

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUVY MARIBAO, ACCUSED-APPELLANT.

G.R. No. 123056. September 12, 1997

Ponente: MELO, J.

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MELO, J.:

For stabbing to death one Georgie Vilando, herein accused-appellant Juvy Maribao was charged with the crime of Murder in an Information reading:

That on or about 5:00 o'clock in the afternoon of May 31, 1992, at Barangay Pacuan, La Libertad, Negros Oriental, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, with treachery and evident premeditation, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Georgie Vilando with the use of a hunting knife with which the accused was then armed and provided, thereby inflicting the following injuries on the body of the victim, to wit:

- 1.Wound, lacerated, left chest, 3 inches long by a ½ inch width by 4.5 inches deep over the 3rd-4th ICS, directed towards the heart perforating the lungs; and
- 2.Wound, stabbed, sternal area, head of sternum, 2 inches long by 1.2 inch width by 2 inches deep, directed downward, which wounds caused the death of said Georgie Vilando shortly thereafter.

Contrary to Article 248 of the Revised Penal Code.

(p. 6, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty. Trial on the merits then ensued and on June 23, 1995, a decision was rendered, disposing:

WHEREFORE, from the foregoing consideration, this Court is convinced beyond reasonable doubt that the accused killed Georgie Vilando with treachery. Consequently, the accused Juvy Maribao, is hereby convicted of the crime of Murder as qualified by treachery. There being no aggravating or mitigating circumstances claimed or proven, the accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of the victim the amount of Fifty Thousand Pesos. The accused shall not suffer subsidiary imprisonment in case of insolvency.

(pp. 22-23, Rollo.)

Not satisfied with the above judgment, accused-appellant interposes the instant appeal on the sole ground that his conviction for murder is improper because the prosecution failed to prove the qualifying circumstance of treachery.

The prosecution presented as witnesses Dr. Fe Mercado (Municipal Health Officer of Guihulngan, Negros Oriental), Ronnie Antonio, Pablito Estoconing, Juvy Vilando (the older brother of the victim), and Vivencia Vilando.

Except for the testimony of the victim's mother, Vivencia Vilando on the civil aspect of this case, the combined testimony of the other witnesses tends to establish that:

On May 31, 1992, Pablito Estoconing and Juvy Vilando and his younger brother, Georgie Vilando, were at Pacuan, Libertad, Negros Oriental to buy dried fish and calamunggay as it was a "tabo" or market day. While Pablito and Juvy were drinking beer, Pablito saw accused Juvy Maribao and Oscar Calihan drinking liquor. Georgie did not drink because he was still very young.

At around 5 o'clock in the afternoon, the brothers Juvy and Georgie and Pablito decided to go home to Eli, La Libertad, Negros Oriental. Ronnie Antonio, who was also going home to Consumandig, La Libertad, walked a few meters behind them. Along the trail leading towards their home, they were stopped by Oscar Calihan, with accused-appellant Juvy Maribao standing by the side of the trail. Calihan approached Pablito and asked him: "Bay, are you going home?" To which Pablito answered: "Yes, I am going home because I have to pasture my cow."

While Calihan and Pablito were conversing, accused Juvy Maribao went behind Georgie Vilando, placed his hand over the left shoulder of Georgie and simultaneously stabbed him twice on the chest with a hunting knife or "plamengco." Shocked by the suddenness of the attack, Ronnie Antonio ran away (tsn, December 15, 1992, pp.7-11; September 29, 1994, pp. 8-9; January 27, 1995, pp. 6-7). Then accused-appellant Maribao walked towards Juvy Vilando and Pablito Estoconing.

Pablito saw blood on the knife Maribao was holding and because Maribao kept advancing towards him, he threw a stone at Maribao but missed, so he ran away to the direction of his home. Juvy Vilando, also ran away upon seeing Maribao advancing towards them with a bloodied knife.

The group left Georgie Vilando lying on the ground to seek help from their relatives but when they returned to the scene of the crime, they found the victim already dead (tsn, September 29, 1994, pp. 10-14; January 27, 1995, pp. 8-9). His cadaver was brought to the waiting shed at Pacuan (tsn, September 29, 1994, p. 14).

Dr. Fe Mercado, the Municipal Health Officer of Guihulngan, Negros Oriental, who conducted a post-mortem examination on the corpse of Georgie Vilando, later submitted her post mortem report (Exh. "A"), with the following findings:

1. Wound, lacerated, Left chest, 3 inches long by 1 ½ inches wide by 4.5 inches deep over the 3rd-4th ICS, directed towards the heart perforating the lungs;
2. Wound, stabbed, sternal area, head of sternum 2 inches long by 1.2 inches wide by 2 inches deep, directed downward.

(p. 52, Rollo.)

She also later testified that injury No. 1 was fatal.

It was also established by Pablito Estoconing and Juvy Vilando that there was no altercation or fight between Georgie Vilando and accused-appellant Juvy Maribao, nor was there a grudge between them.

The evidence for the defense is based on the lone testimony of accused-appellant himself which he summarized as follows:

. . . [A]t about 4 o'clock in the afternoon of May 31, 1992, he saw Oscar Calihan fighting with Juvy Vilando. He tried to separate Juvy Vilando from Oscar Calihan at which precise time, Juvy Vilando pulled a hunting knife and attempted to stab him but he wrestled with said Juvy Vilando. He was able to take hold of the knife by twisting Juvy Vilando's hand. With the hunting knife already in his possession, Juvy Vilando and Pablito

Estoconing continued to box him (Juvy Maribao) hitting him on his stomach. Because he felt so much pain, he lost his senses and he just struck at random. He did not even know that it was Georgie Vilando whom he hit. After that he ran away westward and while running, an army man asked him about the bloodied hunting knife that he was carrying and he told the army man that he was being boxed that is why he stabbed them.

He also agreed with witnesses for the prosecution that there was no grudge between him and the Vilandos (Tsn., February 2, 1995, pp. 2-9).

(Brief for Accused-Appellant, pp. 5-6; Rollo, 42-43.)

Accused-appellant maintains that treachery was absent in the commission of the offense and for which reason, he should be convicted of homicide only, and not of murder.

He argues that according to Juvy Vilando, elder brother of the victim, accused-appellant, who was holding a knife and the victim were facing each other at a distance of 5 meters before the incident. It is also contented that before the incident, accused-appellant and Oscar Calihan were following the group of the victim and upon catching up with them, Calihan insisted that they all take the road together, but this was refused by the victim's group. From this, it is assumed that the victim already had an inkling of lurking danger and he should have been on guard for any eventuality.

These posturings are not supported by the evidence. The testimony of eyewitness Juvy Vilando quoted by accused-appellant in support of his argument does not prove that the victim Georgie Vilando and accused-appellant were facing each other at a distance of 5 meters, with the latter holding a knife. Accused-appellant selected isolated parts of the testimony that favor him and omitted portions thereof unfavorable to him.

The omitted portion of Juvy Vilando's declaration is as follows:

Q

So, in other words, this incident just happened abruptly without any cause whatsoever before?

A

Yes, the incident was so sudden because we did not have any standing arguments between us.

Q

But you really saw that before the stabbing this Juvy Maribao and your brother having facing each other?

A

No, they were not facing to each other, Juvy Maribao came from the back of Jorgie Vilando

Q

But during the stabbing because you saw immediately Juvy Maribao with a knife, did you see your brother facing Juvy Maribao at that time?

A

He is about to face, but he was already hit.

Q

You mean to say that the knife was being thrust (sic) while Jorgie Vilando was facing, rather at the opposite side of Juvy Maribao?

A

He is facing Juvy Maribao, but he was not thinking that he will be stabbed.

(tsn, January 27, 1995, p. 15; underscoring supplied.)

In ascertaining the true meaning of the testimony given by a witness, everything stated by him on his examination in chief as well as on cross must be considered. Facts imperfectly stated in answer to one question may be supplied by his answer to another; and when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by facts disclosed in another. There should be no selection of isolated parts of the testimony; its general bearing must be taken together (Moran, Comments on the Rules of Court, 1980 Ed., Vol. 6, p. 137).

Guided by the above criteria, we may say that the true import of Juvy Vilando's testimony should be that before accused-appellant stabbed Georgie, the distance between them was 5 meters. Then accused-appellant approached Georgie from behind. Georgie, without any inkling that he would be stabbed by Maribao as there had been no previous argument between them, turned to face Maribao, but the latter thereupon stabbed him on the chest.

The trial court pointed out that the prosecution was able to prove that:

[T]he stabbing of Georgie Vilando was sudden, unprovoked and unexpected. Upon the accused's own admission, there was no grudge between him and the victim, his act of putting his arm around Georgie Vilando would give no reason for those around them to expect that Juvy Maribao would be stabbing Georgie Vilando and especially since the stabbing was simultaneous, sudden and swift. The act was so sudden that nobody was able to react immediately. Upon seeing the bloodied knife, their first impulse was to run for their lives. In the case of *People vs. Alcantara*, 207 SCRA 662, the Supreme Court held that a sudden and unexpected attack, without the slightest provocation on the person of the one attacked is the essence of treachery. And again in the case of *People vs. Villanueva*, the Supreme Court held that there is treachery when the victim is attacked by an accused without warning and his back turned to his assailants or when the attack is so sudden and unexpected and without the slightest provocation on the part of the victim, or is sudden and unexpected that the victim was unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant (225 SCRA 353).

(pp. 21-22, Rollo.)

The evidence on record unquestionably supports the trial court's finding that treachery attended the killing of Georgie Villando. Aside from the testimony of Juvy Maribao, there is also the testimony of the other eyewitness, Ronnie Antonio who happened to be walking only a short distance (about 5 arm-lengths) behind the group of the victim.

Ronnie Antonio testified that when Pablito Estoconing and Oscar Calihan were conversing, accused-appellant went behind Georgie and placed his hand over the shoulder of Georgie and then stabbed him twice on the chest. The first wound was on the left side of Georgie's chest and the second wound was at the middle part of the chest (tsn., December 15, 1992, pp. 8-9). Ronnie identified the weapon used as a hunting knife locally known as "plamengco" and his testimony was corroborated by Pablito Estoconing in its material points (tsn, September 29, 1994, pp. 9; 18-19; 22).

Indeed, the locations of the wounds of Georgie as described by Ronnie coincide with the description made by Dr. Fe Mercado who conducted a post mortem examination on the corpse of Georgie. Dr. Mercado stated that injury No. 1 of Georgie, the fatal wound, was at the left side of his chest a few inches above the nipple while injury No. 2 was at the middle of his chest (tsn., October 20, 1992, pp. 4-5).

The attendance of treachery as a qualifying circumstance is found in the concurrence of two conditions: (1) the employment of means, method, or manner of execution which would insure the offender's safety from defensive or retaliatory acts on the part of the offended party, meaning that no opportunity is given the latter to defend himself or to retaliate; and (2) that such means, method, or manner of execution was deliberately and consciously chosen (*People vs. Samonte, Jr.*, 64 SCRA 632[1992]; *People vs. Panayo*, 235 SCRA 226; 231[1994]).

The above conditions are clearly present in the instant case. The act of accused-appellant in approaching Georgie Vilando from behind and placing his arm on the left shoulder of the latter and simultaneously stabbing Georgie twice shows that the manner of execution insured accused-appellant's safety from any retaliation of the victim, specially so when the wounds of the victim were fatal wounds on his chest.

The speed and the suddenness of the unexpected action of accused-appellant prove treachery, for the essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim (*People vs. Alcantara*, 206 SCRA 662[1991]; *People vs. Gonzales*, 210 SCRA 44[1992]; *People vs. Panayo*, *supra*).

Verily, even if the attack had been frontal, considering that Georgie was unarmed, was unaware of any impending assault, and was not in a position to defend himself, treachery may still be appreciated (*People vs. Reyno*, 77 Phil. 93; *People vs. Basadre*, 128 SCRA 641; 649[1984]).

In fine, the trial court correctly considered the killing of Georgie Vilando as murder qualified by treachery under Article 248 of the Revised Penal Code, punishable by reclusion temporal in its maximum period to death. In the absence of any aggravating or mitigating circumstance, the proper penalty is the medium period thereof which is reclusion perpetua (*People vs. Abapo*, 239 SCRA 469; 480[1994]).

WHEREFORE, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Francisco, and Panganiban, JJ., concur.

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