

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WOLVER TUMAOB, JR. HONORATO SARGA, AND POLICARPIO MALICSE, APPELLANT-APPELLANTS.

G.R. No. 125690. June 22, 1998

Ponente: MELO, J.

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MELO, J.:

The proffer of self-defense connotes an admission of the charge and per se shifts the burden of proof to the accused. Withal, for exculpation, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.

This is one of the principal we apply in resolving the appeal from the July 31, 1995 decision of the Regional Trial Court of the Sixth Judicial Region (Kalibo, Aklan, Branch 1) in Criminal Case No. 3089, finding accused-appellant guilty of the crime of murder and disposing:

Wherefore, the guilt of all the three (3) accused having been proven beyond reasonable doubt, the Court hereby sentences

1. Wolver Tumaob, Jr., to suffer the indeterminate penalty of twelve (12) years of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum, and
2. Honorato Sarga and Policarpio Malicsi to suffer the penalty of reclusion perpetua, the crime having been committed in 1990 prior to the effectivity of R.A. 7659 which restores the death penalty.

All the accused are ordered to indemnify solidarity the heirs of Roseller Tugade the amount of P50,000.00 and to suffer the accessory penalties provided for by law.

SO ORDERED.

(pp. 26-27, Rollo.)

Accused-appellants' conviction for said crime arose from an Information reading:

That on or about the 23rd day of March, 1990, in the evening, in Sitio Manggayad, Barangay Manocmanoc, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, while armed with deadly weapons, consisting of a knife and Grande Beer bottle, with treachery evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab one ROSELLER TUGADE, thereby inflicting upon the latter physical injuries, to wit:

1. STAB WOUND, 1.5 cm. long, 0.7 cm. wide, left anterior chest, 2 cm. from the mid sternum.
2. STAB WOUND, 1.5 cm. long, 0.7 wide, left anterior chest, 2.5 cm. above the left nipple.

3. INCISE WOUND, superficial, 8 cm. right of the chest.

4. LACERATED WOUND, 3 cm. long, occipital region, head.

CAUSE OF DEATH: CARDIORESPIRATORY ARREST SECONDARY TO HEMORRHAGE DUE TO STAB WOUNDS.

as per Post-Mortem Examination Report signed by Avelino S. Prado, M.D., Rural Health Physician, Maly, Aklan, hereto attached as Annex "A" to form part of this Information, which injuries caused the death of the aforesaid ROSELLER TUGADE.

That by reason of the criminal acts of the accused, the heirs of the deceased ROSELLER TUGADE suffered actual and compensatory damages in the sum of P30,000.00

CONTRARY TO LAW.

After a plea of not guilty was entered, trial ensued in due course. Thereafter, the trial court rendered the now assailed decision. Feeling aggrieved, the three accused interposed the instant appeal.

In the appelle's brief, the Solicitor General summarized the testimony of the prosecution witnesses as follows:

At about 9 o'clock in the evening of March 23, 1990, three (3) people, later identified as the appellants, ganged up on Roseller Tugade while the latter was with his common-law wife, Juliet on the road to Barangay Balabag, Boracay, Malay, Aklan. Appellant Malicse held the victim's hand behind the latter's back while appellant Tumaob stabbed him even when appellant Sarga hit Tugade at the back of the head (TSN, November 28, 1991, pp. 3-4).

The three (3) appellants scrambled away when a motorbike approached and shone light upon them. The motorbike was driven by Gideon Guerrero whose attention was called to the incident by Juliet who was shouting that her husband was being stabbed. Guerrero went after the three (3) assailants and was forced to retreat when appellant Tumaob turned back and came at him with a knife (Ibid, January 27, 1997, pp. 6-7).

Tugade died as a result of the stab wounds he sustained. The three (3) appellants were immediately identified as Tugade's assailants. Their names were duly recorded in the police blotter at about 10:30 p.m., approximately an hour after the incident. Further, their identification led to their hands still stained with blood (Ibid, December 19, 1990, p. 14).

On the other hand, accused-appellants put an altogether different version of the incident.

Accused-appellant Wolver Tumaob, Jr. admitted killing Roseller Tugade but claims that this was done in self-defense. He testified that he was hit by a motorbike driven by Roseller Tugade who then attacked him with a knife, but in the process of defending himself, accused-appellant Tumaob stabbed Tugade (tsn, January 28, 1993, pp. 5-7).

He further testified that he surrendered at his aunt's place to the barangay captain, and that thereafter, the policemen arrived and brought him to the police headquarters (Ibid, p.10).

Accused-appellants Policarpio Malicse and Honorato Sarga, stay-in construction workers at a construction site of a bowling alley, denied participation in the killing. Sarga, however, testified that on March 23, 1990, at about 9 o'clock in the evening, Wolver Tumaob, their foreman in the construction, arrived at the construction site and woke them up. Tumaob had a bleeding left hand and asked to be accompanied to his aunt's house. Sarga complied, leaving behind Malicse (Ibid, June 22, 1992, pp.3-4)

Accused-appellants now contend that the court a quo erred: (a) in finding that the crime committed was murder

instead of homicide; (b) in giving credence to the testimony of the prosecution's witnesses; and (c) in not acquitting Tumaob on the ground of self-defense.

The trial court found that treachery was duly established, leading to accused-appellants' conviction for the crime of murder. Under substantive law, there is treachery when the offender commits any of the crimes against persons (e.g., homicide or murder), employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make (Article 14(b), Revised Penal Code). Two conditions must concur for treachery to be present, namely, (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the said means or method of execution was deliberately or consciously adopted (*People vs. Compendio, Jr.*, 258 SCRA 254 [1996]; *People vs. Garcia*, 258 SCRA 411 [1996]).

In the case at bench, Macalise pinned the victim's hands behind his back so he could not fight back or resist, thus facilitating the stabbing by Tumaob and bashing of the victim's head by Sarga with an unopened bottle of beer. Plainly decisive then is the fact that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

Just as evident too is the fact that accused-appellants indeed adopted their scheme deliberately. The number and location of the stab wounds, two in the left anterior chest, and the other lacerations, one each in the head and the right chest, sustained by the victims, are enough to banish any hint or suggestion of an accidental killing. The harshness of accused-appellants' acts indicate a calculated pursuit of decision to kill, thus suggesting treachery.

Anent the second assigned error, this Court reiterates the familiar and well-entrenched rule that in the matter of the credibility of witnesses, the factual findings of the trial court are generally accorded the highest respect (*People vs. Morales*, 241 SCRA 267 [1995]).

In its attempt to discredit the testimony of the witnesses for the prosecution, the defense postulates that these witnesses are biased on account of their relationship to the deceased. While it is true that one prosecution witness, Leny Solano, is a relative of the victim and the other, Gideon Guerrero, is a good friend, it was not shown that these two had any ill motive which drove them to make false accusations against appellants, and for such a grave crime as murder.

In a long line of cases, this Court has consistently held that the relationship of a witness to a party does not, by itself, impair the credibility of the witness as to render his testimony less worthy of credence where no improper motive can be ascribed against him (*People vs. Morales*, 241 SCRA 267 [1995]; *People vs. Gondora*, 265 SCRA 408 [1996]).

The trial court's conclusions are founded on direct, positive, and categorical assertions made by the prosecution witnesses regarding material occurrences. Solano and Guerrero positively identified accused-appellants as the perpetrators of the crime. This Court is, therefore, inclined to give credence to the testimony of said witnesses since their declaration correspond with the circumstances of the time and place of the killing.

The third assigned error fails to impress us. The injuries sustained by the victim belie Tumaob's claim that he and the victim wrestled for possession of the knife allegedly used by the victim to attack Tumaob. As earlier mentioned, the victim's chest stab wounds were fatal and the location of these wounds showed an intention to kill, not merely to injure.

On the other hand, the wounds in Tumaob's hand were too superficial to support his claim that they were inflicted while he was prying the stabs and slashes of the victim. In the medico-legal report of Dr. Agnes Java who treated him, the laceration on the back of his left hand measures around 5 cm. long and 0.5 cm. wide only. Further, the

mere fact that an accused was wounded would not necessarily mean that he acted in self-defense or that he was not the aggressor.

An accused relying on the justifying circumstance of self-defence must prove its essential requisites, to wit: (a) unlawful aggression on the part the victim. (b) reasonable necessity of the means employed to repel the aggression and (c) lack of sufficient provocation on the part of the accused (Article II, par. 1, Revised Penal Code). Having admitted the killing in the case, it was incumbent upon accused-appellant Tumaob to show by clear and convincing evidence that he indeed acted in self-defense. Unfortunately, he failed in his regard.

The defense of accused-appellants Sarga and Malicse is one of alibi and denial. In the instant case, aside from having been positively identified, these accused-appellant failed to adduce any evidence that it was physically impossible of them to have impossible for them to have been present at the place where the crime was committed at the time it happened. Sarga and Malicse were in fact in same barangay where the killing occurred (tsn, June 22, 1992, p.3)

Moreover, denials unsubstantiated by clear and convincing evidence are negative and self-serving which merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters (People vs. Morales, 241 SCRA 267 [1995]).

Likewise, it is worthy to note that accused-appellant have not rebutted the testimony of Pfc. Roberto Quiton that at the time accused-appellants were apprehended, their hand were either full of or stained with blood)tsn, December 19, 1900, p. 14).

WHEREFORE, the judgement appealed from with respect to the finding of GUILT of accused-appellants WOLVER TUMAOB, JR., HONORATO SARGA, and POLICARPIO MALICSE, hereby AFFIRMED, but amended only as to the penalty imposed on Wolver Tumaob, Jr. who entitled to the mitigating circumstances of voluntary surrender. The penalty for murder, being reclusion temporal in its maximum period to death (suspended at the time of the commission of the crime) and for purposes of the Indeterminate Sentence Law, Tumaob should be meted the penalty of prision mayor in its maximum period as minimum to reclusion temporal in its maximum period as maximum.

Judgement of the court a quo is likewise affirmed as to the award of indemnity.

SO ORDERED.

Regalado, Puno, Mendoza, and Martinez JJ., concur.

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