

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOREDO REAL Y RIZO, ACCUSED-APPELLANT.

G.R. No. 121930. June 14, 1999

Ponente: PARDO, J.

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PARDO, J.:

What is before us is an appeal from a decision[1] of the Regional Trial Court, Romblon, Branch 81, convicting accused-appellant Loredó Real y Rizo of murder and sentencing him to the penalty of reclusion perpetua with all accessory penalties of the law and to pay the heirs of the deceased P36,000.00, as actual damages, P300,000.00, by way of moral damages, P49,381.19, for loss of earning capacity, P30,000.00, for attorney's fees, P50,000.00, as death indemnity and costs.

The victim was Noe Tarrosa, the mayor of Cajidiocan, Romblon, who died on the spot, after accused-appellant admittedly shot him with an armalite rifle in front of the municipal hall, municipality of Cajidiocan, Romblon, on the night of April 28, 1988.

On April 19, 1990, 2nd Assistant Provincial Prosecutor Alexander Mortel of Romblon filed with the Regional Trial Court, Romblon, Branch 81, an information charging accused-appellant Loredó Real y Razo with murder, alleging:

"That on or about the 28th day of April 1988, at around 10:00 o'clock in the evening, in the poblacion, municipality of Cajidiocan, province of Romblon, Philippines, and within the Jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, by means of treachery and with evident premeditation, willfully, unlawfully and feloniously attack, assault and shoot with an armalite rifle, one MAYOR NOE TARROSA, inflicting upon the latter multiple gunshot wounds in different parts of his body which were the direct and immediate cause of his death." [2]

At his arraignment on July 4, 1990, accused-appellant, duly assisted by counsel, pleaded not guilty to the crime charged.[3] Trial ensued, with the prosecution presenting nine (9) witnesses and the defense calling on the accused-appellant as its lone witness.

The State's version of the mayor's killing, based on the testimonies of prosecution witnesses Pfc. Rodolfo Riño,[4] Milo Fetalino,[5] Pfc. Elmo dela Cruz,[6] Rosario Burgos[7] and Eduardo Rivero[8] is as follows:

At around 7:00 p.m. of April 28, 1988, Milo Fetalino, municipal assessor Isidro Machado and Patrolman Inso Rabino were in front of the Cajidiocan municipal building engaged in a drinking spree hosted by the mayor. Later on, the mayor excused himself as he was going to Bgy. Cambajao.

A few minutes later, accused-appellant arrived at the municipal building. The mayor requested accused-appellant to get his motorcycle as the mayor wanted to visit Barangay Cambajao to monitor illegal gambling activities reportedly proliferating in that locality. Heeding the mayor's request, accused-appellant went home and soon returned to the municipal building with his motorcycle. Pfc. Rodolfo Riño rode at the back of accused-appellant's

motorcycle and the tandem drove towards Bgy. Cambajao, with the mayor on board another motorcycle driven by one Ernesto "Bong" Calsado, Jr. tailing them.

At Bgy. Cambajao, Pfc. Riño scoured the area for gambling operations, but his search yielded nothing. He proceeded to where accused-appellant's motorcycle was parked and there he saw the mayor and accused-appellant shaking hands. Pfc. Riño and accused-appellant thereafter boarded the motorcycle and headed back for Cajidiocan. Along the way, Pfc. Riño heard accused-appellant utter in disgust "Puno na ako." (I'm fed up).

Upon reaching the Cajidiocan town hall at past ten o'clock of that same evening, Pfc. Riño alighted from accused-appellant's motorcycle and immediately went inside the police station to investigate one Onyong Rabino who was apprehended by Pat. Male. Accused-appellant passed by the group of men drinking. Accused-appellant, who Milo Fetalino observed to be very tense and on the verge of tears, then took the armalite rifle placed beside Fetalino and Pat. Rabino and ordered those drinking (Fetalino, Machado and Rabino) to go home. Ten minutes later, a burst of gunfire ripped through the stillness of the night. Pfc. Riño rushed outside the building to check what happened. There, he saw the mayor's bloodied body sprawled on the asphalted street in front of the municipal building. Pfc. Rabino, Pat. Elmo de la Cruz and accused-appellant were near the fallen mayor, with Pat. dela Cruz rebuking the accused "Edu, putang ina akin na iyong armalite" and grappling with the latter for the possession of the M-16 armalite rifle apparently used in the mayor's shooting. After accused-appellant was disarmed, Pfc. Riño asked him why he shot the mayor. Accused-appellant answered "Patas na" (it's now even), because his younger brother was killed by the mayor's brother a few years back. Rosario Burgos, who also arrived at the crime scene, asked him the same question. Accused-appellant replied: "Paano hinahabol niya ang buhay ko. Ako pobre paano na lang ang pamilya ko kung ako ang mamatay maayo kuno siya kay mangaranon." (He was after my life. I am poor and what would happen to my family if I would be killed. He is fortunate to be rich). Pat. Rabino arrived at the scene and took the dead mayor's .38 caliber pistol from its holster, leaving the casing still tucked in the right side of the mayor's waist. Thereafter, Pat. dela Cruz brought the armalite rifle to the police station for safekeeping, while accused-appellant was led to the detention cell.

Upon examination of the handgun, Pfc. Riño observed that it was locked or "on safety" mode, although there was a bullet inside its chamber. When asked whether the pistol found beside the mayor (considering that the gun's holster remained tucked in the waist of mayor) could have slid out from the holster when the mayor fell on the ground after being gunned down, Pfc. Riño confirmed the possibility of such happening.

The mayor sustained eight (8) gunshot wounds in different parts of his body. One (1) bullet hit the victim's face. One (1) bullet found its mark on his chest; four (4) in the abdomen; and two (2) at the back. Each of these wounds was enough to kill the mayor. These findings are reflected in the Autopsy Report dated April 30, 1988.[9]

Accused-appellant admitted killing the mayor. He claimed self-defense. He testified[10] that at about 11:00 in the evening of April 28, 1988, he was in front of the Cajidiocan Municipal building beside the flagpole doing his tour of duty. Moments later, he heard the sound of a motorcycle approaching from the south. It stopped about seven (7) meters away from where he was posted. Accused-appellant then heard somebody shout "Where is Real?" He focused his attention on the motorcycle and saw the mayor alight therefrom. The mayor then slowly approached accused-appellant and, with a Super .38 pistol pointed at him, uttered loudly: "I do, I will kill you!" Fearing for his life, accused-appellant fired his service armalite rifle, which was in full-automatic mode, at the mayor, causing the latter to fall on his back. Accused-appellant observed the fallen mayor for a few seconds before going to the municipal building. He met Patrolmen Rabino and dela Cruz along the way and handed his armalite rifle to Pat. de la Cruz. Accused-appellant was thereafter brought to the detention cell. From his cell, he saw Pat. Riño inspecting the mayor's Super .38 pistol. Pat. Riño told Pat. Male that he would "lock" the pistol.

Accused-appellant denied that he hosted a drinking spree in Bgy. Cambalo a week prior to the mayor's killing. He presented a police blotter to prove that he was assigned in Cajidiocan from April 21 to April 28, 1988.

Accused-appellant also denied that on April 28, 1988, he went to Bgy. Cambajao with the mayor and grabbed the armalite rifle during the drinking session held in front of the Cajidiocan municipal building. Accused-appellant claimed that he came directly from his house to the Cajidiocan municipal building to assume his tour of duty from 11:00 p.m. of April 28, 1988 until 7:00 a.m. of the following day. He got hold of the armalite rifle when the outgoing guard on duty, Pat. Rabino, turned it over to him. The rifle was on full-automatic mode when it was handed to him, since it was the usual practice to put it on that mode on the nightshift.

On the death of his brother in the hands of "Jing" Tarrosa (the mayor's brother), accused-appellant confirmed that Judge Job B. Madayag dismissed the criminal case filed against "Jing." He disagrees, however, that "Jing" acted in self-defense since it was "Jing" who went to his brother's house to kill him.

The trial court accepted the prosecution's version in its findings of fact, and appreciated against accused-appellant the aggravating circumstances of treachery and evident premeditation. He was credited with the mitigating circumstance of voluntary surrender.

Now before this Court, accused-appellant pleads for his acquittal, claiming that:

- 1) he was denied due process of law when he was not allowed to complete his evidence.
- 2) he acted in self-defense.

Accused-appellant's first pose has no merit. As the Solicitor General points out,[11] after the prosecution finished presenting its evidence on May 7, 1992, the defense asked for postponements of the hearing which earned repeated warnings from the trial court. In fact, the continuation of the cross-examination of accused-appellant (which began on July 7, 1994) scheduled on August 15, 1994, was reset many times at the instance of the defense until the trial court, in an Order dated September 21, 1994, warned the defense counsel that the case would be deemed submitted for decision if he failed to proceed with the continuation of the cross-examination of the accused-appellant or the presentation of additional evidence.

Also, accused-appellant and counsel failed to appear at the hearing set on January 31, 1995, claiming via telegram that accused-appellant had been hospitalized. This prompted the trial court to issue an order directing accused-appellant to submit a verified medical certificate, with warning that failure on his part to submit such medical certificate would compel the trial court to declare the case submitted for decision. Accused-appellant still failed to comply with the January 31, 1995 order. The court thus declared the case submitted for decision on the basis of the evidence at hand.[12] Clearly, accused-appellant has only himself to blame for the failure to complete his evidence.

As to his claim of self-defense, we hold that the trial court correctly rejected it.

The settled rule is that where an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[13] The accused must rely on the strength of his own evidence and not on the weakness of the prosecution. For even if the prosecution evidence were weak, it could not be disbelieved after the accused himself had admitted the killing.[14] For self-defense to prosper, the accused must positively show that there was a previous unlawful and unprovoked attack that placed his life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the attack.[15] This defense, in the main, is perched on proof of unlawful aggression on the part of

the victim.[16] "Unlawful aggression presupposes an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude. Unlawful aggression is a condition sine qua non for the justifying circumstance of self defense. In other words, there can be no self-defense, whether complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself. Simply put, unlawful aggression is indispensable, it being the main ingredient of self-defense." [17]

Accused-appellant has failed to establish the element of unlawful aggression with convincing evidence. His account of the mayor's dreadful approach on his person finds no corroboration at all. The fact that the mayor's Super .38 pistol was retrieved beside his fallen body may give semblance of verity to accused-appellant's tale of unlawful aggression. Such view loses its persuasive effect against (1) the possibility that the gun was thrown out from the holster as the mayor fell to the ground and (2) the fact that the mayor's pistol was "locked" or on "safety mode" when it was recovered at the crime scene.[18]

If accused-appellant's claim were true that he and the mayor were face to face when he fired at the mayor, there was no justification at all for him to further inflict two (2) gunshot wounds at the back of the mayor.[19] Any one of the six (6) bullets that found their mark on the frontal portion of the mayor's body was enough to immobilize or repel the purported unlawful aggression supposedly undertaken by the mayor. From the moment those six (6) wounds were inflicted on the mayor, the supposed aggression had certainly ceased. Accused-appellant no longer faced any danger to his life and limb. His continued offensive stance made him the aggressor.[20] When an unlawful aggression which has begun no longer exists, the one making a defense has no right to kill or even injure the former aggressor.[21]

It is worth reiterating at this juncture that the nature and number of wounds inflicted by an assailant are constantly and unremittingly considered important indicia which disprove a plea of self-defense.[22] The eight (8) gunshot wounds sustained by the mayor, each of which was fatal, belie the accused-appellant's exculpatory pretension and confirm the prosecution's theory that accused-appellant purposely and vigorously attacked the deceased in order to kill the latter.[23]

On these considerations, it becomes clear why the accused-appellant's plea of self-defense can not succeed as against the collective testimonies of the prosecution witnesses, which are credible. It is the trial Judge who is best situated to assess and evaluate the probity and trustworthiness of witnesses, for he is able to observe directly their behavior and manner of testifying and is thus in a much better situation to determine whether they were telling the truth or not.[24]

There may have been inconsistencies in the narration of the prosecution witnesses on minor details which do not affect the weight of their testimonies. Testimonies of the prosecution witnesses cannot be expected to be uniform to the last details.[25] We certainly do not expect the testimony of witnesses to a crime to be consistent all throughout because different persons have different impressions and recollections of the same incident.[26] Even the most truthful witnesses can make mistakes or innocent lapses that do not necessarily affect their credibility.[27] Thus, findings of trial courts on the credibility of witnesses are entitled to great weight on appeal, and the rule is not changed simply because of some inconsequential inconsistencies that are discovered upon a faultfinding scrutiny of the records.[28]

However, the Court agrees with the Solicitor General that the trial court erred in finding that evident premeditation attended the mayor's killing. This aggravating circumstance was based on witness Eduardo Rivero's testimony that a week prior to the crime, accused-appellant told him and three (3) other persons during a drinking session that he would take revenge against the mayor for the killing of his brother by a brother of the mayor. The Solicitor General pointed out that witness Rivero's story deserved scant consideration. His testimony was not

corroborated by any of the three (3) persons present in that drinking session. His narration was full of improbabilities.

Furthermore, to establish evident premeditation, 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.[29] Stated differently, the essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[30] In this case, less than an hour lapsed from the time accused-appellant uttered "Puno na ako" (enroute to Cajidiocan coming from Bgy. Cambajao) up to the moment he shot the mayor at the municipal building. It is definitely not a sufficient lapse of time to give the accused-appellant an opportunity to coolly and serenely deliberate on the meaning and consequences of what he planned to do.[31]

The trial court also erred in appreciating treachery against accused-appellant. None of the prosecution witnesses saw the actual shooting. There is thus no conclusive evidence to show that the attack came without warning and that the mayor had absolutely no opportunity to defend himself or to escape. Where no particulars are shown as to the manner by which the aggression was commenced or how the act which resulted in the death of the victim began and developed, treachery can not be established from mere suppositions drawn solely from circumstances prior to the killing.[32] The same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting the attendance of alevosia.[33] It must be proven as clearly and as cogently as the crime itself.[34] "Where treachery is not adequately proved, the appellant can only be convicted of homicide." [35]

We agree with the trial court that voluntary surrender was present. Voluntary surrender must be spontaneous in such a manner that it showed the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wished to save them the trouble and expenses necessarily incurred in his search and capture.[36] Here, accused-appellant surrendered to his fellow policemen the very moment he shot the mayor and calmly agreed to be detained.

Accordingly, absent any qualifying circumstance, the crime committed by accused-appellant is homicide,[37] not murder. The accused-appellant may be credited with the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset it. The penalty prescribed for homicide is reclusion temporal, to be imposed in its minimum period pursuant to Article 64 of the Revised Penal Code, subject to the application of the Indeterminate Sentence Law.

WHEREFORE, the Court hereby MODIFIES the appealed decision. The Court finds the accused Loreda Real y Rizo guilty beyond reasonable doubt of homicide, defined and penalized under Article 249 of the Revised Penal Code, for the killing of Mayor Noe Tarrosa, with the mitigating circumstance of voluntary surrender attendant, without any aggravating circumstance to offset the same, and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, and to indemnify the heirs of the deceased in the amount of P50,000.00, plus P50,000.00, as moral damages and costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Penned by Judge Placido C. Marquez, Rollo, pp. 23-33.

- [2] Records, Vol. 1, p. 1.
- [3] Rollo, p. 54.
- [4] tsn, June 10, 1991, pp. 5-40.
- [5] tsn, June 11, 1991, pp. 3-16.
- [6] tsn, March 19, 1991, pp. 33-75.
- [7] tsn, March 19, 1991, pp. 5-32.
- [8] tsn, March 19, 1991, pp. 76-99.
- [9] Autopsy conducted by Dr. Benito Male, Jr., Record of Exhibits, Exhibit B, pp. 3-4.
- [10] tsn, July 6, 1994, pp. 8-46; tsn, July 7, 1994, pp. 2-59.
- [11] Appellee's Brief, pp. 7-13.
- [12] Order, RTC Original Record, February 27, 1995, pp. 218-219.
- [13] People vs. Morato, 224 SCRA 361; People vs. Mercado, 159 SCRA 453; People vs. Sambulan, 289 SCRA 500; People vs. Cañete, 287 SCRA 490; People vs. Cario, 288 SCRA 404.
- [14] People vs. Tidong, 225 SCRA 324; People vs. Sazon, 189 SCRA 700; People vs. Rey, 172 SCRA 149.
- [15] People vs. Sarense, 214 SCRA 780; People vs. Madali, 188 SCRA 69; People vs. Sambulan, supra.
- [16] People vs. Panes, 278 SCRA 357.
- [17] People vs. Cario, supra, at p. 417 citing People vs. Boniao, 217 SCRA 653; People vs. Sazon, 189 SCRA 700; People vs. Batas, 176 SCRA 46; People vs. Bayocot, 174 SCRA 285.
- [18] Per testimony of Pfc. Riño.
- [19] Autopsy Report, Record of Exhibits, Exhibit B, pp. 3-4.
- [20] People vs. Ganzagan, Jr., 247 SCRA 220; People vs. Binondo, 214 SCRA 764.
- [21] People vs. Alconga, 78 Phil. 366.
- [22] People vs. Daquipil, 240 SCRA 314.
- [23] People vs. Macagaling, 237 SCRA 299; People vs. Marciales, et al., 166 SCRA 436.
- [24] People vs. Peralta, 283 SCRA 81.
- [25] People vs. Astorga, 283 SCRA 420.
- [26] People vs. Fabro, 278 SCRA 304.
- [27] People vs. Calegan, 233 SCRA 537.
- [28] People vs. Lagao, 286 SCRA 610 citing People vs. Loto, 248 SCRA 67.
- [29] People vs. Albao, 287 SCRA 129; People vs. Cordero, 217 SCRA 1; People vs. Salvador, 217 SCRA 826; People vs. Rivera, 221 SCRA 647; People vs. Buela, 227 SCRA 534.
- [30] People vs. Bautista, 278 SCRA 613.

[31] People vs. Bautista, *supra*.

[32] People vs. Narit, 197 SCRA 334; People vs. Cario, 288 SCRA 404.

[33] People vs. Duero, 136 SCRA 515; People vs. Torejas, 43 SCRA 158; People vs. Lansa, 94 SCRA 616.

[34] People vs. Albao, 287 SCRA 129.

[35] People vs. Beltran, 260 SCRA 141, 153, citing People vs. Manlulu, 231 SCRA 701.

[36] People vs. Sakam, 61 Phil. 27; People vs. Lingatong, 181 SCRA 424.

[37] Article 249, Revised Penal Code.

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