

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO CAVERTE AND TEOFILO CAVERTE, ACCUSED-APPELLANTS.

G.R. No. 123112. March 30, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision[1] dated January 27, 1995 of the Regional Trial Court of Tagbilaran City, Branch 1, finding appellants Teofilo Caverte and Arturo Caverte guilty of Murder in Criminal Case No. 8126 and appellant Arturo Caverte guilty of Attempted Murder in Criminal Case No. 8127.

The Information for Murder in Criminal Case No. 8126 against appellants Teofilo Caverte and Arturo Caverte and the Information for Attempted Murder in Criminal Case No. 8127 against appellant Arturo Caverte, respectively read, as follows:

Criminal Case No. 8126:

"That on or about the 8th day of November, 1992, in the municipality of Pilar, province of Bohol, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill and treachery by suddenly attacking the victim without giving the latter an opportunity to defend himself, taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the use of a stainless kitchen knife and shoot with the use of 12 gauge shotgun one Abdon Richard Alesna thereby inflicting mortal wounds or injuries on the vital parts of the body of the said victim which caused his immediate death, to the damage and prejudice of the heirs of the said victim.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code with the aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime."

Criminal Case No. 8127:

"That on or about the 8th day of November, 1992, in the municipality of Pilar, province of Bohol, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable cause and with treachery, by suddenly attacking the victim without giving the latter an opportunity to defend himself, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one Nersas Petalcorin hitting the latter's left forearm with the use of a .38 caliber revolver, thus the said accused having therefore commenced the commission of the crime of Murder directly by overt acts, but did not perform all the acts of execution which would have produced the felony by reason of some cause or accident other than his own spontaneous desistance, to wit: the timely escape of the victim from the scene of the crime and failure of the accused to inflict a fatal injury to the victim; to the damage and prejudice of the said offended party.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code in relation to Articles 6 and 51 of the same Code."

Upon being arraigned, appellants Teofilo Caverte and Arturo Caverte pleaded not guilty to the Information for Murder in Criminal Case No. 8126. Appellant Arturo Caverte likewise pleaded not guilty to the Information for Attempted Murder in Criminal Case No. 8127. The prosecution and the defense agreed on a joint trial of both criminal cases.

The evidence of the prosecution shows that in the evening of November 8, 1992, Engr. Nersas Petalcorin, Chief Field Engineer of Hanil Development Company Ltd. located in Barangay del Pilar, Pilar, Bohol, was drinking liquor with fellow workers Engr. Felixberto Calamba and Richard Alesna in the staff house inside the Hanil compound. The son of Engr. Petalcorin, Giovanni, was also around in the staff house.[2]

At around 9:30 o'clock Engr. Petalcorin went to the canteen which is approximately sixty (60) meters away from the staff house to buy cigarettes. Since the door of the canteen was already closed, he decided to try the store located outside the compound. Upon reaching the main gate, however, he found that the store outside the compound was closed. As he turned away from the main gate to join his companions in the staff house, he heard a clicking sound from the guard house which is located just beside the main gate. He recognized the appellant, Arturo Caverte, who was on the elevated platform of the guard house aiming his service revolver at him. At almost the same instant, appellant Arturo Caverte fired his gun twice, hitting Petalcorin in the left forearm.[3]

Petalcorin lost his balance due to the impact of the gunshot. However, he managed to stand and immediately ran outside the compound to seek help. Along the national highway, he met the barangay captain of del Pilar who took him to the house of a certain Melchor where he was administered first aid treatment.[4]

Petalcorin was subsequently taken on board a company car to Simon Toribio Memorial Hospital in Carmen, Bohol. After the initial treatment there, he was transferred to Gov. Celestino Gallares Hospital in Tagbilaran City where he was confined for at least twelve (12) hours. The attending physician, Dr. Manuel Relampagos, opined that the injury sustained by Petalcorin which penetrated his left forearm required at least thirty (30) days to heal.[5]

After recovering from his gunshot wound, Petalcorin resigned from his work.[6] Misspelled

Meanwhile, upon hearing the two (2) gunshots, it appeared that Giovanni and his companions in the staff house went outside to investigate. Giovanni proceeded to the canteen where he saw Richard Alesna who was conversing with a Korean employee near the kitchen. After the said conversation, appellant Teofilo Caverte appeared in the canteen holding a knife. Teofilo approached Richard Alesna and they grappled for possession of the knife. In the meantime, Arturo Caverte appeared, holding a shotgun, and commanded Richard Alesna to kneel before him. Alesna refused, and Teofilo allegedly stabbed him. Arturo also shot Richard Alesna with his shotgun. Alesna was rushed to the hospital where he was pronounced dead on arrival.[7]

Dr. Lourdes Atup-Tan, Municipal Health Officer of Pilar, Bohol, conducted the post mortem examination on the body of Richard Alesna. Her Autopsy Report[8] dated November 9, 1992 shows the following findings, to wit:

- Gunshot wound on the right posterior lumbar region 3.5 inches diameter irregular edges, presence of powder burns, penetrating right anterior abdominal lumbar region.
- Exit wound right anterior lumbar region ½ inch diameter.
- Eight pieces rounded metallic foreign body ¼ inch diameter, 3 pieces penetrate lumbar spinal cord nerve, blood vessels, 4 pieces lodge right pubic muscles, bones and blood vessels, 2 pieces right pelvic region perforating urinary bladder.
- Presence of massive hemorrhage noted several blood clots.

Cause of Death: Shock secondary to massive hemorrhage due to gunshot wound.

SPO3 Hermogenes Cabanes who was the policeman on duty at the Pilar police headquarters in Pilar, Bohol in the evening of November 8, 1992, testified that appellant Arturo Caverte surrendered to him at around midnight on November 8, 1992 for allegedly shooting somebody inside the compound of Hanil Development Company in Barangay del Pilar. Appellant Arturo Caverte who was then accompanied by the barangay captain of Barangay del Pilar, surrendered to him a .38 caliber revolver[9] and its two (2) empty shells.[10]

SPO3 Cabanes immediately proceeded to the Hanil compound in Barangay del Pilar to investigate. During his inquiry, the people therein handed to him a hunting knife[11] and a scabbard[12] which, according to them, "belonged to the enemy of the security guard".[13] SPO3 Cabanes also recovered a slug[14] which he turned over to SPO2 Venancio Mante, including the other pieces of evidence that he had recovered. The shotgun[15] which appellant Arturo Caverte used in shooting Richard Alesna, together with one empty shell, was turned over by Gregorio Margate, Chief Security Officer of Hanil Development Company, to SPO2 Mante in the afternoon of November 9, 1992.

Appellant Arturo Caverte admitted having shot Engr. Nersas Petalcorin and his nephew, Richard Alesna, but interposed self-defense. Arturo Caverte testified that he was a security guard of the NICO Security Service Agency in Tagbilaran City and was detailed at the compound of the Hanil Development Company Ltd. in Barangay del Pilar, Pilar, Bohol. On November 8, 1992, at around 9:45 in the evening, Arturo Caverte and his fellow security guard, Genaro Busbos, were approached by Engr. Petalcorin and Richard Alesna, both of whom appeared drunk, at the guard house of Hanil Development Company. Engr. Petalcorin pointed his finger at appellant Caverte and remarked that the people of Pilar were boastful. Simultaneously, Richard Alesna pulled out a knife and stabbed the table in the guard house three (3) times.[16] Arturo Caverte drew his .38 caliber revolver and fired a warning shot. Engr. Petalcorin then drew a short firearm from his waist prompting Arturo Caverte to shoot him in the arm.[17]

After Petalcorin has fled, Alesna and Busbos began grappling for possession of the knife. When both had disengaged, Alesna ran towards the staff house. Arturo Caverte and Busbos pursued Alesna to take the knife. However, Alesna attacked Arturo Caverte, thus forcing him to shoot Alesna with a shotgun.[18] Thereafter, Arturo Caverte surrendered to the police accompanied by the head of the security guards, Gregorio Margate.

Arturo Caverte belied the testimony of prosecution witness Giovanni Petalcorin that Teofilo Caverte stabbed Richard Alesna when the latter refused to kneel as ordered by Arturo Caverte. Arturo Caverte stated that his elder brother, Teofilo, was in their house at the time of the incident. Arturo had seen him there when he dropped by before he surrendered to the police. Arturo Caverte also stated that Giovanni Petalcorin was not in the Hanil compound when the incident occurred as he had not seen him since his father, Engr. Petalcorin, and Richard Alesna started drinking liquor at 6:00 o'clock in the evening of that day inside the staff house.[19]

The testimony of defense witness Genaro Busbos reveals that prior to the shooting incident, Engr. Nersas Petalcorin and Richard Alesna, who were both drunk, approached the guardhouse situated at the main gate of Hanil Development Company Ltd. Engr. Petalcorin pointed his finger at Busbos and Arturo Caverte and shouted that the people in Pilar, Bohol were boastful ("hambogero"). Petalcorin repeated the remarks three (3) times and to which Busbos replied that they were not looking for a quarrel. Apparently irked, Alesna brought out a knife that prompted Arturo Caverte to draw his service revolver and fire a warning shot. When Engr. Petalcorin pulled a gun from his waist, Arturo Caverte shot him on the arm. Petalcorin fell to the ground but managed to get up and run. Richard Alesna attacked Busbos with the knife and the two grappled for possession thereof.[20]

While Busbos and Alesna were grappling for possession of the knife, Arturo Caverte fired at Alesna twice but

missed. Subsequently, Busbos pushed Alesna and the latter ran outside the guardhouse still holding his knife. Arturo Caverte followed Alesna and shot him with his service shotgun that caused his death.[21]

Genaro Busbos belied the testimony of Giovanni Petalcorin that Teofilo Caverte grappled with Richard Alesna for the possession of the knife. In addition, Busbos belied that Teofilo Caverte stabbed Alesna with a knife when the latter refused to kneel as ordered by Arturo Caverte. He stated that Giovanni Petalcorin was brought by his father to Hanil compound in the last week of October, 1992. However, the young Petalcorin had left and was no longer inside the compound on November 8, 1992, when the shooting incident occurred.

For his part, appellant Teofilo Caverte testified that he was in the house of his parents in Poblacion, Pilar, Bohol in the evening of November 8, 1992. At about midnight, his brother Arturo dropped by the house with Gregorio Margate and informed him that he shot somebody in the Hanil compound. Thereafter, Arturo and Gregorio Margate proceeded to the municipal building to surrender to the police. Teofilo came to know that he was implicated in the shooting incident only on February 6, 1992 or three (3) months thereafter, when policeman Rodrigo Butron informed him that a warrant for his arrest was issued.[22]

After analyzing the evidence, the trial court made the following findings:

- a).....That the accused Arturo Caverte, a security guard of Hanil Construction and his co-accused Teofilo Caverte on November 8, 1992 in the Municipality of Pilar, Province of Bohol conspiring and helping each other with the use of a shotgun and a kitchen knife stabbed and shot to death the victim Richard Alesna (Criminal Case No. 8126, For: Murder);
- b).....That the accused Arturo Caverte after shooting and stabbing to death Richard Alesna, Arturo Caverte surrendered to SPO2 Venancio Mante;
- c).....That the accused Arturo Caverte in the afternoon of November 5(sic), 1992 at the staff house of the Hanil Compound located at Del Pilar, Pilar, Bohol, attacked the complainant Nersas Petalcorin by shooting him with a .38 caliber revolver, hitting his left forearm which, as a consequence, the complainant Nersas Petalcorin fell down and subsequently stood up and ran;
- d).....The fact of the killing of the deceased victim Richard Alesna is admitted by the accused Arturo Caverte but interposed self-defense;
- e).....The accused Teofilo Caverte brother of the accused Arturo Caverte interposed the defense of alibi.

The Court anchored its conclusions not only (People vs. Adlawon, Jr., 217 SCRA 489) which the witnesses testify but more particularly the demeanor of the witnesses on the witness stand (People vs. Camadlo, 217 SCRA 162). The Court believes the prosecution witnesses because they testified in a spontaneous and straightforward manner (People vs. Pacana, 218 SCRA 346).

The defense of alibi interposed by the accused "the same can not prevail over the positive identification of the prosecution witnesses...that alibi to be given full faith and credit must not leave any doubt as to its plausibility (People vs. Gabatin, 203 SCRA 225; People vs. Bragoes, 203 SCRA 555; People vs. Urguis, 203 SCRA 738; Seton vs. Court of Appeals, 204 SCRA 473; People vs. Lee, 204 SCRA 900; People vs. Babac, 204 SCRA 978).

It is the view of the Court that in the commission of the crime as charged in Criminal Case No. 8126 there was conspiracy as it can be "inferred from the acts of the accused Arturo Caverte and Teofilo Caverte, as brothers (People vs. Nabaluna, 142 SCRA 448). It is inferred from the acts of the accused (People vs. Abueg, 145 SCRA 622).

The crime committed falls within the purview of Murder for "the killing of the victim... was attended... with the

presence of the qualifying circumstance of abuse of superior strength (*People vs. Milas*, 218 SCRA 473). The killing was committed with treachery (*People vs. Manrique, Jr.*, 223 SCRA 196).

Based upon the evidence adduced by the prosecution and defense, the prosecution has proved the guilt of the accused in Criminal Cases Nos. 8126 and 8127.[23]

Accordingly, the trial court in Criminal Case No. 8126, found appellants Teofilo and Arturo Caverte guilty of Murder and sentenced each of them to suffer an imprisonment of reclusion perpetua and to pay the heirs of the victim P50,000.00 by way of indemnity and P50,000.00 for moral and exemplary damages without subsidiary imprisonment in case of insolvency. In Criminal Case No. 8127, the trial court found appellant Arturo Caverte guilty of Attempted Murder and sentenced him to suffer the indeterminate penalty of "TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, the Minimum of the Medium Period of Prision Correccional, as Minimum, to EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, the Minimum of Prision Mayor in its Medium Period, as Maximum, and to pay P50,000.00 representing indemnity and exemplary damages, without subsidiary imprisonment in case of insolvency." [24]

In assailing the aforequoted Decision of the trial court, appellants Arturo Caverte and Teofilo Caverte raised the following assignment of errors:

I

THE HONORABLE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS IN THE TWO (2) CASES EVEN IF THE EVIDENCE ADDUCED CAN NOT IRREMEDIABLY ESTABLISH THEIR GUILT BEYOND REASONABLE DOUBT; AND

II

THE HONORABLE TRIAL COURT ERRED IN NOT GIVING FULL FAITH AND CREDIT TO THE VERSION ADDUCED BY THE DEFENSE WHICH, IF OBJECTIVELY AND DISPASSIONATELY ANALYZED, IS MORE NATURAL AND CONSISTENT WITH TRUTH AND REASON.[25]

In the Appellee's Brief, the Office of the Solicitor General recommended the acquittal of Teofilo Caverte and the conviction of Arturo Caverte only for homicide with the attendant mitigating circumstance of voluntary surrender in Criminal Case No. 8126 for murder; while it recommended Arturo Caverte's acquittal in Criminal Case No. 8127 for attempted murder based on the submissions therein made.

The respective witnesses of both parties presented conflicting versions of the incident that led to the wounding of Engr. Nersas Petalcorin and the killing of Richard Alesna otherwise known as Abdon Richard Alesna. In arriving at the assailed decision, the trial court accorded full faith and credence to the testimonies of prosecution witnesses Nersas Petalcorin and Giovanni Petalcorin, stating that the same appear spontaneous and straightforward while it dismissed or disregarded appellants Arturo and Teofilo Cavertes' respective defenses of self-defense and alibi. It has been held that unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of the witnesses must be respected.[26] Hence, in that light, the merit of the defenses respectively raised by the appellants in the instant appeal depends primarily on whether or not the trial court overlooked or disregarded certain facts of substance or value which, if properly considered, might affect its decision in these criminal cases.

It may be noted that the victims and the appellant Arturo Caverte, were all working in the compound of the Hanil Development Company Ltd. Despite this fact, the prosecution witnesses miserably failed to show any ill motive on the part of appellant Arturo Caverte that could have possibly motivated him to shoot Engr. Nersas Petalcorin

and Richard Alesna.

On the other hand, it appears that prior to the shooting incident Richard Alesna was scolded by appellant Arturo Caverte for passing through the barbed wire perimeter fence in entering the Hanil compound. While Engr. Petalcorin claimed that he had earlier patched up the differences between appellant Arturo Caverte and his nephew,[27] the same was apparently not so as shown by the evidence adduced relative to the incident in the evening of November 8, 1992.

The fact that the shooting incident occurred at the vicinity of the guard house while Genaro Busbos and appellant Arturo Caverte were in the performance of their duty as security guards, lends credence to the claim of the defense that Engr. Petalcorin and Alesna were both drunk when they approached the guard house and started shouting insults at the security guards. The testimony of Engr. Petalcorin that he came to the main gate merely to look for a store to buy cigarettes after failing to do so at the canteen, does not inspire belief. The time honored test in determining the value of the testimony of a witness is whether or not such is in conformity with knowledge and consistent with the common experience of mankind.[28] It must be noted that the shooting incident happened on November 8, 1992 which was a Sunday.[29] Having been employed in the company for sometime, Engr. Petalcorin should have known all along that the canteen inside the Hanil compound was not open for business on Sundays and that the store outside the compound was already closed at that time.

Curiously enough, Engr. Petalcorin never filed a complaint with the management of the Hanil Development Company Ltd. against appellant Arturo Caverte and Genaro Busbos in connection with the shooting incident. He even resigned from the said company effective on the last day of November 1992. Such actuation of Engr. Petalcorin is inconsistent with the attitude of a person who is totally free from blame.

Likewise, the lower court failed to note that the testimony of Giovanni Petalcorin is laden with improbabilities that detract from his credibility. As the Solicitor General aptly observed, it appears strange why the young Giovanni Petalcorin should proceed to the canteen when he testified that the reported gunshots came from the direction of the guardhouse. Also, Giovanni Petalcorin could not have seen appellant Teofilo Caverte inside the canteen whom he claimed to be standing and holding a knife[30] for the reason that the canteen did not open for business on that day which was a Sunday. Engr. Petalcorin himself noted that the door of the canteen was closed at that time.[31] In addition, it is difficult to imagine that appellant Arturo Caverte would shoot Richard Alesna at the back with a shotgun while Richard Alesna and appellant Teofilo Caverte were grappling for possession of the knife as Giovanni would make it appear. Considering the nature of the firearm used by Arturo Caverte, which in this case was a shotgun, there was great possibility that his brother, Teofilo, could have been hit also inasmuch as there was an exit wound at Alesna's right anterior lumbar region.³² [Exhibit "A"].³² In this connection, it has been held that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[32]

Consequently, the testimony of defense witness Genaro Busbos appears more convincingly reflective of the actual shooting incident on November 8, 1992. There is no apparent motive on his part for giving his testimony except to tell the truth. As a matter of fact, we can not perceive from his testimony any bias or partiality to any of the protagonists. The pertinent portions of his unbiased and credible testimony are quoted hereunder, to wit:

(ATTY. TINAMPAY TO WITNESS)

Q

That evening of November 8, 1992 during your Guard duty, did you observe anything unusual that happened?

A

Yes, sir.

Q

What was it?

A

:Engr. Nersas Petalcorin and Engr. Abdun Richard Alesna came near to us.

xxx

Q

When Engrs. Nersas Petalcorin and Richard Alesna went or approached both of you, what happened?

A

They looked for trouble with us because at that time when they approached us, they were drank (sic).

Q

What did the two or one of them say when they approached both of you security guards?

A

They pointed their fingers at both of us one by one and said that we who (sic) are from Pilar are boastful (hambogero).

ATTY. TINAMPAY: We request that the word "hambogero" be reflected in the record.

Q

Who of the two engineers made that statement?

A

It was Engr. Nersas Petalcorin who said those words.

Q

How about the other engineer, Alesna, did he not say similar statements to you both (sic) security guards?

A

He did not say anything.

Q

:How many times did Engr. Petalcorin say those words or remarks?

A

Maybe he said that three times.

xxx

Q

When Engr. Nersas Petalcorin made those statements three times to both of you Security Guards, what did you or your co-Security Guards (sic) Arturo Caverte do or react?

A

I told Engr. Nersas Petalcorin saying, "Sir, do not make trouble with us." When I said that, this Abdun Alesna pulled his knife and he stabbed the table.

Q

How many times did Engr. Abdun Alesna stab the table with his knife?

A

Three times.

xxx

Q

When Engr. Abdun Alesna stabbed the table three times following which you remarked, "Do not quarrel with us, Sir", what did his co-Engineer do who according to you was nearby?

A

I saw that Engr. Nersas Petalcorin pulled his gun from his waist.

Q

What gun was that, long barreled or short barreled?

A

Short barreled gun.

xxx

Q

And with the gun Engr. Nersas Petalcorin got from his waist, what happened next?

A

Arturo Caverte saw that gun being pulled by Engr. Nersas Petalcorin from his waist and Arturo Caverte went up the table and fired it (sic) Engr. Nersas Petalcorin first.

Q

So are you telling or picturing to the Court that while Engr. Nersas Petalcorin was holding his short barreled gun taken from his waist, Arturo Caverte went on top of the table and fired at Nersas Petalcorin.

A

Arturo Caverte shot the hand of Nersas Petalcorin.

xxx

Q

Did you notice if Nersas Petalcorin was hit?

A

To my belief, I believed he was hit.

Q

And what happened after Arturo Caverte fired his gun once?

A

Nersas Petalcorin staggered and fell to the ground.

Q

The same spot where he was aimed at and hit?

A

Yes, sir.

Q

After that, what did Engr. Nersas Petalcorin do?

A

Engr. Nersas Petalcorin stood up and ran outside the compound.

Q

When Engr. Nersas Petalcorin got his short barreled gun from his waist, what was the other engineer, Richard Abdun do (sic)?

A

Engr. Alesna thrust his knife at me.

xxx

Q

:And were you hit?

A

:I was able to hold his hand.[33]

xxx

Q

Then what happened next?

A

Arturo Caverte told me to release Richard Alesna because Arturo Caverte had no more bullets.

Q

Did you release Richard Alesna?

A

I released him pushing him towards outside the guard house.

Q

And what happened to him?

A

:Richard Alesna ran towards the office.

Q

Do you know what happened to Richard Alesna?

A

Arturo Caverte followed.

Q

And what happened.

A

While running, Arturo Caverte is (sic) carrying his gun and followed Richard Alesna.

Q

Why did Arturo Caverte followed (sic) Engr. Richard Alesna?

FICAL MAGDOZA: Witness is incompetent.

COURT: Witness may answer.

A

Arturo Caverte followed Richard Alesna because Richard Alesna was carrying a knife.

Q

:At the time that Arturo Caverte followed Richard Alesna with a knife, how many times did Arturo Caverte shot (sic) Richard Alesna?

A

Once.[34]

From the foregoing there appears sufficient justification for appellant Arturo Caverte to shoot Engr. Nersas Petalcorin in self-defense. There is self-defense when the following elements concur: (1) unlawful aggression on the part of the person injured or killed by the offender; (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.[35] Engr. Nersas Petalcorin's act of pulling a gun from his waist despite the firing of a warning shot by Arturo Caverte to stop Richard Alesna from further stabbing the table inside the guardhouse clearly shows his intention to use his gun against either or both security guards Arturo Caverte and Genaro Busbos, thereby exposing their persons to actual and imminent danger. The fact that Nersas Petalcorin was not pursued anymore upon his escape after he was hit on the wrist clearly indicates that appellant Arturo Caverte did not intend to kill but simply to defend himself from the expected attack. During the investigation which was conducted after he surrendered, Arturo Caverte narrated the same circumstances before the police.

However, we do not reach the same conclusion with respect to the killing of Richard Alesna by appellant Arturo Caverte. Having invoked self-defense, the burden was shifted on Arturo Caverte to prove by clear and convincing

evidence that his victim was the aggressor and that he did not initiate any sufficient provocation. The accused must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence the moment the accused admits the commission of the alleged criminal act.[36]

From the abovequoted testimony of defense witness Genaro Busbos, Richard Alesna was already running toward the staff house when appellant Arturo Caverte still pursued and shot him at the back with his service shotgun. This account of Genaro Busbos is consistent with the findings of Dra. Atup-Tan that Alesna suffered a gunshot wound at the right posterior lumbar region penetrating at the right anterior lumbar region.[37] Thus, while the initial aggression may have come from Alesna, Arturo Caverte was not justified in shooting him at the back while the latter was running away to the staff house for the reason that his person (Arturo Caverte) was no longer exposed to any actual or imminent danger. It is a doctrinal rule that when an unlawful aggression which has begun no longer exists, the one making a defense has no right to kill or even to wound the former aggressor.[38]

However, the crime committed by appellant Arturo Caverte in Criminal Case No. 8126 is homicide and not murder in view of the absence of the qualifying circumstance of treachery. There is treachery when two conditions concur, to wit: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) deliberate or conscious adoption of the means of execution.[39] Treachery exists where the attack was perpetrated suddenly and without warning.[40] It should be pointed out in the case at bench that Richard Alesna earlier threatened appellant Arturo Caverte and Genaro Busbos by stabbing the table inside the guardhouse. Alesna could have even succeeded in stabbing Busbos had the latter not been quick enough to parry the blow. Hence, the subsequent act of shooting Alesna by Arturo Caverte was not preconceived nor deliberately adopted but as held in a case, it was just triggered by the sudden infuriation on the part of the appellant because of the provocation on the part of the victim.[41]

Likewise, conspiracy and abuse of superior strength are not borne by the evidence on record. The only evidence that tends to link appellant Teofilo Caverte to the crime is the testimony of Giovanni Petalcorin who testified that he allegedly saw appellant Teofilo Caverte inside the canteen holding a knife. He also stated that Teofilo Caverte subsequently stabbed Richard Alesna with the same knife. We disregard the testimony of Giovanni Petalcorin for being highly incredible. It has been established that the canteen was closed during the incident. Moreover, the Autopsy Report prepared by Dra. Atup-Tan clearly belies the presence of any stab wound on the body of the victim, Richard Alesna. Also, the ownership of the knife by Richard Alesna was established by the credible testimony of Genaro Busbos which, in turn, was supported by the testimony of the police officer who investigated the case. SPO3 Hermogenes Cabanes testified that he recovered a knife and a scabbard during his investigation and he learned that the same "belonged to the enemy of the guard". Being an officer of the law, the unbiased testimony of SPO3 Cabanes bears the badge of credence and is entitled to high respect.

Additionally, note should be made that Giovanni was a mere guest of his father, Engr. Nersas Petalcorin, inside the compound of Hanil Development Company Ltd. Having stayed inside the compound for a relatively short time, it is safe to assume that he mistook Genaro Busbos, who is admittedly the companion of appellant Arturo Caverte in the evening of the incident, for appellant Teofilo Caverte as the person who grappled with Richard Alesna for possession of the knife. In any event, Giovanni himself impliedly admitted his lack of familiarity with the other persons inside the Hanil compound.[42]

In view of the inconclusive and unreliable identification by Giovanni Petalcorin, Teofilo Caverte's defense of alibi assumes credence and importance. While alibi is a weak defense and the rule is that it must be proved to the satisfaction of the court, the said rule is never intended to change the burden of proof in criminal cases, otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak as in the instant case.[43]

WHEREFORE, the Decision of the Regional Trial Court of Tagbilaran City, Branch 1, in Criminal Case No. 8126, for Murder, is hereby MODIFIED. Appellant Teofilo Caverte is ACQUITTED of the crime of murder on the ground of reasonable doubt while appellant Arturo Caverte is CONVICTED only of the crime of homicide with the attendant mitigating circumstance of voluntary surrender. The imposable penalty on the appellant Arturo Caverte, under Article 249 of the Revised Penal Code for homicide, is reclusion temporal in its minimum period. Applying the Indeterminate Sentence Law, the penalty hereby imposed on appellant Arturo Caverte is the indeterminate penalty of twelve (12) years of prision mayor maximum, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal minimum, as maximum; and to pay the heirs of the victim, Abdon Richard Alesna, the amount of P 50,000.00 by way of civil indemnity ex delicto and P 50,000.00 as moral damages.

Appellant Arturo Caverte is hereby ACQUITTED in Criminal Case No. 8127 for the alleged crime of Attempted Murder on the ground of self defense and as justified under Article 12(1) of the Revised Penal Code.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and Quisumbing, JJ., concur.

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- [1] Penned by Judge Antonio H. Bautista. Rollo, pp. 13-20.
- [2] TSN, August 26, 1993, pp. 11-12.
- [3] TSN, August 9, 1993, pp. 5-7.
- [4] Id., pp. 8-9.
- [5] TSN, August 11, 1993, pp.4-5; Exhibit "C".
- [6] TSN, August 13, 1993, p. 5.
- [7] TSN, August 16, 1993, pp. 5-9; TSN, September 3, 1993, p. 5.
- [8] Exhibit "A".
- [9] Exhibit "E".
- [10] Exhibits "F-1" and "F-2".
- [11] Exhibit "G".
- [12] Exhibit "G-1"
- [13] TSN, September 10, 1993, p. 5.
- [14] Exhibit "H".
- [15] Exhibit "D".
- [16] TSN, May 27, 1994, pp. 9-12.
- [17] TSN, June 3, 1994, pp. 3-4.
- [18] Id., pp. 5-8.
- [19] TSN, August 5, 1994, p.6.
- [20] TSN, January 28, 1994, pp. 6-10.

- [21] TSN, April 18, 1994, pp. 3-4.
- [22] TSN, September 15, 1994, pp. 5-10.
- [23] Rollo, pp. 18-19.
- [24] Rollo, p. 19.
- [25] Rollo, p. 58.
- [26] *People vs. Viovicente*, 286 SCRA 1, 11 (1998)
- [27] TSN, August 10, 1993, pp. 3-4.
- [28] *People vs. Parazo*, 272 SCRA 512, 521 (1997)
- [29] TSN, May 27, 1994, p. 8.
- [30] TSN, September 3, 1993, p. 5.
- [31] TSN, August 9, 1993, p. 5.
- [32] *People vs. Cayabyab*, 274 SCRA 387, 397 (1997)
- [33] TSN, January 28, 1994, pp. 6-10.
- [34] TSN, April 18, 1994, p. 4.
- [35] *People vs. Demonteverde*, 290 SCRA 175, 181 (1998)
- [36] *People vs. Obzunar*, 265 SCRA 547, 566 (1996)
- [37] TSN, August 10, 1993, p. 7.
- [38] *People vs. Cawaling* 293 SCRA 267, 303 (1998)
- [39] *People vs. Serzo*, 274 SCRA 553, 569 (1997)
- [40] *People vs. Violin* 266 SCRA 224, 233 (1997)
- [41] *People vs. Valles*, 267 SCRA 103,113-114 (1997)
- [42] TSN, August 16, 1993, p. 4.
- [43] *People vs. Manambit*, 271 SCRA 344, 381 (1997)

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