

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO V. ERIBAL, ACCUSED-APPELLANT.

G.R. No. 127662. March 25, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Accused-appellant Antonio Eribal (hereafter ERIBAL) appeals from the decision[1] of 20 August 1996 of the Regional Trial Court, Branch 54, Bacolod City, in Criminal Case No. 14094 convicting him of murder and sentencing him to suffer the penalty of reclusion perpetua and pay the heirs of the victim P100,000 as moral damages; P50,000 as actual damages; and P100,000 as exemplary damages, as well as the costs.

The accusatory portion of the information in Criminal Case No. 14094 reads as follows:

That on or about the 13th day of April, 1993, in the City of Bacolod, Philippines, and within the jurisdiction of this honorable Court, the herein accused, without any justifiable cause or motive, being then armed with a handgun with intent to kill and by means of treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously assault, attack and shoot with said weapon LIN HO CHAN thereby causing upon the person of the latter the following wounds, to wit:

...

which directly caused the death of the said victim LIN HO CHAN, to the damage and prejudice of his heirs as follows:

1. As indemnity for the death of the victim.....P50,000.00
2. As indemnity for the loss of earning capacity.....P55,800.00
3. As moral damages.....P10,000.00

Act contrary to law.[2]

At the trial on the merits, the prosecution presented two eyewitnesses, namely, Mrs. Mely Arsaga and Hernani Yorac.

Mrs. Arsaga testified that at about 5:00 p.m. of 13 April 1993 she was tending her store located across the house of the victim Lin Ho Chan (hereafter CHAN). ERIBAL, a resident of the place who was then wearing a t-shirt, approached her and told her that CHAN had stared sharply at him a few minutes earlier. ERIBAL then left but returned to the store some thirty minutes later, already wearing a fatigue jacket. At that time Mrs. Arsaga was waiting for Hernani Yorac, a carpenter who was staying and doing repairs in the house of CHAN, to request him to come to her store and repair a table. As Yorac was coming out of CHAN's gate, ERIBAL asked her whether Yorac was a protegee ("bata-bata") of CHAN, and she answered in the affirmative. When Yorac came to her store, ERIBAL approached him and asked him whether he (ERIBAL) could talk to CHAN. Yorac immediately went back to CHAN's house, followed by ERIBAL. Yorac informed CHAN that somebody wanted to see him.

ERIBAL stayed at the gate, while Yorac proceeded to Arsaga's store.[3]

A few minutes later, CHAN, wearing only a pair of pants and without a shirt, emerged from his house. He went to the gate and talked to ERIBAL. Mrs. Arsaga, who was only 15 meters away from where ERIBAL and CHAN were talking, heard CHAN tell ERIBAL that he had a defective eyesight and that if ever ERIBAL misinterpreted his stare he apologized for it. Mrs. Arsaga turned her back to them. Then she heard a shot. When she turned to look, she saw ERIBAL with a gun pointed at CHAN while the latter was pressing his chest and turning his back. ERIBAL shot CHAN again at the back. CHAN fell down. ERIBAL fired another shot at CHAN and immediately left the scene. Mrs. Arsaga called up the police right after the incident.[4]

Yorac testified that on 13 April 1993, at around 5:30 p.m., he was on his way to the store of Mely Arsaga because the latter had requested him to repair a table for her. ERIBAL approached him to ask whether his boss, CHAN, was in the house because ERIBAL wanted to talk to CHAN. Yorac then went to the house to inform CHAN that someone would like to talk to him. CHAN immediately went out, and when he saw ERIBAL he invited the latter inside the house. Yorac heard ERIBAL tell CHAN that they would just talk outside. CHAN went out and talked to ERIBAL. Yorac went back to the store and proceeded to work on the table of Mely Arsaga.[5]

While doing the repairs on a table, Yorac heard a shot. When he turned to look he saw CHAN leaning on the gate, then turning around. ERIBAL shot CHAN once more causing the latter to fall down. ERIBAL shot him again, and immediately kept his firearm and left the place.[6]

Dr. Romeo Gellada, the medico-legal officer who conducted the autopsy on CHAN, testified that he found two gunshot entrance wounds and one exit-wound. The first gunshot wound was at the right anterior chest, while the second entrance wound was at the upper back. One slug from a 0.38 caliber gun was recovered. He was of the opinion that the first shot was fired when the victim was facing the assailant. Due to force and inertia, the victim must have turned to the right with his back to the assailant after he was hit by the first shot. Hence, when the second shot was fired, it hit the upper back of the victim.[7]

Mrs. Clara Chan, the surviving spouse of CHAN, declared that she was in Iloilo City at the time of the incident. CHAN would have been 61 years old by December 1993. He had a defective eyesight; he underwent surgery for cataract in both eyes the year before and had not yet fully recovered from the eye operation because of his diabetes. She incurred some P35,482 for the death and burial expenses of her husband.[8]

ERIBAL presented a slightly different version of the events that led to the shooting of CHAN. In the afternoon of 13 April 1993 he, on his "trisikad," and CHAN, on his motorcycle, figured in a near-collision. As a result of which, CHAN pointed a finger and stared sharply at him; but they did not exchange words. CHAN proceeded to his house some 100 meters away from the site of the near-collision. He, on the other hand, parked his trisikad followed the victim to talk to the latter about the incident.[9]

Thereafter, ERIBAL went to the store of Mely Arsaga, which was just about 25 meters away from CHAN's house. He told her that the victim had stared sharply at him. A little while he saw Hernani Yorac coming out of the gate of CHAN's house and coming to the store of Mely Arsaga. He asked Yorac whether his boss, CHAN, was inside the house. Yorac answered in the affirmative. ERIBAL told Yorac that he wanted to talk to his boss; so Yorac went back to the house to inform CHAN that somebody wanted to talk to him.[10]

When Yorac came out, ERIBAL asked him again where his boss was. Yorac told him to wait because his boss was still taking a bath. Upon hearing this, ERIBAL suddenly remembered that he left his jacket in the trisikad, and so he left to get that jacket. After taking his jacket he went back to the store and asked Yorac once more where his boss was. Yorac went back inside the house, and when he came out he told ERIBAL that his boss was

following him.[11]

ERIBAL then met CHAN at the front gate outside the house and asked CHAN why the latter was angry with him. CHAN replied that ERIBAL knew that he (CHAN) was approaching and yet he (ERIBAL) still placed his trisikad in the middle of the road. ERIBAL countered that it was CHAN's fault because he (CHAN) was the one trying to avoid the pothole. CHAN then told him to leave. ERIBAL refused to do so, and instead, he asked CHAN why he was so harsh. CHAN again told him to leave, pushing him and threatening him while taking out his gun from his back and pointing it at ERIBAL.[12]

While CHAN was pointing the gun at ERIBAL, the latter immediately lunged at the former and wrestled the gun away from CHAN. He was able to hold CHAN's arm with the barrel of the gun pointing towards CHAN, and then the gun fired. While CHAN was slowly falling, ERIBAL fired the gun again out of nervousness. He did not know whether he hit CHAN because CHAN was falling down. He felt so scared that he fled from the scene right away.[13]

ERIBAL went to the house of his friend in Rosario Heights, since he felt safe there. While there, he told his friend to go to his brother Efren so that the latter could look for somebody who could guarantee his safety because he was going to surrender voluntarily. It was Mayor Mirasol of Binalbagan, Negros Occidental, who facilitated his surrender.[14]

On cross-examination, ERIBAL declared that the gun belonged to CHAN. He had never handled a gun before. He fired the gun because he felt his life was in danger.[15] After the shooting incident, he carried the gun, but he lost it while fleeing from the place.

Rene Amodia corroborated ERIBAL's story on the near-collision incident and on CHAN's pointing a finger at ERIBAL.[16]

Efren Eribal, ERIBAL's brother, testified on the circumstances surrounding the voluntary surrender of ERIBAL. He further testified that ERIBAL was not exposed to guns but was a good athlete.[17]

The trial court gave more weight to the prosecution's evidence. It noted that from the evidence presented by both the prosecution and the defense, ERIBAL was the one who harbored resentment towards the victim from the time of the near-collision up to the shooting incident: ERIBAL followed CHAN after the incident and voiced his resentment to Mely Arsaga. The court gave full faith and credit to the testimony of Mely Arsaga for being credible, devoid of partiality and motive, and corroborated on material points by the testimony of Hernani Yorac. It found evident premeditation and treachery in the shooting of CHAN, but appreciated ill favor of ERIBAL the mitigating circumstance of voluntary surrender. Accordingly, it convicted ERIBAL of murder, and sentenced him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim actual, moral, and exemplary damages and costs.

Hence, this appeal from the judgment.

ERIBAL claims that the trial court erred in finding him guilty of murder and in imposing the penalty of reclusion perpetua. He assails the credibility of Mely Arsaga and Hernani Yorac on the ground that the former was CHAN's neighbor and the latter was CHAN's carpenter. Besides, neither of the two eyewitnesses saw how the shooting started. Thus, his version of self-defense, i.e., that it was CHAN who pulled the gun at him and that he was able to wrestle the gun from CHAN, remains un rebutted. The trial court engaged in speculation and conjecture when it concluded that since he was the one who sought out the victim for a confrontation, he was also the one who provided himself with a gun.

Finally, ERIBAL challenges the trial court's conclusion that evident premeditation and treachery attended the shooting. He asserts that there was no evident premeditation because the shooting was "an act of the moment perhaps spurred by a harsh offensive or challenging remark, as between two hotheads just coming out of a traffic collision." Neither was there treachery because no particulars were known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed.

On the other hand, the Office of the Solicitor General urges us to affirm the challenged decision for being in accordance with the law and the evidence.

We should first address the issue of credibility of prosecution witnesses Arsaga and Yorac. It is settled that the evaluation by the trial court of the testimonies of witnesses is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the witness stand and determine whether they are telling the truth.[18] The recognized exceptions to this rule are when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the result of the case.[19] ERIBAL has not convinced us of the presence of any of such exceptions to this case. Besides, ERIBAL has not offered adequate proof that these witnesses held a grudge against him or that they had a score to settle with him so as to give them motive to falsely testify against him. It is a settled rule that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[20]

And now on ERIBAL's theory of self-defense. By invoking self-defense, he admits that he killed CHAN. Hence, the burden is on him to prove by clear and convincing evidence the existence of the following essential requisites: (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.[21]

ERIBAL claims that it was CHAN who pulled a gun on him thereby implying that the unlawful aggression originated from CHAN. No clear and convincing evidence supports this claim. It was he who followed CHAN to the latter's house and confronted CHAN about the near-collision. He was the one who felt offended by CHAN's alleged stare. Moreover, eyewitnesses Arsaga and Yorac testified that CHAN was shirtless and was wearing only a pair of pants when he went out of the house to meet ERIBAL. If CHAN had a gun, then this would have been apparent to the eyewitnesses. Even if Arsaga did not see how the shooting started, she overheard the conversation between ERIBAL and CHAN, with the victim apologizing to ERIBAL. Arsaga and Yorac did not hear any scuffle between ERIBAL and CHAN. Immediately after they heard the first shot, they turned to look. What they saw was ERIBAL holding the gun and firing it again on CHAN.

ERIBAL's subsequent act of firing at CHAN while the latter was already on the ground further disproves his claim of self-defense. Assuming that the unlawful aggression came from CHAN, such aggression ceased when ERIBAL allegedly wrestled the gun from the victim and "accidentally" shot CHAN. Instead, ERIBAL proceeded to fire two more shots at CHAN. It was overkill for ERIBAL to again shoot CHAN, and this circumstance belies any reasonable necessity of the means employed by ERIBAL to prevent or repel aggression from the victim.[22]

Then, too, ERIBAL immediately fled with the gun after shooting CHAN. He did not turn over the gun to the police or to the Mayor of Binalbaga if only to prove that the gun was CHAN's. His claim that he lost the gun while on his way to his friend's house is incredible.

We are, however, unable to agree with the trial court's finding of evident premeditation. The prosecution established no clear and convincing proof as to (a) the time when the accused was determined to commit the crime; (b) the act manifestly indicating that the accused clung to his determination; and (c) sufficient lapse of time

between such determination and execution to allow him to reflect upon the consequences of his act.[23] To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt. In the instant case, the proven lapse of thirty minutes between the determination and the execution of the crime was not sufficient time for ERIBAL to reflect upon the consequences of his act.[24]

Neither can treachery be appreciated. While the two eyewitnesses saw ERIBAL and CHAN talk with each other outside the gate of CHAN's house, they did not see how the attack began.[25] Deeply ingrained in our jurisprudence is the rule that where no particulars are known as to the manner in which the aggression commenced and how the act which resulted in the death of the victim unfolded, we cannot surmise from the circumstances that the accused perpetrated the killing with treachery.[26] Treachery cannot be presumed, it must be proved as clearly and convincingly as the killing itself.[27] Any doubt as to the existence of treachery must be resolved in favor of the accused.[28]

Accused-appellant, ERIBAL can, therefore, be convicted of homicide only, which is punishable by reclusion temporal.[29] Since the mitigating circumstance of voluntary surrender was duly established, the penalty should be imposed in its minimum period pursuant to Article 64(1) of the Revised Penal Code. Applying the Indeterminate Sentence Law, ERIBAL may thus be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense and the maximum of which should be within the range of reclusion temporal in its minimum period. More specifically, the imposable penalty is from six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum.

We note that the actual damages proved in the instant case is in the total amount of P35,482.50.[30] The amount of actual damages thus awarded by the trial court should be reduced from P50,000.00 to P35,482.50. However, as indemnity for the death of CHAN, ERIBAL should further be ordered to pay P50,000.00, conformably with current jurisprudence.

For lack of sufficient evidence, the awards of moral and exemplary damages have to be deleted.

WHEREFORE, the appealed decision in Criminal Case No. 14094 of Branch 54 of the Regional Trial Court of Negros Occidental (Bacolod City) is hereby AFFIRMED with the following modifications:

(1)

The penalty is hereby reduced from reclusion perpetua to an indeterminate imprisonment penalty ranging from Six (6) years and One (1) day of prision mayor as minimum to Fourteen (14) years and Eight (8) months of-reclusion temporal as maximum.

(2)

The awards of moral and exemplary damages are set aside, while the award of actual damages is reduced from P50,000.00 to P35,482.50.

(3)

Accused-appellant Antonio V. Eribal is further ordered to pay the heirs of Lin Ho Chan the sum of P50,000.00 as indemnity for the death of CHAN.

Costs against the accused-appellant.

SO ORDERED.

Melo, Kapunan, and Pardo, JJ., concur.

[1]Rollo, 24-38; Original Record (OR), Criminal Case No. 14094, 143-157. Per Judge Demosthenes L. Magallanes.

[2] Rollo, 11-12.

[3] TSN, 21 June 1993, 6-15.

[4]TSN, 21 June 1993, 15-19, 22.

[5] TSN, 16 August 1993, 6-10.

[6] Id., 11-13.

[7]TSN, 8 November 1993, 8-26.

[8] Id., 41-48, 53.

[9] TSN, 14 March 1994, 9-14.

[10] Id., 15-18.

[11] TSN, 14 March 1994, 18-20.

[12] Id., 21-23.

[13] Id., 24-25.

[14] TSN, 14 March 1994, 25-29.

[15] TSN, 13 June 1994, 49-51, 74-76, 85-87.

[16] TSN, 18 January 1994, 8-29.

[17] TSN, 4 August 1994, 7-22.

[18] People v. Delovino, 247 SCRA 637, 646-647 [1995].

[19] People v. Delovino, *supra* note 18 at 648.

[20] People v. Simon, 209 SCRA 148, 159 [1992]; People vs. Castor, 216 SCRA 410, 419 [1992].

[21] People v. Boniao, 217 SCRA 653; 665-666 [1993]; People v. Gomez, 235 SCRA 444, 451 [1994].

[22] People v. Tobias, 267 SCRA 229, 255 [1997].

[23] People v. Narit, 197 SCRA 334, 349 [1991]; People v. Barba, 203 SCRA 436, 458 [1991]; People v. Cordova, 224 SCRA 319, 347-348 [1993].

[24] People v. Garachico, 113 SCRA 131, 145 [1982]; People v. Batas, 176 SCRA 46, 55-56 [1989].

[25] People v. Garcia, 258 SCRA 411, 422 [1996].

[26] People v. Sumaoy, 263 SCRA 460, 469 [1996]; People v. Obzunar, 265 SCRA 547, 569-570 [1996]; People v. Asis, 286 SCRA 64, 74-75 [1998].

[27] People v. Albao, 287 SCRA 129, 155-156 [1998]; People v. Demonteverde, G.R. No. 124978, 19 May 1998.

[28] People v. Ballare, 264 SCRA 350, 370 [1996].

[29] Article 249, Revised Penal Code.

[30] OR, 67-69. Exhibits "H" to "J."

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