prevented his death.

(p. 6, CA Rollo.)

After arraignment, a joint trial was conducted. Thereafter, the trial court rendered judgment convicting the three accused of the crimes of Homicide and Frustrated Homicide in Criminal Cases No. 994-M(88) and 995-M(88), respectively. Upon review by the Court of Appeals, their conviction in Criminal Cases No. 994-M(88) was modified as earlier mentioned, by raising the penalty to reclusion perpetua due to the presence and abuse of superior strength, which circumstance also resulted in the modification of the imposable penalty in Criminal Cases No. 995-M(88) which was hiked to 6 years of prision correccional 12 years of prision mayor.

The antecedents facts, as summarized by the Court of Appeals, are as follows”

On June 11, 1988, at about 8:30 in the evening, Ramon Paculan, his wife Avelina and Arnold Margallo were on the way to their home located in Sugbongcogon, Misamis Oriental (TSN, Jan. 5, 1989, pp. 2-3). While they were passing on the road near the house of appellant German Cañete, they saw appellants German, Harvey and Dominic all surnamed Cañete. Appellant German was holding a flash light and a bolo. Appellant Dominic was holding an “indian pana” (TSN, Jan. 5, 1989, pp. 4, 23-25). Appellants accosted the passersby and asked why they were shouting, to which question Ramon Paculan and his companions replied that they were not shouting but singing (TSN, Jan. 5, 1989, p. 24). Immediately, thereafter, Ramon Paculan, who was then in front of his wife, and Arnold Margallo were attacked and hacked several times by appellants German, Harvey and Dominic Cañete with bolos (TSN, Jan. 5, 1989, pp. 7 and 28) resulting in the death of Ramon Paculan. Appellant Dominic then let loose an arrow hitting the right buttock of Arnold Margallo. The latter was also hacked at the back by German Cañete (TSN, Jan. 5, 1989, pp. 6 and 25). Arnold Margallo, however, was able to roll down the edge of the road towards a banana plantation (TSN, Jan. 5, 1989, pp. 6 and 29). Avelina Paculan, wife of Ramon Paculan embraced the lifeless body of her husband asking their attackers for mercy. The attackers then left (TSN, Jan. 5, 1989, pp. 8 and 36). Arnold Margallo returned and tried to carry Ramon Paculan but he could not do so because the “indian pana” was embedded in his buttock. Two women later arrived and they carried Ramon to the chapel. Later they brought him to the clinic of Dr. Precioso Tacandang at Silay, Misamis Oriental but Paculan was dead on arrival.

The arrow was turned over to the Chief of Police who did not issue any receipt therefor. The bolo used by German Cañete was found at the place of incident at 8:00 a.m. of June 12, 1988 and was turned over to the Chief of Police.

(p. 3, CA Decision, ff. 136, CA Rollo.)

As earlier mentioned, accused-appellants did not avail themselves of the opportunity of filing a supplemental brief, thus we have only their brief filed with the Court of Appeals as basis for discussion. Aside from the issue of whether or not the Court of Appeals correctly raised the sentence of accused-appellants to reclusion perpetua, from accused-appellants' assigned errors, the other significant issues are accused-appellant German's claim of self-defense, and accused-appellant Harvey's alibi.

We find no compelling reasons to discuss the other assigned errors referring to the trial court's evaluation on the credibility of witnesses in general, which assay, after careful review we find to be fundamentally sound. We likewise find the issue of the alleged lack of motive on the part of accused-appellants too insignificant and irrelevant to merit an extended discussion considering the positive identification of the three accused-appellants by prosecution witnesses. Suffice it to quote *People vs. Cabodoc* (263 SCRA 187 [1996]), that:

Well entrenched is the rule that the prosecution need not prove motive on the part of of the accused when the latter has been positively identified as the author of the crime. As this Court previously said, lack of motive for committing the crime does not preclude conviction, considering, that, nowadays, it is a matter of judicial knowledge that persons have been killed or assaulted for no reason at all. (citing *People vs. Mandapat*, 196 SCRA 157, 165 [1991]; and *People vs. Ilaa*, 233 SCRA 231, 236 [1994].)

(p. 199)

Accused-appellant German's claim of self-defense is underpinned by his contention that the deceased Ramon Paculan and his companion, Boy Margallo, a victim, begrudged him for being responsible in having the goats of the victims impounded by the municipal authorities. He claims that he was attacked by Paculan and Margallo, with two other companions, at his farmhouse that same evening of June 11, 1998. The trial court summarized German's Version follows.

German Cañete declared that last June 11, 1998 at 8:30 p.m. he and his wife Gloria Cagato Cañete were in their farmhouse at Balongis, Silad, Suchongcogon. They usually sleep there because of their animals kept thereat. He was asleep and awakened by loud sound of an object which fell to the floor of their house. He heard two sounds and his wife called his attention, hence he stood up yet noticed nothing. And he went down to urinate. He claims that he was wearing his t-shirt and brief and urinated near the coconut tree near their house which is five meters away. Then somebody rushed to him from the left side of the coconut tree and one person attacked him and he parried with his left hand to the right hand of the attacker. Another person attacked him from the right side of the coconut tree who did not hit him and so he retreated towards their house. He heard a voice saying, "Go ahead, Boy" (Sigue Boy). Then he saw a woman holding a coconut palm who struck his back so he ran towards their copra drier but when he reached there, his attackers were already there. The copra drier is twenty to thirty meters from his house on the eastern side. He wanted to run from his attackers but there was no way out so he faced them and he recognized four persons, namely: Ramon Paculan, Boy whose real name is Arnold Margallo, Jimmy Namata and Avelina Paculan.

Ramon rushed towards him but he did not see any weapon because the night was dark but he believed his attacker had a weapon for his movement is in the act of stabbing, witness demonstrating.

German Cañete further declared saying "I parried his right hand with my left hand. My hand caught his right and thrust towards him. I turned around and embraced him and held his forehead with my left hand. Ramon Paculan fell on my breast then Ramon Paculan said, "Sigue Boy, Sigue Jim", which means "Go ahead, Boy, go ahead, Jim. The two persons advanced towards me. Boy, from the right and Jim from the left. I retreated by stepping backwards as I used Ramon Paculan as my shield and made two steps backwards. Avelina Ramon Paculan struck my back with a coconut palm. I felt over my head, back and hand. Then I pushed Ramon Paculan forward strongly and he fell in front of Boy Margallo and Jim Namata. They let

Ramon Paculan stood up and said wait, we will come back. I walked towards my house and called up my wife, come down Ling and bring my pants”

(pp. 97-98, CA Rollo.)

The foregoing facts , even assuming them to be true, do not sufficiently establish the justifying circumstance of self defense. The indispensable elements of complete self-defense are (1) unlawful aggression against the pleader of self-defense; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. Upon pleading self-defense, the burden of proof shifts to the accused to prove by clear and convincing evidence the elements of the plea before he can avail himself of the benefits of this justifying circumstance (*People vs. Viernes*, 262 SCRA 641, 651 [1996]).

German failed to discharge this burden. There is no clear and convincing evidence of unlawful aggression. From the foregoing narration of facts on this point of the supposed aggression, one will wonder how German managed to avoid sustaining any injury from such attack. Aside from his own testimony claiming such aggression, no other evidence appears on record.

Further, from German’s narration it would appear that he managed to repel the alleged aggression by using Ramon Paculan as a human shield against the alleged blows from his other aggressors until he was finally able to push Ramon towards the other aggressors. This does not explain how Ramon sustained the injuries that caused his death.

The post mortem examination of the cadaver of the victim Ramon conducted by Dr. Precioso Tacandong (Exh. “B”) shows several wounds, to wit:

1. Stab wound about 2 inches in width, penetrating at 5[TH] interspace at mid-axillary line (below nipple) left side.
2. Stab wound and contusion left eye lateral portion.
3. Stab wound – right lumbar area about 2 inches in width going upward and penetrating.
4. Wound (stab) beside the other one about 2 inches going upward and penetrating.
5. Stab wound at right buttock, about 2 inches in width and 3 inches in depth.

(Judgment, CA Rollo, p. 90)

German’s claim of self-defense is thus utterly unavailing, unsupported as it is by any clear and convincing evidence. Moreover, the Court has in similar cases examined the nature and number of wounds inflicted by the assailant upon the victim to determine the veracity of the plea. The nature and number of wounds are constantly and unremittingly considered important indicia which disprove a plea of self-defense (*Guevarra vs. CA*, 187 SCRA 484 [1987] citing *People vs. Ganut*, 118 SCRA 35, 43 [1982]; *People vs. Masankay*, 157 SCRA 320 [1988]; *People vs. Court of Appeals*, 166 SCRA 436 [1988]).

The above described stab wounds inflicted on Ramon and the injuries of Arnold Margallo, a hack wound at the back and the “indian pana” embedded on his buttocks, disprove the plea of self-defense of German Cañete, there being no explanation whatsoever by him how these numerous and gruesome wounds were sustained by the victims.

In *People vs. Maceda* (197 SCRA 499 [1991]), the Court ruled that self-defense on the part of therein appellant was negated by the physical evidence in the case. Specifically, the number of wounds twelve (12) in all, indicated that Maceda’s act was no longer an act of self-defense but a determined effort to kill his victim. The same may be

said of accused-appellants in this case. The nature and number of wounds inflicted upon Ramon and Arnold clearly indicate the assailants' determined effort to kill their victims.

As for accused-appellant Harvey Cañete, he puts up alibi as defense, claiming that he slept in their residence in the Poblacion of Sugbongcogon on June 11, 1988. This is explained in accused-appellants' brief thusly:

Harvey Cañete testified that he had been sick of pulmonary tuberculosis since June 1987. In fact, he was confined from June 2-6, 1987 at the Maria Reyna Hospital in Cagayan de Oro attended by Dr. Luis Borja. (Exh. "6" & "6-A") His X-rays showed that he had pulmonary tuberculosis. Dr. Borja prescribed rest and recuperation for two (2) years and in faithful compliance with that prescription, he had been under regular treatment and given regular injections by the nurse at the municipal health center under the supervision of Dr. Leon Llanto. He always stayed at their house in the poblacion as it is near the health center. Now and then, he asked to be brought to their farmhouse, which was near the sea, for exercise and to breath the invigorating air of the sea. But always, he would be back home in the poblacion, to sleep early as was the case on that night of June 11, 1988.

Bernardino Luquinario, a tailor who has been renting a part of the house of the Cañete in the poblacion which he used for his tailoring shop, testified that indeed Harvey was home early that night of June 11, 1988.

(p. 82, C.A. Rollo.)

However, on cross-examination, Luquinario admitted that he could not see what was inside the Cañete house, so he had no means of knowing the presence of Harvey therein (TSN, p. 22, October 8, 1991). Moreover, Harvey's co-accused and half-brother, Dominic admitted that the distance between the poblacion and Sitio Balongis is only one kilometer or a walk of not more than 30 minutes (TSN, p. 22, October 8, 1991).

We are thus not surprised that both the trial court and the Court of Appeals gave no credit to Harvey's alibi, for we need hardly repeat that alibi is "a defense that places the defendant at the relevant time of the crime in a different place than the scene involved and so removed therefrom as to render it impossible for him to be the guilty party" (People vs. Villaruel, 261 SCRA 386, 396 [1996]; People vs. Acob, 246 SCRA 715, 723 [1995]); and that it is the weakest defense (People vs. Montealto, G.R. No. 121765, March 14, 1997). It has been held time and again that for alibi to prosper as defense, the accused must show that he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity at the time of its commission (People vs. Tasarra, 192 SCRA 266 [1990]).

Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (People vs. Lumantas, 28 SCRA 764 [1969]), or three (3) kilometers (People vs. Binsol, 100 Phil 713 [1957]) or even five (5) kilometers (People vs. Manabat, 100 Phil 603 [1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (People vs. Aparato, 80 Phil. 199 [1948]). With more reason, therefore, do we find the defense of alibi in the present case implausible, the distance being merely one kilometer, which may be negotiated by foot within 25 to 30 minutes. The established circumstances in this case cannot conclusively preclude the possibility of accused-appellant Harvey Cañete's presence at the scene of the crime at 8:30 on the evening of June 11, 1988 when the crimes were committed.

More importantly, it is equally settled in this jurisdiction that the defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrators of the crime (People vs. Ferrer, 255 SCRA 19 [1996]; People vs. Panlilio, 255 SCRA 503 [1996]). Thus, plainly prevailing over the infirmed alibi of Harvey is the clear and positive identification made by Avelina Paculan and Arnold Margallo of Harvey as

one of the perpetrators of the crimes in these cases.

Now, to the last issue left which necessitated the certification of this case. The Court of Appeals would hold that the crime committed by accused-appellants in Criminal Case No. 994-M(88) is murder, not homicide, because supposedly, the qualifying circumstance of abuse of superior strength attended the commission of the crime. This conclusion is justified in this manner:

In the instant case, it is clear that not only was numerical superiority enjoyed by the appellants over the deceased Paculan and the seriously injured Margallo but that the three appellants were all armed with deadly weapons (Pls. See *People vs. Tandoc*, 40 Phils. 954) making it clear that while it could be said that they were not aided by armed men, the evidence shows beyond doubt that German Cañete was carrying a flashlight and a bolo (TSN, p. 4, January 5, 1989), Dominic Cañete was armed with an "Indian Pana" (TSN, p. 6, January 5, 1989) while Harvey Cañete used a bolo in assaulting Paculan and Margallo (TSN, p. 8, January 5, 1989). It cannot, therefore, be ignored that they themselves were so armed and helped each other insure the commission of the offense as against two men and one woman, then completely defenseless and unarmed . . .

(p. 12, C.A. Decision.)

We hold otherwise.

Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactor to take advantage thereof. To justifiably appreciate said circumstance, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event (*People vs. Escoto*, 244 SCRA 87; 97-98 [1995], citing *People vs. Cabiling*, 74 SCRA 285 [1976]).

On cross-examination, Avelina Paculan declared that while they were in the public market, Margallo, and her husband, Ramon, drunk tuba for half an hour and they were tipsy when they left the public market.

Q. While you and your husband together with Arnold Margallo were in the public market, your husband did not take any intoxicating liquor?

A. They drunk a little.

Q. When you said they drunk a little, you were referring to Ramon Paculan and Arnold Margallo?

A. Yes, sir.

Q. What kind of intoxicating drink did they drink?

A. Tuba.

Q. They consumed more than a gallon of tuba?

A. About one-half gallon.

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Q. They drunk from 8:00 o'clock continuously until you left the public market at 8:30?

A. Yes, sir.

Q. Of course they were tipsy?

A. Yes, sir.

(TSN, Jan. 5, 1989, pp. 17-19.)

As this tipsy pair and Avelina were homeward, passing by the house of the accused-appellants, Avelina declared that before the hacking incident, she heard German Cañete asking in a loud voice, “who was the one shouting”?

Q. Do I get you right, before the alleged hacking of Arnold Magallo there were shouts?

A. Yes, sir.

Q. How many people were shouting?

A. It was only German Cañete who shouted.

Q. He shouted while he was in his house?

A. He shouted when he was near us.

Q. What were the particular words he shouted?

A. He said, “who was the one shouting”?

(TSN, Ibid., p. 24.)

Because of the inebriated condition of Margallo and Ramon, and as they were admittedly singing, their manner of belting out their songs, could have been taken as shouting which the Cañetes resented at such a late hour. Under these conditions, it appears to us that the encounter was unplanned and unpremeditated. There could have been no conscious effort, on the part of the accused-appellants, to take advantage of any unimagined superior strength. The victims were simply at the spot by accident, not by any design of accused-appellants. There could have been no time for accused-appellants to consciously plot taking advantage of the numerical strength.

The prosecution, moreover, failed to show the physical conditions of both Arnold Margallo and Ramon Paculan compared to those of the Cañetes, one of whom is ravaged by tuberculosis and undergoing medication. Too, the mere fact that the number of assailants is superior to that of those attacked is not sufficient to constitute abuse of superior strength (*People vs. Diokno, et al.*, 63 Phil. 601 [1936]).

In *People vs. Bigcas* (211 SCRA 631; 634 [1992]), the Court held:

For this qualifying circumstance to be considered, it is not sufficient that there be superiority in number or strength; it is necessary that the accused must have been cooperated and intended to use or secure advantage from such superior strength. As we also emphasized in *People vs. Cabiling*, abuse of superior strength may be considered not only when there is an inequality of forces between the victim and the aggressor but there must be a situation of superiority of strength notoriously selected or taken advantage of by him in the commission of the crime. (Emphasis Supplied)

The prosecution thus failed to prove that accused-appellants deliberately intended and planned to take advantage of their superiority in their assault on the victims. This circumstance must be proved as conclusively as the crime itself and not drawn from mere assumptions and conjectures.

It is to be noted also that when Ramon was attacked and repeatedly hacked, Avelina was still able to embrace him and to pull him up, shouting for help at the same time. Yet, accused-appellants simply turned away (TSN, Jan. 5, 1998, p.8). Surely, if accused-appellants indeed took advantage of their imagined superior strength, they would have finished off Margallo and probably even Avelina.

The circumstance of abuse of superior strength not having been duly proven by the prosecution, the judgment of the trial court finding accused-appellants guilty only of Homicide in Criminal Case No. 994-M(88) and of the

crime of Frustrated Homicide in Criminal Case No. 995-M(88) is in order.

WHEREFORE, the judgment of the Regional Trial Court is AFFIRMED in toto.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza and Martinez, JJ., concur.

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