

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MERLINDO BELAJE, ALIAS “MERLINDO OR MERLIN,” ACCUSED-APPELLANT.

G.R. No. 125331. November 23, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision of the Regional Trial Court Tacloban City, Branch 8,[1] in Criminal Case No. 94-12-524 sentencing appellant Merlindo Belaje to suffer the penalty of reclusion perpetua for the crime of murder.

The conviction of the appellant stemmed from an information reading as follows:

"That on or about the 24[th]day of June, 1994, in the Municipality of Babatngon, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one BONIFACIO CAYSIDO with a "pisaw" with which said accused had provided himself for the purpose, thereby causing and inflicting upon the said Bonifacio Caysido a fatal wound on his body which caused his death shortly thereafter.

At his arraignment, appellant Merlindo Belaje pleaded not guilty to the offense charged.[2] Trial on the merits ensued. The prosecution presented only two witnesses: Rogelio Caysido and Victoria Caysido, the victim's son and wife, respectively. The testimonies of said prosecution witnesses may be summed as follows:

Rogelio Caysido, the 21 year old son of the victim, testified that the appellant stabbed his father with a knife locally known as pisaw, at their house in Barangay San Ricardo, Babatngon, Leyte, on the evening of 24 June 1994. According to Rogelio, he knew appellant as the latter was their neighbor, whose house was only a meter away from theirs.[3] That night, appellant was in their house drinking. Rogelio witnessed the stabbing of his father as he was 3 to 4 meters away when the fatal incident took place. Appellant then fled to the house of his sister-in-law. Rogelio cried for help and was aided by several men from their barangay. His father was then rushed to the St. Paul's Hospital, where eleven (11) days later he succumbed to the mortal wound received.[4]

Victoria Caysido, the victim's wife, testified that on June 24, 1994, the Caysido family was at home celebrating the feast day of St. John.[5] According to Victoria, appellant stabbed her husband at the yard of their house and that aside from her husband, the appellant and herself, there were no other people around when the incident happened.[6] On cross examination, however, she admitted that she did not witness the stabbing incident,[7] and that she was actually inside the house when someone informed her that her husband had just been stabbed in their own yard. As a consequence of her husband's death, she was left feeling pain, which in terms of moral damages, she could quantify in the amount of P50,000.00. Her husband's hospital bills amounted to P80,000.00, with P15,000.00 still left unpaid when she testified.[8] Because of the unpaid hospital bills, Victoria was unable to secure her husband's death certificate.[9]

The prosecution submitted in evidence the medico-legal report issued by Dr. Florentino Merins. Despite the absence of the testimony of a medico-legal, the contents of the same were admitted by the defense without objection. The medical certificate reveals that Ventura "expired intra operative" on July 5, 1994 or while he was undergoing such medical procedures as exploratory laparotomy and gastrorrhaphy (sic). Bonifacio sustained a stab wound that penetrated his thoraco-abdominal cavity, diaphragm, "tail of the pancreas colon (splenic flexure)," and the stomach where there was massive spillage of gastric and colonic content. He also had an incised wound in his arm.[10]

Appellant took the witness stand and claimed self-defense. Appellant, a thirty-four year old farmer, testified that on June 24, 1994, at around 9:00 in the evening, he was headed home when he decided to pass by the Caysido household. He went there to ask Bonifacio Caysido to "tune their karaoke softly," to which the latter acceded. He then proceeded home. At around 11:00 that evening, the Caysidos' karaoke was once again blaring. Appellant instructed his son to go next door and request that the volume be toned down, as he had to wake up early. However, instead of granting the request, the Caysidos turned the karaoke's volume full blast. Appellant also heard Victoria shouting that he (appellant) was just envious because he did not have a karaoke. Appellant decided to go the Caysidos to ask them to reduce the volume of the karaoke.

Appellant did not reach the Caysido household as he saw the victim Bonifacio and his son-in-law Danilo Josep by the road on their way to the fishpond. He approached Bonifacio and requested him to please tone down the volume of the karaoke. However, Bonifacio slapped both his ears and uttered: "You don't have the right to do the same (sic)." The assault caused appellant's "sight to dim".[11] Just then, Danilo tried to stab appellant with a knife known as "sipol" but appellant was able to take hold of the weapon. Danilo thus ran away. Bonifacio, then tried to stab him but appellant succeeded in stabbing Bonifacio's upper left arm. The same thrust hit the latter's abdomen. Appellant, thereafter, ran to the house of Cirilo Aporto around sixty (60) meters away. He just stood in front of Aporto's house until some tanod members told him to go inside the house. That same night he surrendered to the authorities and was detained for four days. He was then released because no complaint was filed against him.[12]

As stated at the outset, the trial court found appellant guilty beyond reasonable doubt of the crime of murder. It held that the justifying circumstance of self-defense could not be appreciated in favor of the appellant as he failed to prove that there was unlawful aggression on the part of the victim. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused MERLINDO BELAJE guilty beyond reasonable doubt of the crime of Murder and appreciating in his favor the mitigating circumstance of voluntary surrender as borne out by the records of the case and taking into account the provisions of the Indeterminate Sentence Law, the Court hereby sentences accused MERLINDO BELAJE to suffer the penalty of Reclusion Perpetua with all the accessory penalties therefor, to pay the widow of the victim P50,000.00 by way of moral damages and P80,000.00 by way of reimbursement of hospital expenses and P50,000.00 by way of indemnity and to pay the costs.

SO ORDERED.

Appellant now comes before this Court seeking a reversal of his conviction and assigns the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE COURT A QUO GRAVELY ERRED IN HOLDING THAT THE ACCUSED-APPELLANT FAILED TO PROVE UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM, HENCE, DISREGARDING HIS DEFENSE OF SELF-DEFENSE.

While appellant pleaded not guilty to the crime charged, he admitted clearly and categorically that he stabbed Bonifacio as an act of self-defense. He disclaimed any legal liability for the act on the ground that his life had been exposed to harm first before he committed the act in defense of himself.[13] In so doing, appellant shifted the burden of proof on himself. As this Court said in *People v. Cario*:

x x x. Where an accused admits killing the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he acted in self-defense; and as the burden of the evidence is thus shifted to him, he must rely on the strength of his own evidence and not on the weakness of the prosecution for, even if the latter were weak, it could not be disbelieved after the accused's open admission of responsibility for the killing.[14]

The elements of self-defense that appellant should prove clearly and convincingly are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression, and (3) lack of sufficient provocation on the part of the person defending himself.[15]

To prove self-defense, appellant presented a sole witness - himself. Hence, the resolution of appellant's guilt or innocence rests much upon the credibility of his testimony. Under the law on evidence, to be credible, testimonial evidence should not only come from the mouth of a credible witness, it should also be credible, reasonable, and in accord with human experience.[16] It should be such that under the common experience and observation of mankind the testimony in question would lead to no other inference than its probability under the circumstances. This holds true especially in cases where there is no test by which to determine its veracity except its conformity to our knowledge, observation and experience.[17]

Appellant declared that when he requested Bonifacio to tone down the volume of the karaoke, the latter allegedly slapped him on the ears. Thereafter, Danilo Joseph (son-in-law of the deceased) tried to stab appellant who grappled with Joseph for possession of the knife. After five (5) minutes of struggle, appellant was able to wrest the knife from Joseph. It was allegedly at this juncture that Bonifacio pulled his own knife and tried to stab appellant who in an act to self-defense fatally struck Bonifacio with the knife that he took away from Joseph. Thus, appellant testified on cross-examination:

Q

You testified on direct examination that you were able to get hold the possession of the knife or sipol as you called it from Danilo Joseph how long did you grapple and got hold the possession of the knife (sic)?

A

About five minutes sir.

Q

And while you were grappling with Danilo Joseph for the possession of the knife, Bonifacio Caysido was within the vicinity?

A

Yes.

Q

And within that five minutes when you were grappling with Danilo Joseph, Bonifacio did not do anything?

A

When I was able to grab the knife known as sipol from Danilo Joseph, Bonifacio delivered a stabbing thrust towards me so that I had to deliver a stabbing thrust in return to Bonifacio.

Q

While within that period while you were grappling with Danilo Joseph, Bonifacio Caysudo (sic) the victim was not able to stab you, as a matter of fact you were not wounded in that incident.

A

No sir, I only said, "kay ano maisog kagud", are you really brave?

Q

So that when you were able to get hold the possession (sic) of the knife of Danilo Joseph you could have ran instead of stabbing Bonifacio because Bonifacio never touched you while you were in the possession of the sipol?

A

He draw his knife too.

Q

Are you trying to impress this court that Bonifacio Caysido draw his knife when you had already in your possession of the knife of Danilo Joseph his son-in-law (sic)?

A

Yes.

Q

But during the five minutes that your were grappling for the possession of the knife of Danilo Joseph, Bonifacio did not stab you?

A

Not yet.

x x x

Q

When you saw Danilo Joseph pulled (sic) out his knife, did it not occur to you to run instead of holding the possession of the knife (sic)?

A

No sir because I could not run I was in between them and the fence. And you were able to get hold the possession (sic) of the knife of Danilo Joseph before Bonifacio Caysido allegedly made a stabbing thrust to you, did it not occur to you to run to avoid the confrontation? After being hit on my head, `as indicated by the witness by meeting his both hands or palms rather on his ears', I lost my right senses.

Q

Who is bigger than you?

A

Danilo Joseph is bigger than I do.

Q

Also in physical built.

A

Yes.

Q

How about you and Bonifacio Caysido who is bigger than you (sic)?

A

I am taller but he was bigger.

Q

And you are trying to impress this court that these two men Danilo Joseph and Bonifacio Caysido were bigger than you in physical built, not both of them with a knife and you were not stabbed by both of them in that incident?

A

They had weapon with them after I was able to hit one of them I ran away.

Q

But it was Danilo Joseph who first ran away.

A

Yes.

Q

And you ran away only after you were able to stab the bigger physical built (sic) Bonifacio Caysido?

A

Yes."^[18]

Appellant's testimony lacks the ring of truth. It is incredible that during the five-minute struggle between appellant and Joseph for possession of the knife, the victim just stood by, doing nothing to help his son-in-law. It was only when appellant, who was tubercular, was able to take hold of the knife, and after Danilo ran away, leaving his father-in-law, when the victim pulled a knife and lunged at appellant. Moreover, since both the victim and his son-in-law were bigger than appellant, it is most unlikely that he could repel their assault and come out unscathed. As correctly assessed by the trial court, human experience dictates that the victim would not have waited until appellant was in possession of Joseph's knife before attempting to attack appellant. If the victim had the intention to harm appellant, the most opportune time to do so would have been when appellant and Joseph were grappling for possession of the latter's knife and appellant was at his weakest.

Whether or not appellant acted in self-defense is essentially a question of fact.[19] Self-defense cannot be justifiably entertained where it is not only uncorroborated by competent evidence but is extremely doubtful.[20] The defense failed to meet the required quantum of proof on the matter, hence, the trial court correctly discredited altogether appellant's self-defense theory. This Court cannot deviate from such finding and conclusion as, on the issue of credibility of witnesses, it accords the highest respect for the findings of the trial court as it is in a better position to decide the question. After all, the trial court heard the witnesses testify and observed their demeanor and deportment. Absent any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, its findings on credibility shall prevail.[21]

We agree with the Solicitor General that the prosecution failed to prove the qualifying circumstances of treachery and evident premeditation. Treachery cannot be presumed. It must be proved by clear and convincing evidence or as conclusively as the killing itself.[22] Similarly, evident premeditation must be clearly proven, established beyond reasonable doubt and based on external acts that are evident, not merely suspected, and which indicate deliberate planning.[23] The evidence presented by the prosecution fails to show the circumstances which would qualify the crime to murder. However, as appellant admitted inflicting the fatal wounds on the victim and at the same time failing to prove his claim of self-defense, appellant shall be held liable for the crime of homicide.

The trial court correctly appreciated the mitigating circumstance of voluntary surrender.[24] Appellant testified that he surrendered to the authorities on the same night that he committed the crime.[25] This claim is supported by defense "Exhibit 2," the police officer's return of service stating that appellant "voluntarily surrendered" to the Babatngon police station at 7:00 a.m. of July 1, 1994 "before the warrant of arrest was issued and served." [26]

Article 249 of the Revised Penal Code penalizes the crime of homicide with reclusion temporal. Considering the presence of the mitigating circumstance of voluntary surrender, the penalty should be applied in its minimum period. Applying the Indeterminate Sentence Law, appellant shall suffer the penalty of prision mayor minimum, as minimum penalty, to reclusion temporal minimum, as maximum penalty.[27]

The trial court correctly awarded civil indemnity in the amount of P50,000.00 as such award is automatically granted to the heirs of the victim without need of any evidence other than the fact of commission of the crime.[28] It also correctly awarded P50,000.00 as moral damages under Art. 2219 (1) of the Civil Code, which the court may award in criminal cases in the exercise of its discretion.[29] Victoria Caysido's claim that she suffered pain as a result of her husband's death[30] is sufficient basis for such an award. Her mental, physical and psychological sufferings that constitute the bases for moral damages may be assumed as the result of the untimely demise of her husband. There is no need for her to go through a "testimonial charade"[31] detailing how she endured such sufferings.

However, the award of P80,000.00 as actual damages cannot be sustained. Allegedly incurred for the hospitalization and interment of the victim, the prosecution failed to substantiate these expenses by competent evidence such as receipts. The award of actual damages cannot rest on the bare allegation of the heirs of the offended party.[32]

WHEREFORE, the decision appealed from finding appellant Merlindo Belaje guilty of murder is MODIFIED. This Court finds him guilty instead of the crime of homicide. Appreciating the mitigating circumstance of voluntary surrender, the Court imposes upon appellant Merlindo Belaje the indeterminate penalty of six (6) years and one (1) day of prision mayor minimum, as minimum, to twelve (12) years and one (1) day of reclusion temporal minimum, as maximum. Further, appellant is ordered to indemnify the heirs of the deceased Bonifacio Caysido P50,000.00 indemnity for death and P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Presided by Judge Walerico B. Butalid.

[2] Records, p. 47.

[3] TSN, April 25, 1995, p. 5.

[4] Id., at 2-5.

[5] TSN, May 2, 1995, p. 4.

[6] Id., at 3.

[7] Id., at 4-5.

[8] Id., at 4.

[9] Id., at 6.

[10] Exh. "A," Records, p. 26.

[11] Literally translated in Tagalog as "nagdilim ang paningin" and in Waray as "Nagsirom an pangita"

[12] TSN, June 22, 1995, pp. 2-5. The records show that he was originally charged with the crime of frustrated homicide in the complaint of the police dated June 30, 1994 (Records, p. 5). The police amended their complaint on August 2, 1994 to charge appellant with homicide (Ibid., p. 4). After preliminary investigation, appellant was eventually charged with murder in the information dated November 29, 1994.

[13] *People v. De la Cruz*, 291 SCRA 164, 180 (1998).

[14] *People v. Cario*, 288 SCRA 404, 416 (1998).

[15] *People v. Navarro*, 295 SCRA 139, 144 (1998).

[16] *People v. Atad*, 334 Phil. 235, 248 (1997).

[17] *People v. Manambit*, 338 Phil. 57, 91 (1997).

[18] Id., at 5-9.

[19] *People v. Gementiza*, 230 SCRA 146, 149 (1994).

[20] *People v. Carpio*, 346 Phil. 703, 715 (1997).

[21] *People v. Magaro*, 291 SCRA 681, 687 (1998).

[22] *People v. Peña*, 291 SCRA 606, 615 (1998).

[23] Id., at 616.

[24] To be appreciated as a mitigating circumstance, voluntary surrender must be established by the concurrence of the following requisites: (a) the offender had not actually been arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary. [*People v. Amamangpang*, 291 SCRA 638, 654 (1998)].

[25] TSN, June 22, 1995, p. 5.

[26] Records, p. 27.

[27] People v. Amamangpang, *supra*.

[28] People v. Obello, 348 Phil. 88, 106 (1998).

[29] Salao v. Court of Appeals, 348 Phil. 529, 537 (1998).

[30] TSN, May 2, 1995, p. 3.

[31] People v. Prades, 293 SCRA 411, 431 (1998).

[32] People v. Aguilar, 292 SCRA 349, 359 (1998).

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