

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL TADEJE Y ALGER AND JOSE MENDOZA Y MALLARI, ACCUSED-APPELLANTS.

G.R. No. 123143. July 19, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an automatic review of the decision[1] of the Regional Trial Court of Quezon City, Branch 217, convicting accused Gil Tadeje y Alger[2] and Jose Mendoza y Mallari of murder, and sentencing each of them to the supreme penalty of death, and to indemnify the heirs of the victim Antonio Alegre in the amount of forty thousand pesos (P40,000.00) as actual damages, and fifty thousand pesos (P50,000.00) as death indemnity.

On July 8, 1994, Assistant City Prosecutor Meynardo Bautista of Quezon City filed with the Regional Trial Court, Quezon City, an information charging Gil Tadeje y Alger and Jose Mendoza y Mallari with murder, committed as follows:

"That on or about the 5th day of July 1994, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, did then and there, willfully, unlawfully and feloniously, with intent to kill, with treachery, taking advantage of superior strength and with evident premeditation, attack, assault and employ personal violence upon the person of ANTONIO ALEGRE y GABAWA, by then and there stabbing the latter with a paint scraper or spatula hitting him on the different parts of his body thereby inflicting upon him serious and grave wounds which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of said ANTONIO ALEGRE y GABAWA.

"CONTRARY TO LAW."[3]

At the arraignment on August 15, 1994, both accused pleaded not guilty to the crime charged. The lower court set the case for pre-trial on September 14, 1994.[4] Thereafter, the court conducted the trial in the reverse order, upon motion of accused Gil Tadeje, as the accused claimed self-defense.

On September 27, 1995, the lower court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court hereby finds the accused GIL TADEJE Y ALEGRE and JOSE MENDOZA Y MALLARI guilty of MURDER qualified by treachery and hereby sentences them to suffer the penalty of death.

"Both accused are further ordered to indemnify the heirs of the victim Antonio Alger in the amount of P40,000.00 as and by way of actual damages and the amount of P50,000.00 as indemnity for the death of the victim.

"SO ORDERED.

"Quezon City, Philippines, September 27, 1995.

"(s/t) GIL P. FERNANDEZ, SR.

"J u d g e"[5]

Hence, this automatic review.

The facts are as follows:

Accused Gil Tadeje and Jose Mendoza worked as painters at the construction site of Mazda Auto Center, located along Quezon Avenue, Quezon City.

On July 5, 1994, at around 11:00 in the evening, Gil Ceballos, the general foreman at the construction site, was eating "balut" together with Antonio Alegre and other workers. Accused Tadeje and Mendoza, arrived, drunk, and taunted people to challenge them to a fight.

Junior Bunda, another worker, approached accused Tadeje and Mendoza. Accused Tadeje immediately stabbed Bunda on the forehead with a spatula, an instrument four inches long with a three-inch blade used as paint scraper. As Bunda ran away from the scene, Antonio Alegre approached accused Tadeje and tried to pacify him. Accused Tadeje and Mendoza then took turns in stabbing Antonio Alegre successively. The victim fell to the ground.

Gil Ceballos tried to appease accused Tadeje and Mendoza, who in turn, attempted to stab him. Gil Ceballos parried the blow, ran away and sought police assistance.

The victim Alegre was brought to the hospital by his co-workers but was pronounced dead on arrival. The autopsy report revealed the following:

"incised wounds on the right and left portion of the neck; a total of seven (7) stab wounds sustained by the victim, could have been caused by a sharp instrument."[6]

Policemen arrested accused Tadeje that same night inside a passenger jeep. Accused Mendoza was arrested at the job site the following day.[7]

Accused Gil Tadeje interposed self-defense. He alleged that on July 5, 1994, at around 10:00 in the evening, he woke up from his barracks bed where he and several other workers were staying, and went out of the construction site to the canteen for some snacks. At that time, Gil Ceballos, Junior Bunda, Marcial Diaz and a person named Nonoy were having a drinking spree. The accused Tadeje returned to the barracks and invited accused Jose Mendoza to accompany him to the canteen. When they reached the canteen, accused Tadeje decided to remain outside, while accused Mendoza proceeded inside the canteen.

Accused Tadeje struck a conversation with Jonathan Bunda in front of the canteen. Later, they started arguing and raised their voices. At this point, the victim Antonio Alegre, a co-worker, approached them and suddenly boxed accused Tadeje in the face, causing him to fall to the ground. The victim pinned him down and punched his chest. The victim then held accused Tadeje's head and banged it on the concrete pavement several times. Accused Tadeje, almost losing consciousness, grappled with the victim. Accused Tadeje touched his head and noticed blood on his forehead. When he realized that the victim would not stop from harming him, accused Tadeje managed to get hold of a spatula from his pocket and stabbed the victim with it. He could not recall the number of times he stabbed the latter, for he was losing consciousness at that time.

After the incident, accused Tadeje returned to the job site. He noticed several persons, including two policemen in plainclothes, milling around. The policemen brought accused Tadeje to the Galas Police Station and imprisoned him. After three days, accused Tadeje's mother visited him. She noticed the wound on his forehead and requested

for its treatment. Accused Tadeje was then allowed to go to the hospital for medical treatment.

Dr. Generoso Sison, Jr. of the Philippine Orthopedic Center examined accused Tadeje and issued a medical certificate stating that he suffered from "contusion, hematoma, sigmatic area, left and right," perhaps caused by a fistblow, and an "abrasion 1.5 cm. Pyreathal area left" located on the head.[8] According to the physician, bumping the head against a hard surface, or repeatedly hitting a concrete pavement may have caused the injury.[9]

After undergoing medical examination and treatment, accused Tadeje was brought back to the police station.[10]

On his part, accused Jose Mendoza denied any participation in the crime. He averred that on the night of July 5, 1994, at around 10:00 p.m., he entered the canteen and ordered food. He saw the victim emerge from the canteen and yell at accused Tadeje.[11] He sought for help but the general foreman and his other companions were drunk at that time. He then went inside the job site and slept. The following morning, Gil Ceballos, the foreman, arrived with two policemen in plainclothes. The policemen placed handcuffs on accused Mendoza and brought him to the Sto. Domingo Police Station.

In this automatic review, appellants contend that the lower court erred in rejecting the claim of self-defense. They also assail the lower court's finding of conspiracy.

Self-defense as a justifying circumstance must satisfy the following requirements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused.[12] The burden of proving self-defense by clear and convincing evidence is on the accused. In doing so, he must rely on the strength of his evidence and not on the weakness of that of the prosecution.[13]

Accused-appellant Gil Tadeje contends that the abrasion and contusion on his head prove that there was unlawful aggression on the part of the deceased Antonio Alegre. According to him, the medical findings contradicted the prosecution's version of the incident and established that the victim was not a passive pacifier but was the actual aggressor.

However, the doctor who examined the wounds of accused Tadeje could not determine with certainty that the injuries were inflicted on the day of the stabbing. He testified that it was possible for the injuries to have been incurred the day after, for he examined accused Tadeje three days after the incident.

Furthermore, accused Tadeje failed to establish that his injuries resulted from efforts to ward off aggression from the victim, for the wounds could have been caused by the struggle of the victim to repel the stabbing of accused. The fact that he sustained injuries on the head did not necessarily mean that said wounds were the result of an unlawful aggression.

No other witnesses corroborated the allegation of accused-appellants that the victim was the unlawful aggressor in the stabbing incident.

In the absence of any other proof presented that would show unlawful aggression on the part of the victim, there can be no self-defense, complete or incomplete.[14]

Moreover, the number of the injuries sustained by the victim indicates a determined effort on the part of accused-appellants to kill the victim, and further negates the claim of self-defense.[15] The autopsy report revealed that there were four incised wounds on the body of the victim, two on the neck, two on the right arm, as well as two wounds behind the neck and one on the left side of the head.[16]

Thus, accused-appellant Gil Tadeje failed to prove that he acted in self-defense and must be held liable for the killing he admitted.

What is more, there was conspiracy between the two accused. "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." [17] In the commission of the offense, the accused had the same purpose and were united in its execution. "Direct proof of a previous agreement to commit the crime is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action, and community of interest." [18]

In this case, conspiracy was shown through the testimony of prosecution witness Gil Ceballos. He declared that accused Mendoza held the victim when accused Tadeje stabbed him successively after the witness failed to pacify the two accused. [19] The acts of the two accused displayed a common design to execute a common purpose. Thus, the trial court did not err in finding the existence of conspiracy.

Accused-appellants further assail the trial court's finding that treachery qualified the crime to murder. On this issue, we agree with accused-appellant. The law is clear. Treachery may be considered as a qualifying circumstance when the following two conditions are present: (a) the employment of means, methods or forms in the execution that tend directly to ensure the safety of the malefactor from defensive or retaliatory acts of the victim, and (b) the deliberate adoption by the offender of such means, methods or manner of execution. [20]

In this case, the trial court erred in finding the existence of treachery. It was the victim who initially boxed accused Tadeje in the face. The victim also managed to pin him down and to punch his chest. The victim even held accused Tadeje's head and banged it on the concrete pavement several times. It was at this point that accused Tadeje managed to get hold of a spatula and stabbed the latter with it. In such a situation, treachery was not present.

The Court observes that the trial court considered the aggravating circumstance of abuse of superior strength. However, we do not find this circumstance present in this case. While the accused successively stabbed the victim, they did not particularly take advantage of their combined strength when they took turns in stabbing the victim who was unarmed. "As regards this aggravating circumstance, what should be considered is not that there were three, four or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. It is, therefore, necessary to show that the attackers cooperated in such a way as to secure the advantage of their superiority in strength." [21]

In the absence of any qualifying circumstance, the crime committed was homicide, not murder. [22]

The penalty prescribed for homicide is reclusion temporal, pursuant to Article 249 of the Revised Penal Code. Without the attendance of any aggravating or mitigating circumstance, the prescribed penalty of reclusion temporal, shall be imposed in its medium period. [23] Applying the Indeterminate Sentence Law, the accused-appellants may be sentenced to an indeterminate penalty within the range of the penalty next lower in degree to that prescribed for the offense, that is, prision mayor, as the minimum, and within the range of reclusion temporal in its medium period, as the maximum. [24]

IN VIEW WHEREOF, the Court hereby MODIFIES the judgment appealed from. As modified, the Court finds the accused-appellants Gil Tadeje y Alger and Jose Mendoza y Mallari both guilty beyond reasonable doubt of homicide defined and penalized under Article 249 of the Revised Penal Code. In the absence of any aggravating or mitigating circumstance, the Court sentences each of them to suffer the indeterminate penalty of eight (8) years of prision mayor, as minimum, to seventeen (17) years, and four (4) months of reclusion temporal, as maximum, with all its accessory penalties, and to pay the heirs of the deceased Antonio Alegre in the amount of forty thousand pesos (P40,000.00), as actual damages and fifty thousand pesos (P50,000.00), as death indemnity.

Costs against the accused in both instances.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Penned by Judge Gil P. Fernandez, Sr.

[2] Pursuant to accused's letter to the Court, correcting the records from "Alegre" to "Alger", Rollo, p. 78.28

[3] Records, p. 1.

[4] Records, p. 21.

[5] Original Record, Judgment, pp. 409-414.

[6] Medico-legal Report, Records, p. 72.

[7] tsn, March 15, 1995, pp. 8-46.

[8] see medical certificate, dated July 7, 1994, Records, p. 29.

[9] tsn, November 21, 1994, p. 8.

[10] tsn, November 9, 1994, pp. 5-23.

[11] tsn, November 14, 1994, p. 21.

[12] Revised Penal Code, Article 11, paragraph 2. People vs. Cahindo, 266 SCRA 554; People vs. Aguilar, 292 SCRA 356; People vs. Villamor, 292 SCRA 395.

[13] People vs. Noay, G.R. No. 122102, September 25, 1998; People vs. Umadhay, G.R. No. 119544, August 3, 1998; People vs. Gutual, 254 SCRA 37; People vs. Hubilla, Jr., 252 SCRA 471; People vs. Albarico, 238 SCRA 203.

[14] People vs. Ebrada, G.R. No. 122774, September 25, 1998, citing People vs. Galit, 230 SCRA 486.

[15] People vs. Umadhay, *supra*.

[16] See Medico-legal Report, Records, pp. 72-74.

[17] Article 8, Revised Penal Code.

[18] People vs. Felix, G.R. No. 126914, October 1, 1998; People vs. Sion, 277 SCRA 127, citing People vs. Martinado, 214 SCRA 712, 732; People vs. Pama, 216 SCRA 385, 401; People vs. de la Cruz, 207 SCRA 632, 648.

[19] tsn, March 15, 1995, pp. 6-12.

[20] People vs. Silvestre, G. R. No. 127573, May 12, 1999; People vs. Mahinay, G. R. No. 125311, March 17, 1999; People vs. Piamonte, G.R. No. 91999, February 25, 1999; People vs. Dorado, G.R. No. 122248, February 11, 1999; People vs. Castillo, 261 SCRA 493.

[21] People vs. Platilla, G.R. No. 126123, March 9, 1999, citing People vs. Gelera, 277 SCRA 450, 459; People vs. Flores, 40 SCRA 230.

[22] People vs. Tabones, G.R. No. 129695, March 17, 1999; People vs. Piamonte, *supra*.

[23] Article 64 (1), Revised Penal Code; People vs. Tavas, G.R. No. 123969, February 11, 1999; People vs. Realin, G.R. No. 126051, January 21, 1999.

[24] People vs. Silvestre, *supra*, citing People vs. Tavas, *supra*.

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