

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PATROLMAN DOMINGO BELBES, ACCUSED-APPELLANT.

G.R. No. 124670. June 21, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before the Regional Trial Court of Tabaco, Albay, Branch 18, Patrolman Domingo Belbes stood charged of Murder. The information against him reads:

"That on or about the 16th of February, 1990 at 9:00 o'clock in the evening, more or less, inside the campus of Pili National High School, at Barangay Pili, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, taking advantage of nighttime, employing means to insure or afford impunity, with the use of high powered firearm, and with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly and without any warning, attack, fire and shoot successively with an armalite rifle (M-16) FERNANDO B. BATALLER while the latter was intoxicated, thereby hitting and inflicting upon him multiple serious and mortal wounds on his head, at the right lower face, the chest (front) at the left antero lateral approximately 5 cm. below but lateral to the left nipple, at the left lateral waistline, thereby lacerating the liver, hitting the stomach portions of the large and small intestines and lower vertebrae, and the chest (back) at the middle back and another at the left back, lateral level of the lower rib, which caused Fernando B. Bataller's direct and instantaneous death, to the damage and prejudice of his legal heirs.

ACTS CONTRARY TO LAW."^[1]

When arraigned, he pleaded not guilty.

The facts established during trial by the prosecution is summarized by the appellee in its brief, thus:

"In the evening of February 16, 1990, appellant Pat. Domingo Belbes and Pat. Jose Pabon were assigned by the Bacacay Station Commander to maintain peace and order at the Junior and Senior Prom of Pili Barangay High School, Pili, Bacacay, Albay.

Around 9:00 p.m. while Teacher-In-Charge Mila Ulanca, appellant, Pat. Pabon and Elmo Bes were watching the dance, two students, Riselle Banares and Juliana Basaysay, approached Mrs. Ulanca and said "Mam, it seems that there is somebody making trouble." Appellant and Pat. Pabon, armed with an armalite rifle and a .38 caliber revolver, respectively, responded forthwith. Moments after the two police officers left, bursts of gunfire-- "Rat-tat-tat-tat-tat" filled the air. Fernando Bataller, a graduating student of Pili Barangay High School, was hit on different parts of his body and died.

Moments before the gruesome incident, Fernando Bataller, then drunk, was in the company of Carlito Bataller and Rosalio Belista. While Fernando was vomiting and holding on to the bamboo wall of the school's temporary building, the bamboo splits broke. At this instance, appellant and Pat. Pabon appeared. Without warning, appellant fired his gun. Fernando slumped on the ground, bathed with his own blood. Appellant and Pat. Pabon fled from the crime scene.

Fernando was pronounced dead on arrival at the hospital. As shown in the autopsy report, Fernando suffered the following gunshot wounds: (1) head, located at the right lower face, skin, muscles, blood vessels, nerves, bone torn away; (2) chest (front, located at left, antero lateral approximately 5 cm. below but lateral to the left nipple, another gunshot wound on the same location with tattooing located at left lateral waistline; (3) chest (back) located at the middle back at the level of the lowest rib, skin and superficial muscles torn away, another gunshot wound located at the left back, lateral level of the lowest rib, with tattooing. (Citations omitted)"[2]

In his defense, the accused-appellant presented his version of the fatal incident, summed up by the trial court as follows:

"The accused, Domingo Belbes in his defense testified that he was at Pili Barangay High School with P/Cpl. Jose Pabon because they were detailed by their Station Commander. x x x At 9:00 p.m. two female students reported to them and Mrs. Ulanca that somebody was making trouble at the back of the temporary building. They were requested by Mrs. Ulanca to see what happened and they went to the place. There they came upon somebody who was making trouble and destroying the wall of the temporary building. He came to know that it was Fernando Bataller. Fernando Bataller had some companions, Carlito Bataller and certain Belista. Fernando Bataller was more than 20 years old at that time and Carlito was about Fernando's age. He saw Fernando destroying the wall of the temporary building which was made of bamboo splits. Pabon was in front of him. The two companions were prevailing upon Fernando. Fernando was drunk or a little bit tipsy. He was not vomiting but he smelled of wine. They approached Fernando and identified themselves as policemen. Fernando did not mind them. Fernando stabbed Pabon with a knife. Belbes knew because he saw the glint of the blade when the thrust was made on Pabon. Pabon and Bataller were about one (1) meter away from each other. Pabon was not hit, for he was able to move backward. Fernando made two thrusts on Pabon. After Pabon retreated because of the knife thrusts, he (Belbes) was also stabbed by Fernando. He was hit on his lower left shoulder. He was able to hold Fernando's hand because he wanted to get the knife from him. His firearm was slung on his shoulder. Fernando was able to free himself. Fernando made another thrust and Belbes moved to his left. Then he made a warning shot. After the warning shot, Fernando suddenly grabbed his firearm. Belista was quite aggressive at that moment, while Carlito wanted to kick him. Fernando was able to hold the barrel of the armalite. They struggled with each other and the gun went off considering that his armalite was semi-automatic, with one squeeze of the trigger one shot came out. During the process of grappling for the armalite he could not recall how many shots came out. When his service armalite went off he saw Fernando fall to the ground. When Fernando fell, he took the knife from his hand. The people gathered around them. They asked that Fernando be brought to the hospital. After one hour, the police mobile car arrived. They proceeded to the Police Station. There they turned over the knife to the Desk Officer. The knife is now with the Provincial Command."[3]

Defense witness Jose Pabon, also a policeman, who was present when the incident happened, corroborated the testimony of the appellant. However, on cross-examination, Pabon belied the fact that the appellant fired a warning shot. Pabon likewise failed to mention anything about aggression on the part of the companions of the deceased, namely Carlito Bataller and Rosalio Belista. He only recalled that said companions ganged up on Belbes after he shot the deceased.

Finding the defense weak, while the evidence for the prosecution sufficiently strong, the trial court convicted the appellant of murder and sentenced him to reclusion perpetua.

In this appeal, counsel de oficio raised one issue:

WAS THE TRIAL [Court] CORRECT IN HOLDING ACCUSED-APPELLANT GUILTY OF MURDER?[4]

We shall now consider this matter as well as the more basic issues of self-defense claimed by appellant and the credibility of the witness for the prosecution. Appellant policeman admits firing the fatal gunshots that hit the deceased student. But he claims that he did so in self-defense. He contends that he was only performing his

official functions when he responded in the course of police duties to the information that somebody was making trouble and disturbing the peace. Being in charge of maintaining peace and order within the vicinity, he ascertained the veracity of the information given by the students concerned. He asserts that in the absence of intent and voluntariness, he cannot be faulted for the death of the deceased.

At the outset, we note that appellant questions the credibility of the sole eye-witness for the prosecution, Carlito Bataller. He states that Carlito is the cousin and friend of the deceased. In his view, Carlito had strong motive to falsely testify against him. Moreover, appellant says that Carlito kindled some moral guilt because he contributed to the sudden death of his cousin. Appellant alleges that if only Carlito had prevailed over Fernando (instead of tolerating the hostility of the deceased), he could have prevented the shooting incident.

Regrettably, appellant offers no material evidence to sufficiently support his claim of self-defense on the face of mortal danger while on police duty. The cross-examination of Carlito Bataller did not bear out his averments of fraternal bias and psychological guilt or moral taint in Carlito's testimony. The testimony of the single witness, if positive and clear, is sufficient to sustain a judgment of conviction, even in a charge for murder.[5] Moreover, when the issue boils down to the credibility of witnesses, the findings of the trial court deserve great respect since it is in a better position to observe the demeanor of the witnesses while testifying in court, and to discern its dimensions, both verbal and non-verbal.[6] The relationship of a witness to the victim does not necessarily diminish the former's credibility.[7]

It is a settled rule that the findings and conclusions of the trial court on the credibility of a witness deserve respect because it is in a better position to determine whether the witness was telling the truth or not, having observed the demeanor of the witness while testifying on the witness stand.[8] In the case at bar, there appears to be no cogent reason why we should not adhere to this rule.

Where the accused owns up to killing the victim in self-defense, the burden of evidence shifts to him. He must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of a relative or a stranger.[9] To prove self-defense, the accused must show with 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 or repel the aggression. Self-defense, like alibi, is a defense which can easily be concocted. It is well settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing." [10]

Appellant testified that upon responding to the report of two students, he and Patrolman Pabon, saw Fernando Bataller destroying the bamboo wall of the school's temporary building. Fernando appeared to be drunk and a little bit tipsy. They approached Fernando and identified themselves as policemen but the former ignored them. Instead, Fernando lunged with a knife at Patrolman Pabon but the latter avoided the thrust. Afterwards, Fernando also stabbed the appellant and hit his left shoulder. As another thrust was coming, appellant claims he fired a warning shot. Fernando grabbed the armalite and they struggled until the gun went off hitting Fernando, according to appellant.

We have serious questions on accused-appellant's claim of self-defense, on his part, against the alleged aggressiveness of the deceased student. First, why was the knife allegedly used by the deceased mis-handled? It was not even subjected to fingerprinting. Second, why was the wound on appellant's shoulder medically examined only after the lapse of more than twenty-one hours? Was it possibly self-inflicted? According to the doctor who

examined him, Dr. Evelyn Amador, it was a possibility.[11] Lastly, as observed by the trial court, if it was true that they grappled face to face with each other, why was the victim hit sideways, as testified to by Amador?

The time factor here appears significant. Mrs. Mila Ulanca testified that it only took about six seconds from the time Patrolman Belbes left his seat until she heard the burst of gunshots.[12] This testimony is not contradicted or rebutted.

Thus, appellant's claim of self-defense could not prosper. The evidence on record, however, reveals an incomplete justifying circumstance defined in Article 11, paragraph number 5 of the Revised Penal Code.[13] A person incurs no criminal liability when he acts in the fulfillment of a duty or in the lawful exercise of a right or office. But we must stress there are two requisites for this justifying circumstance: (a) that the offender acted in the performance of a duty or in the lawful exercise of a duty or in the lawful exercise of a right; and (b) that the injury or offense committed be the necessary consequence of the due performance of such right or office.[14] In the instant case, only the first requisite is present; admittedly appellant acted in the performance of his duty. However, the second requisite is lacking, for the killing need not be a necessary consequence of the performance of his duty. His duty is to maintain peace and order during the Junior and Senior Prom. But he exceeded such duty, in our view, when he fired his armalite without warning. No doubt, the concept of mitigating circumstances is founded on leniency in favor of an accused who has shown less perversity in the commission of an offense.[15] Though his protestation of innocence is unavailing, his offense could only be characterized as homicide, not murder, as hereafter shown.

On one hand, treachery did not attend the commission of the crime as to rule out murder. Treachery cannot be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself. For the same to be considered as a qualifying circumstance, two conditions must concur: (a) the employment of means, method or manner of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given the latter to defend himself or to retaliate; and (b) the means, method or manner of execution were deliberately or consciously adopted by the offender.[16] There is no showing that the shooting was premeditated or that appellant, in shooting the victim, employed means, methods or forms to ensure its execution, without risk to himself arising from the defense which the offended victim might make. Likewise, mere suddenness of the attack does not necessarily imply treachery.[17]

On the other hand, the offense is definitely not reckless imprudence resulting in homicide because the shooting was intentional.[18] Illustrations of reckless imprudence resulting in homicide are: (1) exhibiting a loaded revolver to a friend, who was killed by the accidental discharge brought about by negligent handling;[19] or (2) discharging a firearm from the window of one's house and killing a neighbor who just at the moment leaned over the balcony front;[20] or (3) where the defendant, to stop a fist fight, fired his .45 caliber pistol twice in the air, and, as the bout continued, he fired another shot at the ground, but the bullet ricocheted and hit a bystander who died soon thereafter.[21] In this case, appellant intended to fire AT the victim, and in fact hit ONLY the victim.

We conclude that appellant is guilty only of homicide, mitigated by the incomplete justifying circumstance of fulfillment of duty. The penalty for homicide is reclusion temporal. There being one mitigating circumstance, the maximum of the penalty should be reclusion temporal in its minimum period, which is 12 years and 1 day to 14 years and 8 months. Applying the indeterminate sentence law, the minimum of said penalty should be taken from prision mayor.

WHEREFORE, the decision of the trial court convicting appellant Domingo Belbes of the crime of murder is hereby MODIFIED. Appellant is found guilty of the crime of homicide and sentenced to an indeterminate penalty of eight (8) years of prision mayor minimum, as minimum, to fourteen (14) years of reclusion temporal minimum, as maximum. He is also ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity and

P20,000.00 as moral damages, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 33.

[2] Id. at 130-133.

[3] Id. at 41-42.

[4] Id. at 78.

[5] *People v. Navarro*, 297 SCRA 331, 348-349 (1998) citing *People v. Hayahay et. al.*, 279 SCRA 567 (1997); *People v. Tuvilla*, 259 SCRA 1 (1996); *People v. Panganiban*, 241 SCRA 91 (1995)

[6] *People v. Uycoque*, 246 SCRA 769, 779 (1995)

[7] Ibid.

[8] *People v. Manalo*, 229 SCRA 479, 485 (1994)

[9] *People v. Gutual*, 254 SCRA 37, 45 (1996)

[10] *People v. Pay-an*, 84 SCRA 353, 362 (1978)

[11] TSN, July 24, 1995, p. 11.

[12] TSN, May 6, 1992, p. 8.

[13] Art. 11 of the Revised Penal Code states: Justifying circumstances.-- x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

[14] *People v. Oanis*, 74 Phil. 257, 262-263 (1943)

[15] *People v. Santos*, 255 SCRA 309, 311 (1996)

[16] *People v. De Leon*, 262 SCRA 446, 450 (1996)

[17] Ibid.

[18] Article 365, Revised Penal Code.

[19] Aquino, Revised Penal Code, Vol. III, p. 633.

[20] Ibid., citing *People v. Reodique*, 32 Phil. 458 (1915)

[21] Id. at 635, citing *People v. Nocum*, 77 Phil. 1018 (1947); *Lampa v. People*, 73 Phil. 82 (1941)

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