

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TORADIO SILVANO, ACCUSED-APPELLANT.

G.R. No. 125923. January 31, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of Cebu City, Branch 13, in Criminal Case No. CBU-30317 convicting appellant Toradio Silvano of the crime of murder.

Appellant Toradio Silvano was charged with the crime of murder defined and penalized under Article 248 of the Revised Penal Code in an Information that reads:

That on April 14, 1993 at 6:30 o'clock in the evening, more or less, in Barangay Lambug, Municipality of Badian, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and hack one Ildefonso Palabrica with the use of a sharp bladed weapon, thereby hitting the latter multiple hack wounds at the back of his neck which resulted his instantaneous death.

CONTRARY TO LAW.

Upon being arraigned on July 6, 1993, appellant Toradio Silvano, assisted by his counsel, entered the plea of "Not guilty" to the Information in this case. Pre-trial was waived by the defense. Thereafter, trial on the merits ensued.

On March 20, 1995, the trial court rendered a decision finding the appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused TORADIO SILVANO GUILTY beyond reasonable doubt of the crime of MURDER, and sentences him to a penalty of Reclusion Perpetua.

He is directed to indemnify the heirs of Ildefonso Palabrica the sum of P50,000.00.

SO ORDERED.

Aggrieved by the decision, Toradio Silvano interposed the instant appeal.

It appears that in the late afternoon of April 14, 1993, Ildefonso Palabrica and his 15-year old son, Richard, left their house in Sitio Manay-as, Barangay Lambug, Badian, Cebu.[2] Ildefonso was going to meet his wife, Leonarda, at the corner of the Green Island Beach Resort which was about one (1) kilometer away from his house.[3]

During the day Leonarda sold biscuits locally known as "salvaro" in the Badian Public Market. After selling her goods in the afternoon of April 14, 1993, Leonarda bought fifty (50) kilos of flour that she loaded in a tricycle en route to the corner of Green Island Beach Resort where Ildefonso would fetch her.[4] After a while Leonarda

spotted Ildefonso being followed by their son. She had no idea of the impending tragedy that would befall her husband.

From a distance of one hundred (100) meters, Leonarda saw her nephew, Toradio Silvano, approached Ildefonso from behind and suddenly hacked the latter on the nape with a bolo locally known as "pinute". Ildefonso staggered before he fell down on his face. Toradio sat beside the fallen victim and hacked him three (3) times before delivering another hacking blow on his forehead. Leonarda and her son Richard, who also witnessed the incident, were helpless and could only manage to cry for help.[5]

Richard was trailing behind his father by twenty (20) meters when Toradio emerged among the pandan plants that were growing by the roadside. After catching up with Ildefonso, Toradio suddenly delivered successive hacking blows on the nape and on the forehead of the victim.[6]

Incidentally, Richard's cry for help drew the attention of Arnolfo Coronel who was on his way home after gathering fodder for his cow. Arnolfo witnessed Ildefonso staggered on the road and fell down on his face after he was hacked by Toradio on the nape. Toradio turned the victim's face upward and hacked him again on the forehead.[7]

Leonarda, Richard and Arnolfo approached the lifeless body of Ildefonso after Toradio hurriedly left the crime scene. The head of Ildefonso was almost severed due to the wounds that he suffered on his nape.[8] Jaime Silvano also arrived as he became curious upon accidentally meeting his uncle along the road carrying a bolo and was walking hurriedly while he kept looking behind him as if he was in trouble.[9]

Leonarda disclosed, during the trial, that her husband and the appellant had a quarrel when the latter attempted to occupy a portion of their land three (3) years before the hacking incident on April 14, 1993. Since then the two were not in good terms. On April 10, 1993, Ildefonso reprimanded Toradio for intruding into the land of Eutiquia Silvano who was an aunt of the appellant.[10]

Dra. Urduja Espiritu, M.D., Municipal Health Officer of Badian, Cebu conducted a post mortem examination on the cadaver of Ildefonso Palabrica. The autopsy report[11] that was prepared and signed by Dra. Espiritu, shows the following findings:

FACE:

1.

Lacerated wound located on the right side of the forehead 6 cm. above the right eyebrow measuring 3 cm. in length gaping about 0.5 cm. wide going deep down and cutting a little the skull surface.

2. Multiple abrasions and purple red discoloration of the skin, contusion.

EAR:

Avulsion of the inferior lobe of the R pinna.

NECK:

Multiple hack wounds from the level of the inferior portion of the ears running horizontally about 8 inches in length gaping about 1 inch wide cutting through the muscles at the back of the neck. Going down below is a portion of the skin measuring about 1 inch wide. Next to it is another hack wound gaping about 3 inches wide cutting deep down through the muscles, blood vessels and almost ½ of the depth of the cervical vertebra.

ELBOWS:

Abrasions on both sides L and R.

HANDS:

1. Lacerated wound, 2 cm. in length at the proximal 3[rd] of the left thumb.
2. Lacerated wound, 1 cm. in length at the distal 3[rd] of the left thumb.

KNEES:

Abrasions on both left and right.

PROBABLE CAUSE OF DEATH:

Hypovolemic Shock, Irreversible

Hemorrhage, Severe, External

Multiple hack wounds at the back of the neck.

Meanwhile, at 11:00 o'clock in the evening of April 14, 1993, appellant Toradio Silvano surrendered to Teofilo Delubio, a distant relative of the appellant and a barangay councilman in Barangay Lambug, Badian, Cebu. Toradio admitted that he had killed Ildefonso Palabrica for the reason that the latter allegedly took advantage of him ("gilupigan"). Consequently, Teofilo brought Toradio to the Municipal Police Station in Badian, Cebu and turned him over to Pat. Vicente Suerte, Jr. for investigation.[12]

Appellant Toradio Silvano admitted killing Ildefonso Palabrica in the late afternoon of April 14, 1993 but interposed self-defense. Based on his testimony, Toradio was going to fetch his wife in Badian Public Market in Badian, Cebu when he met Ildefonso in the middle of the road leading to the corner of the Green Island Beach Resort. As Toradio approached, he called Ildefonso "Santaran" which was the name he used to address the victim, and the latter merely asked what he (Toradio) wanted. Subsequently, Ildefonso attempted to stab him with a short bolo that was previously hidden behind the victim's right leg, but missed. After wresting the bolo, Toradio hacked Ildefonso successively on the forehead and on the nape causing him to stagger before falling down on his face. Thereafter, he surrendered to Teofilo Delubio who turned his person over to the police.[13]

Toradio also admitted that the wife of Ildefonso is a second cousin of his father. However, he denied that anyone had witnessed the incident in the late afternoon of April 14, 1993.[14] He also denied harboring any grudge against the deceased victim although Toradio admitted that he regarded Ildefonso as a land grabber.[15]

In his Brief,[16] appellant Toradio Silvano interposed the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE THEORY OF SELF-DEFENSE INTERPOSED BY ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING AND CONTRADICTORY TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR ATTENDANCE IN THE COMMISSION OF THE CRIME CHARGED.

IV

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME ALTHOUGH THE HACKING INCIDENT WAS COMMITTED ON DAYTIME.

We cannot sustain appellant's plea of self-defense. By invoking self-defense, appellant Toradio Silvano admitted killing the victim, Ildefonso Palabrica. The burden is, therefore, upon him to prove the existence by clear and convincing evidence of its essential requisites which are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[17] He must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if the latter were weak, it could not be disbelieved after he himself admitted the killing.[18]

The appellant miserably failed to discharge such burden. His uncorroborated testimony failed to prove clearly and convincingly that there was unlawful aggression on the part of his victim, Ildefonso Palabrica. To prove unlawful aggression, Toradio Silvano impressed upon the Court that he was not armed in the late afternoon of April 14, 1993. Toradio ascribed ownership of the bolo to the victim and claimed that he merely wrested it when the latter attempted to stab him in the middle of the road. If Toradio were unarmed and that he merely wrested the bolo from Ildefonso, his failure to produce the same before the police and during the trial of his case simply puzzles the Court. He cannot justify his failure to produce the bolo with the lame excuse that he threw the same at an undisclosed place. The evidence on record does not clearly show that he gave the same bits of information when he surrendered to the police.[19] The bolo which allegedly belonged to the victim is a vital evidence to prove his plea of self-defense. His failure to produce the same in court impugns his credibility.

Even assuming, *ex gratia arguendo*, that the bolo did not belong to appellant Toradio Silvano, the Court still failed to find any justification for his act of killing the helpless victim. From appellant's own account, Ildefonso waited for him in the middle of the road that leads toward the corner of Green Island Beach Resort in Barangay Lambug, Badian, Cebu. As he approached Ildefonso, the latter asked him what he wanted. By the time he was about to pass, Ildefonso suddenly attempted to stab him, but which he was able to parry.

After successfully wresting the bolo from Ildefonso, the imminent danger on the person of the appellant ceased to exist to still warrant the application of extreme force against the victim. Admittedly, the appellant has bigger and stronger physical constitution than the victim owing to his training and knowledge in martial arts.[20] Nevertheless, Toradio inflicted multiple hack blows on Ildefonso that almost decapitated his head. Apparently not satisfied, Toradio turned the fallen victim and hacked him on the forehead and other parts of the body.

Having inflicted multiple hack wounds, the appellant cannot claim that he merely intended to repel a purported attack by the victim. The multiple hack wounds unmistakably manifested a calculated pursuit of a decision to kill. Indeed, the locations, number and gravity of the wounds inflicted on the victim belie the appellant's pretensions that he acted in self-defense. Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses.[21]

Besides, the prosecution adduced more than sufficient evidence to prove the guilt of the appellant for the crime charged in the Information beyond reasonable doubt. It has been established from the testimony of prosecution eyewitnesses Leonarda Palabrica and her son, Richard, that Ildefonso was walking along the road leading to the corner of the Green Island Beach Resort to fetch his wife. Leonarda arrived earlier and she had been waiting at their rendezvous when she spotted her approaching husband together with their son. Subsequently, Toradio appeared from the roadside and surreptitiously approached Ildefonso from behind. Suddenly, Toradio hacked the unsuspecting victim on different parts of the body that inevitably led to his death. Their eyewitness accounts were corroborated on material points by Arnolfo Coronel, whose attention was drawn to the unfolding crime by the

cries of Richard Palabrica for help.

Appellant claims that the testimonies of the prosecution's alleged eyewitnesses suffer from contradictions and inconsistencies that militate against their credibility. He contends that the testimony of Leonarda Palabrica runs counter to the statement that she made in her affidavit[22] that she did not witness the killing of her husband; that the attention of Arnolfo Coronel was drawn only when Richard cried for help that came after his father had already fallen to the ground;[23] that Leonarda could not have possibly left the flour and other articles with her son[24] for the reason that Richard and Ildefonso failed to reach their rendezvous; and that, according to Richard, Toradio bent over his father[25] contrary to Leonarda's testimony that the attacker was in a sitting position as he continued to hack the victim after the latter had fallen.

The said contentions are not persuasive. After a careful scrutiny of the record, We find that the contents of the affidavit executed by Leonarda Palabrica on April 15, 1993 in connection with the death of her husband belie the appellant's misleading contention. The declarations of Leonarda in her affidavit were based on personal knowledge. Leonarda stated therein that she witnessed the killing of her husband and she emphasized that Toradio hacked Ildefonso several times even as the latter had already fallen down on his face. Whatever vagueness there may have been in the contents of her affidavit was sufficiently clarified by Leonarda on the witness stand when she explained that at the time of the execution of her affidavit she was not yet in her normal state of mind due to the killing of her husband on April 14, 1993.[26] Affidavits, being ex-parte, are almost always incomplete and often inaccurate but do not really detract from the credibility of witnesses.[27]

The credibility of Arnolfo Coronel may not be validly impeached on the mere contention that his attention was drawn by the cries of Richard for help that came only after his father had already fallen to the ground. The evidence on record established that Toradio continued hacking Ildefonso even after the latter had fallen down to the ground. Although Arnolfo may have missed the earlier segment of the entire scenario of Ildefonso's killing, this prosecution witness positively identified the appellant during the trial as the only person who was hacking the fallen victim.

The other alleged inconsistencies in the testimonies of Leonarda Palabrica and her son, Richard, refer to minor details that do not affect either the substance of their declaration, their veracity, or the weight of their respective testimonies. These inconsistencies even tend to strengthen, rather than weaken, the credibility of witnesses as they negate any suspicion of a rehearsed testimony.[28] The testimonies of the various witnesses should not be expected to be identical and coinciding with each other. It is enough that the principal points covered by such testimonies are established although they may not dovetail in all details.[29]

The trial court correctly appreciated treachery which qualifies the crime in this case to murder. It appears clear from the testimonies of Leonarda Palabrica and her son, Richard, that Ildefonso was completely unaware of the presence of the appellant who approached surreptitiously from behind the victim. The attack was deliberate, sudden and unexpected that denied the victim any opportunity to defend himself. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[30]

However, evidence is wanting to establish sufficiently the existence of the aggravating circumstance of nighttime. The appellant himself admitted that the crime occurred in the late afternoon of April 14, 1993. For nighttime to be appreciated as an aggravating circumstance, there must be a convincing showing that the accused had purposely sought such time of the day in order to facilitate the commission of the crime or to prevent its discovery or to evade the culprit's capture.[31]

Likewise, there is no sufficient evidence to sustain the finding of existence of the aggravating circumstance of evident premeditation. The requisites of evident premeditation are: (1) the time when the accused determined to

commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[32] Such factual requisites clearly do not obtain in the case at bar.

On the other hand, the defense sufficiently proved the existence of the mitigating circumstance of voluntary surrender. The requisites of voluntary surrender are: (a) the offender has not been actually 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.[33] The facts of this case show that the appellant voluntarily surrendered at 11:00 o'clock in the evening to Teofilo Delubio, a barangay councilman of Barangay Lambug, Badian, Cebu on the same day that he killed the victim. Thereafter, the appellant was brought to the Badian Police Station where he remained incarcerated for investigation.

The Information in this case indicates that the crime of murder was committed by the appellant on April 14, 1993 which was before the effectivity of Republic Act No. 7659 on December 31, 1993 amending Article 248 of the Revised Penal Code on murder. Prior to its amendment the penalty for the crime of murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. Considering that the mitigating circumstance of voluntary surrender can be appreciated in favor of the appellant with no aggravating circumstance in offset, the imposable penalty is reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed on the appellant is the maximum period of reclusion temporal and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, that is, prision mayor.

Moral damages in the amount of P50,000.00 should be awarded on account of the mental anguish[34]suffered by the widow of the victim as a result of the violent death of her husband. Actual damages in the amount of P7,000.00 is supported by evidence in the form of receipts for funeral expenses.[35] The award of P50,000.00 for civil indemnity ex delicto is justified under prevailing jurisprudence.[36]

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 13, in Criminal Case No. CBU-30317 convicting appellant Toradio Silvano of the crime of murder is hereby **AFFIRMED** with the **MODIFICATION** that the said appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment for twelve (12) years, as minimum, to seventeen (17) years, four (4) months and one (1) day, as maximum, and to pay the heirs of the victim the amount of P50,000.00 as civil indemnity ex delicto, P50,000.00 as moral damages and P7,000.00 by way of actual damages.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Meinrado P. Paredes. Rollo, pp.22-29.

[2] TSN dated September 20, 1993, p. 6.

[3] Id., p. 16; TSN dated October 6, 1993, p. 4.

[4] TSN dated September 20, 1993, pp. 15-16; TSN dated September 28, 1993, pp. 4-5.

[5] TSN dated September 28, 1993, pp. 6-7.

[6] TSN dated September 20, 1993, pp. 6-8.

[7] TSN dated October 7, 1993, pp. 5-7.

- [8] Id., pp. 7-8.
- [9] TSN dated October 14, 1993, pp. 4-5.
- [10] TSN dated October 6, 1993, pp. 2-3.
- [11] Exhibit "A".
- [12] TSN dated December 13, 1993, pp. 3-4.
- [13] TSN dated February 9, 1994, pp. 3-9.
- [14] Ibid.
- [15] Id., p. 10.
- [16] Rollo, pp. 44-62.
- [17] People vs. Boniao, 217 SCRA 653,666 (1993).
- [18] People vs. Pena, 291 SCRA 606, 614 (1998).
- [19] People vs. De la Cruz, 291 SCRA 164, 181 (1998).
- [20] TSN dated March 8, 1994, p. 7.
- [21] People vs. Boniao, supra, citing People vs. Sacabin, 57 SCRA 707 (1974); People vs. Demeterio, 124 SCRA 914 (1983).
- [22] Exhibit "D".
- [23] TSN dated September 20, 1993, p. 8.
- [24] TSN dated September 28, 1993, p. 5.
- [25] See note no. 23.
- [26] TSN dated October 6, 1993, p. 4.
- [27] Naval vs. Panday, 275 SCRA 654, 686 (1997).
- [28] People vs. Sanche, 302 SCRA 21, 51 (1999); People vs. Lising, 285 SCRA 595, 640 (1998).
- [29] People vs. Alolod, 266 SCRA 157, 161 (1997).
- [30] People vs. Lagarteja, 291 SCRA 142, 153 (1998).
- [31] People vs. Garcia, 258 SCRA 411, 421 (1996).
- [32] People vs. Compendio, Jr., 258 SCRA 254, 264 (1996).
- [33] Estacio vs. Sandiganbayan, 183 SCRA 12, 24 (1990).
- [34] TSN dated October 6, 1993, p. 4.
- [35] Exhibits "E-4," "E-5."
- [36] People vs. Trilles, 254 SCRA 633, 643 (1996).

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