

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO ABRAZALDO @ “PEDING,” ACCUSED-APPELLANT.

G.R. No. 124392. February 07, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision[1] dated November 15, 1995 of the Regional Trial Court, Branch 44, Dagupan City in Criminal Case No. 95-01052-D, finding accused-appellant Federico Abrazaldo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the supreme penalty of death and to indemnify the heirs of the deceased Delfin Guban the amount of P50,000.00 as indemnity and P27,000.00 as actual damages, plus costs.

In the Information dated August 3, 1995 filed with the trial court, accused-appellant was charged with the crime of murder committed as follows:

“That on or about July 15, 1995 in the evening at barangay Pogo, Municipality of Mangaldan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a bolo, with intent to kill, treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously stabbed DELFIN GUBAN Y GUINTO inflicting upon him a stab wound which caused his death to the damage and prejudice of his heirs.

“CONTRARY to Art. 248, Revised Penal Code, as amended by R.A. 7659.”[2]

Upon arraignment, accused-appellant entered a plea of not guilty.[3] Forthwith, trial on the merits ensued. The prosecution presented as its witnesses Rosendo Fajardo, SPO1 Ramie Petrache, SP02 Roberto Fernandez, Dr. Alberto Gonzales and Gregorio Guban. Accused-appellant and his sister, Marites Abrazaldo, took the witness stand for the defense.

The facts of the case as presented by the prosecution witnesses are as follows:

On July 15, 1995, at about 10:00 o’clock in the evening, at Barangay Pogo, Mangaldan, Pangasinan, accused-appellant, then intoxicated,[4] attempted to hack his uncle, Bernabe Quinto, but instead, hit the post of the latter’s house.[5] The incident was reported to the barangay authorities, prompting Delfin Guban, Rosendo Fajardo, Sr., Alejandro Loceste (all are members of the barangay tanod), and Cesar Manaois to rush to the scene. Upon reaching the place, Fajardo heard accused-appellant shouting at his uncle, “I will kill you!” Thereafter, he saw accused-appellant coming out of Quinto’s house with blood oozing from his forehead.[6] At that time, the place was well lighted by a fluorescent lamp. Guban tried to assist accused-appellant. However, for unknown reason, accused-appellant and Guban shouted at each other and grappled “face to face.” Accused-appellant pulled out his knife, stabbed Guban at the abdomen[7] and ran away. When Fajardo got hold of Guban, the latter said, “I was stabbed by Peding Abrazaldo.”[8] Fajardo, together with the other barangay tanod, rushed Guban to the Gov. Teofilo Sison Memorial Hospital where he was operated by Dr. Alberto Gonzales, a Medical Officer III. But after a few hours, Guban died. Dr. Gonzales issued a Medico-Legal Certificate stating that the cause of death was “stab

wound, epigastrium, massive hemothorax right.”[9]

Gregorio Guban, the victim’s father, testified that he was the one who spent for his son’s funeral expenses. For the burial, he spent P10,000.00;[10] for the 10-day funeral wake, P10,000.00;[11] for the 9th day novena, P3,000.00;[12] and for the hospitalization, P4,000.00,[13] or a total of P27,000.00.

On July 16, 1995, Fajardo learned that the knife used by accused-appellant in stabbing Guban was in Salay, Pangasinan. Together with SPO2 Roberto Fernandez, Fajardo went to the house of Francisca Velasquez, accused-appellant’s aunt, and recovered the knife. [14]

Invoking self-defense, accused-appellant presented a different version. On July 15, 1995 at about 10:00 in the evening, he was making fans inside his house at Barangay Pogo, Mangaldan, Pangasinan.[15] His wife Lydia and children Mary Jane, Melvin and Christelle were with him. Suddenly, Delfin Guban, who was then drunk, went to his house and shouted at him, saying, “Get out Feding I will kill you!”[16] When accused-appellant went out, Guban hit him with an iron pipe. Accused-appellant ran towards his house and got his two children. Guban, now armed with a knife, followed him and they grappled for its possession. In the course thereof, both fell down.[17] It was then that the knife held by Guban accidentally hit him. Accused-appellant did not know which part of Guban’s body was hit. Thereafter, he got the knife in order to surrender it to the police.[18]

Marites Abrazaldo testified that accused-appellant is his brother.[19] On July 15, 1992, at about 6:00 in the evening, accused-appellant, Guban and Juan Quinto were engaged in a “drinking spree.”[20] At about 10:00 o’clock in that evening, accused-appellant caused trouble at the house of his uncle, Bernabe Quinto.[21] He attempted to hack his uncle, but instead hit the post of the latter’s house.[22] While running away from his uncle’s place, he bumped an artesian well, causing a wound on his forehead.[23] Afterwards, accused-appellant killed Guban.[24]

On November 15, 1995, the trial court rendered a Decision, the decretal portion of which reads:

“WHEREFORE, premises considered, the Court finds accused Federico Abrazaldo @ Peding guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, as amended by Republic 7659, and in view of the presence of the aggravating circumstances that the crime was committed while the public authorities were engaged in the discharge of their duties and that the crime was committed at nighttime, which aggravating circumstances are not offset by any mitigating circumstance, accused Federico Abrazaldo is hereby sentenced to suffer the penalty of Death.

“Accused Federico Abrazaldo is ordered to pay an indemnity of P50,000.00 to the heirs of the deceased Delfin Guban. Accused is also ordered to pay the heirs of the deceased Delfin Guban the total sum of P27,000.00 as actual expenses, plus costs.

“SO ORDERED.”

In appreciating treachery and the aggravating circumstances under paragraphs (5) and (6) of Article 14,[25] Revised Penal Code, the trial court held:

“We now come to the issue of whether or not evident premeditation was present. The prosecution’s evidence is wanting on this point. However, there is no question that there was treachery as the accused embraced Delfin Guban and suddenly stabbed him with a knife. The victim was not in a position to defend himself at the time of the attack. The deceased was stabbed without any warning. He was given no chance to defend himself. Treachery, therefore, qualifies the killing of the victim and raises it to the category of murder.

“The prosecution has established thru the testimony of Gregorio Guban that at the time of the incident on July 15, 1995, the members of the barangay tanod, namely: Rosendo Fajardo, Sr., Delfin Guban and Alfredo

Laceste were performing their duties as members of the barangay tanod. (See p. 6 tsn September 18, 1995). This is an aggravating circumstance under paragraph 5, Article 14 of the Revised Penal Code. The members of the barangay tanod who are public authorities were engaged in the discharge of their duties at the time of the stabbing incident. Besides, the incident was committed during nighttime, that was 10:00 in the evening. Accused took advantage of the darkness of the night for the successful consummation of his plan to kill Delfin Guban.”

Accused-appellant, in his Appellant’s Brief, ascribes to the trial court the following errors:

“I

THE HONORABLE TRIAL COURT ERRED IN NOT APPRECIATING THE CLAIM OF SELF-DEFENSE BY THE ACCUSED TAKING INTO CONSIDERATION THE CIRCUMSTANCE OF THE CASE.

II

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE RECOVERY OF THE ALLEGED WEAPON USED IN STABBING VICTIM AT THE HOUSE OF THE AUNT OF ACCUSED BOLSTERED THE CASE AGAINST HIM DESPITE LACK OF SUFFICIENT EVIDENCE TO PROVE ITS VERACITY.

III

THE HONORABLE TRIAL COURT ERRED IN APPRECIATING THE TESTIMONY EXTRACTED BY THE PROSECUTION FROM DEFENSE WITNESS MARITESS ABRAZALDO WHICH HAD NO SUFFICIENT BASIS AT ALL.

IV

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT TREACHERY ATTENDED THE STABBING OF THE VICTIM WITHOUT SUFFICIENT BASIS TO PROVE THE SAME.

V

THE HONORABLE TRIAL COURT ERRED IN ASSUMING THAT ACCUSED-APPELLANT TOOK ADVANTAGE OF NIGHTTIME IN CONSUMING THE ACT.

VI

THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE CHARGE AGAINST ACCUSED-APPELLANT IS AGGRAVATED BY THE FACT THAT THE VICTIM WAS IN THE PERFORMANCE OF HIS DUTY.”

The Solicitor General, in the Appellee’s Brief, asserts that in pleading self-defense, accused-appellant admitted he killed the victim and, therefore, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Moreover, accused-appellant’s version of the incident is completely contradicted by the testimony of his sister. Also, the aggravating circumstance, under par. (5) of Article 14, Revised Penal Code, was clearly established because during the incident, Guban, as the Assistant Chief Tanod, was on duty and engaged in the maintenance of peace and order.

The Solicitor General though agrees with accused-appellant that there was no treachery. Evidence shows that he and Guban shouted at each other and struggled “face to face” before the stabbing incident. Thus, the assault was not sudden. Likewise, the Solicitor General is convinced that accused-appellant did not purposely and deliberately seek nighttime to perpetrate the commission of the crime.

Consistent is the jurisprudence that where self-defense is invoked, it is incumbent upon the accused to prove by clear and convincing evidence that (1) he is not the unlawful aggressor; (2) there was lack of sufficient provocation on his part; and (3) he employed reasonable means to prevent and repel an aggression. On appeal, the burden becomes even more difficult as the accused must show that the court below committed reversible error in

appreciating the evidence.[26]

Accused-appellant miserably failed to discharge the burden. To show that he was not the unlawful aggressor, he testified that it was Guban who went to his house, threatened to kill him,[27] hit him with an iron pipe,[28] and attacked him with a knife.[29] We quote accused-appellant's testimony, thus:

“ATTY. CAMPOS:

X X X X X X

Q

You said a while ago that on July 15, 1995 at about 10:00 in the evening you were in your house engaging in fan making, do you know of any unusual incident that happened during that time?

A

Delfin Guban came to my house and he was under the influence of liquor and he shouted at me, sir.

Q

And what did Delfin Guban shout at you?

A

He said, “Get out Feding I will kill you.”

Q

After this Delfin Guban shouted at you, what happened next?

A

When I went out of the house, I was already there infront of the house then he hit me, sir.

Q

You said Delfin Guban hit you, what instrument did he use in hitting you?

A

He hit me with a pipe , sir.

X X X X X X

Q

After Delfin Guban hit you with that pipe, what happened next?

A

I ran towards my house inside, then got my two children while Delfin Guban followed me inside my house, sir.

Q

When Delfin Guban followed you inside your house, what happened again?

A

He was holding a knife and we grappled and during that time both of us fell down, sir.

Q

When you grappled with Delfin Guban, who was holding a knife, what again happened?

A

We grappled for the possession of the knife then we fell down and the knife he was then holding pointed towards him and hit him. x x x.[30]" (Emphasis supplied)

The foregoing testimony bears not only the vice of falsity but also isolation. It is uncorroborated and even opposed by Marites, accused-appellant's own sister and lone witness. Contrary to his testimony that Guban hit him on his forehead with a pipe, Marites declared that accused-appellant sustained the wound on his forehead when he accidentally bumped an artesian well. Instead of fortifying her brother's defense, she virtually affirmed the prosecution's story by testifying that he created trouble in their compound, attempted to kill his uncle Bernabe Quinto and killed Guban. [31]

Ingrained in our jurisprudence is the doctrine that the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but in itself is extremely doubtful.[32] In the present case, accused-appellant's tendency to invoke a melange of defenses renders his testimony dubious. While he admitted the commission of the crime in order to preserve his own life, he maintained that Guban accidentally stabbed himself. This shows ambivalence. Accident presupposes lack of intention to stab the victim, while self-defense presumes voluntariness, induced only by necessity.[33] Indeed, if there is truth to either of his claim, his natural course of action was to assist the victim, or at the very least, report the incident to the authorities. Certainly, the justifying circumstance of self-defense[34] or the exempting circumstance of accident cannot be appreciated considering accused-appellant's flight from the crime scene and his failure to inform the authorities of the incident. Furthermore, that he did not surrender the knife to the authorities is inconsistent with a clean conscience and, instead, indicates his culpability of the crime charged.[35]

In a last-ditch effort to exculpate himself, accused-appellant assails Fajardo's testimony as tainted with inconsistencies and is "contrary to the normal course." Accused-appellant cannot invoke these alleged weaknesses in view of the principle that one who pleads self-defense must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Even if the prosecution's evidence is weak, it is still credible considering accused-appellant's admission that he killed the victim. It bears emphasis that Fajardo's testimony clearly points to him as the culprit. Not only did he pull out his knife, stabbed Guban[36] and ran

away.[37] Fajardo also reiterated what Guban uttered to him, i.e., “I was stabbed by Feding Abrazaldo.”[38]

As Guban had succumbed to death and his opportunity to divulge the truth on his demise had been lost, we cannot but cast a quizzical glance on accused-appellant’s uncorroborated testimony. More so, when such testimony was contradicted by his own witness who happened to be his sister. Standing alone against the testimonies of the prosecution witnesses, accused-appellant’s own account of the killing must necessarily fail. We hold that his guilt has been established to a degree of moral certainty. The trial court did not err in relying on the testimony of Fajardo, an eyewitness. Time and again, we have said that we will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears on record some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood.[39]

However, we find that the trial court erred in concluding that treachery attended the commission of the crime. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from defense which the offended party might make. Treachery cannot be presumed, it must be proved by clear and convincing evidence or as conclusively as the killing itself. Fajardo testified that accused-appellant and Guban were “grappling with each other” and that prior to the stabbing, they were shouting at each other. In this scenario, it cannot be said that Guban was unprepared to put up a defense, such as hitting accused-appellant, or that the latter’s assault was sudden. We quote in verbatim the testimony of Fajardo, thus:

“ATTY. CAMPOS:

Q

They were not then fighting?

A

They were grappling with each other and then he stabbed Delfin Guban.

x x x x x

Q

In fact, they were shouting each other?

A

Yes, sir.

Q

What were they shouting against another?

A

I could no longer understand because it was already night.

Q

But they were shouting loudly, am I correct?

A

Yes and there were many people.”[40] (Emphasis supplied)

The trial court likewise erred in appreciating the aggravating circumstance of nocturnity or nighttime. For nocturnity to be properly appreciated, it must be shown that it facilitated the commission of the crime and that it was purposely sought for by the offender. By and itself, nighttime is not an aggravating circumstance.[41] In the instant case, no sufficient evidence was offered to prove that accused-appellant deliberately sought the cover of darkness to accomplish his criminal design. In fact, Fajardo testified that there was a fluorescent lamp sufficiently illuminating the scene of the crime.[42]

Neither can we sustain the trial court’s finding that the aggravating circumstance under paragraph (5) of Article 14, Revised Penal Code, i.e., that the crime was committed in a place where public authorities were engaged in the discharge of their duties, is present. It must be pointed out that this aggravating circumstance is based on the greater perversity of the offender, as shown by the place of the commission of the crime, which must be respected.[43] In this case, the crime was committed at the compound of the accused-appellant where no public function was being held. The arrival of the barangay authorities was precisely due to the trouble that had commenced prior to the stabbing incident. Clearly, the said aggravating circumstance cannot be considered. Moreover, under the present Rules,[44] aggravating circumstances must be alleged, otherwise, they cannot be appreciated. Being favorable to the accused, this new procedure may be given retroactive effect.[45] Except treachery, the other aggravating circumstances mentioned have not been alleged in the Information.

In the absence of any circumstance that would qualify the crime at bar to murder, accused-appellant can only be held liable for homicide defined and penalized under Article 249 of the Revised Penal Code. The prescribed penalty is reclusion temporal. Considering that there was neither mitigating nor aggravating circumstance that attended the commission of the crime, the penalty has to be imposed in its medium period, ranging from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the provisions of the Indeterminate Sentence Law, he should be sentenced to an indeterminate penalty, the minimum of which is within the range of prision mayor, or 6 years and 1 day to 12 years. The maximum thereof is within the range of reclusion temporal in its medium period, which is 14 years, 8 months and 1 day to 17 years and 4 months. [46]

On the trial court’s award of actual damages in the amount of P27,000.00, we find the same to be unsubstantiated. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[47] In the case at bar, the prosecution failed to present any receipt to prove the claim for expenses incurred.[48] Gregorio Guban, the father of the victim, who shouldered the expenses for the wake and burial failed to submit receipts to show the amount of such expenses.[49] However, as the heirs of Guban did actually incur funeral expenses, we are justified in awarding P25,000.00, not for purposes of indemnification, but by way of temperate damages.[50]

Thus, we now hold that where the amount of the actual damages cannot be determined because of the absence of receipts to prove the same, but it is shown that the heirs are entitled thereto, temperate damages may be awarded. Such temperate damages, taking into account the current jurisprudence fixing the indemnity for death at P 50,000.00, should be one-half thereof, or P25,000.00. This makes temperate damages equal to the award of

exemplary damages, which is likewise fixed at P25,000.00 in cases where its award is justified.

WHEREFORE, the assailed judgment in Criminal Case No. 95-01052-D is AFFIRMED with MODIFICATION. Accused- appellant Federico Abrazaldo is declared guilty beyond reasonable doubt of homicide defined and penalized under Article 249 of the Revised Penal Code and is sentenced to suffer an indeterminate penalty of six (6) years and 1 day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum. He is ordered to pay the heirs of the late Delfin Guban P50,000.00 as indemnity and P25,000.00 as temperate damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio- Morales, Callejo, Sr., and Azcuna, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] Penned by Judge Crispin C. Laron. Rollo, at 63-69.

[2] Records, at 1.

[3] Id., at 21.

[4] TSN, September 11, 1995, at 13.

[5] Id., at 7.

[6] Id., at 8.

[7] Id., at 5 and 22.

[8] Id., at 29.

[9] Records, at 52; TSN, September 18, 1995, at 14-17.

[10] TSN, September 18, 1995, at 4.

[11] Id., at 5.

[12] Id.

[13] Id.

[14] TSN, September 14, 1995, at 16-20.

[15] TSN, September 20, 1995, at 4.

[16] Id., at 5.

[17] Id., at 6.

[18] Id., at 7.

[19] TSN, October 6, 1995, at 3-A.

[20] Id., at 3-B.

[21] Id., at 4.

[22] Id., at 7.

[23] Id., at 7.

[24] Id., at 5.

[25] ART. 14. Aggravating circumstances. – The following are aggravating circumstances:

x x x x x x x x

- That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.

- That the crime be committed in the nighttime, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

[26] People vs. Saure, G.R. No. 135848, March 12, 2002.

[27] TSN, September 20, 1995, at 5.

[28] Id., at 6.

[29] Id., at 6-7.

[30] Id., at 5-7.

[31] TSN, October 6, 1995, at 3-7.

[32] Ebajan vs. Court of Appeals, 170 SCRA 178 (1989); People vs. Orongan, 168 SCRA 586 (1988).

[33] People vs. Carlos, 115 Phil. 704, 706 (1962).

[34] People vs. Gerolaga, 263 SCRA 143 (1997) citing People vs. Rivera, 221 SCRA 647 (1993).

[35] People vs. Figuracion, 362 SCRA 606 (2001).

[36] TSN, September 11, 1995, at 5 and 22.

[37] Id., at 22-24.

[38] Id., at 29.

[39] People vs. Pacantara, G.R. No. 140896, May 7, 2002.

[40] TSN, September 11, 1995, at 22-23.

[41] People vs. Moreno, G.R. No. 140033, January 25, 2002.

[42] TSN, September 11, 1995, at 9.

[43] Reyes, The Revised Penal Code, Book I, 1993, at 350.

[44] Section 8, Rule 110 of the 2000 Revised Rules on Criminal Procedure.

[45] People vs. Luayon, 260 SCRA 739 (1996); People vs. Ramirez, G.R. No. 136094, April 20, 2001; People vs. Baroy, G.R. Nos. 137520-22, May 9, 2002.

[46] People vs. Calago, G.R. No. 141122, April 22, 2002; People vs. Jamiro, 279 SCRA 290 (1997).

[47] *People vs. Acosta*, G.R. No. 140386, November 29, 2001; *People vs. Suelto*, 325 SCRA 41 (2000); *People vs. Samolde*, 336 SCRA 632 (2000).

[48] *People vs. Manlansing*, G.R. No. 131736, March 11, 2002.

[49] TSN, September 18, 1995, at 4-5.

[50] *People vs. Manlansing*, *supra*; *People vs. Anivado*, 348 SCRA 74, 94 (2000), citing *People vs. Gopio*, 346 SCRA 408, 431 (2000); *People vs. Carillo*, 333 SCRA 338, 353 (2000), citing *Sumalpong vs. Court of Appeals*, 268 SCRA 764, 775 (1997).

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