

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDISON CASTURIA Y DIACOSTA ALIAS "EDDIE"; AND JESSIE CASTURIA Y DIACOSTA, ACCUSED-APPELLANTS.

G.R. No. 128819. November 20, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Bukidnon, Branch 9, Malaybalay convicting the accused Eddison Casturia y Diacosta alias "Eddie" and Jesse Casturia y Diacosta of murder and sentencing each of them to reclusion perpetua and to indemnify the heirs of the victim Gomersindo Vallejos in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency.

On June 15, 1994, Assistant Provincial Prosecutor Mario A. Dalapo of Bukidnon filed with the Regional Trial Court, Bukidnon, Malaybalay an information[2] charging the accused with murder, committed as follows:

"That on or about the 29[th] day of April 1994, in the afternoon, at Sitio Tambulan, Barangay Guinoroyan, Municipality of Valencia, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and abuse of superior strength, and with the use of a sharp bladed weapon, did then and there wilfully, unlawfully and criminally attack, assault, kick, box and hack GOMERSINDO VALLEJOS, inflicting upon the latter mortal injuries which caused the instantaneous death of GOMERSINDO VALLEJOS; to the damage and prejudice of the legal heirs of GOMERSINDO VALLEJOS in such amount as they may be allowed by law.

"Contrary to and in violation of Article 248 of the Revised Penal Code as amended by R.A. 7659."

On July 20, 1994, at the arraignment, accused pleaded not guilty to the crime charged.[3] Trial thus ensued.

The facts are as follows:

At around 4:00 p.m. of April 29, 1994, accused Jessie Casturia, together with his co-workers Amado Nellas and the victim Gomersindo Vallejos, was at the barrio hall of Tambulan, Guinuruyan, Valencia, Bukidnon loading sacks of coffee berries belonging to their employer Juanito Lapis. Suddenly, accused Jessie while holding a bolo, shouted "Who is brave?" Not for long, accused Eddison Casturia, Jessie's older brother, arrived and asked his younger brother who he was angry at. Jessie passed the bolo he was holding to Eddison, then approached Gomersindo and began boxing and kicking the latter. Eddison followed up on his younger brother's attack by hacking Gomersindo thrice on the head. Witness Amado Nellas tried to pacify the two accused but when accused Eddison turned his ire on him, Amado scampered for safety. After killing Gomersindo, both accused left. Witness Ricardo Bacalso, who was at the crime scene, rushed home and immediately reported the incident to their employer, Juanito Lapis.[4]

Accused Jessie had a different story to tell. He claimed that in the morning of April 29, 1994, he, the victim

Gomersindo, Amado Nellas and one "Junjun" were cutting and gathering bamboo poles in Sitio Tambulan, Guinuruyan, Valencia, Bukidnon. They took their lunch at around 11:00 a. m. at the house of accused Eddison, and finished eating at around 12:00 p.m. The group decided to relax for a while by consuming six (6) bottles of "fighter" wine. Thereafter, they continued gathering bamboo poles until 3:00 p.m. and then loaded them on the jeep.

Upon reaching the basketball court at Sitio Tambulan, the jeep driven by accused Jessie stopped to load some sacks of coffee berries. Gomersindo then approached accused Jessie and told the latter that he (Gomersindo) would drive the jeep going to Guinuruyan. Accused Jessie turned down Gomersindo's request because of poor road conditions and the fact that Gomersindo had no driver's license. Slighted, Gomersindo boxed accused Jessie on the chin and nape, causing the latter to fall unconscious. When accused Jessie regained consciousness, he noticed Gomersindo bloodied. Struck with fear, accused Jessie rode on the jeep and proceeded to Guinuruyan. He denied seeing his brother, accused Eddison, at the crime scene.[5]

Accused Eddison invoked self-defense. He confirmed his brother Jessie's story that the latter's co-workers took their lunch at his house in the afternoon of April 29, 1994. He then left for Guinuruyan to have his corn milled. As he was passing by the basketball court at Sitio Tambulan at around 4:00 p.m. enroute to his house, accused Eddison saw Gomersindo mauling accused Jessie. He alighted from his motorcycle and asked Gomersindo why he was manhandling his younger brother. Gomersindo, who was unarmed, instead attacked him. Accused Eddison picked up a bolo on the ground to frighten Gomersindo, but the latter continued charging and boxing accused Eddison twice which the latter managed to evade. As Gomersindo continued attacking him, accused Eddison was left with no recourse but to deliver one hack blow, hitting Gomersindo on the left side of his head and his left hand. Gripped with fear, accused Eddison left the place.[6]

On September 6, 1996, the trial court rendered a decision convicting the accused, the decretal portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered finding both accused Jessie Casturia and Eddison Casturia in this case GUILTY beyond reasonable doubt as principals of the crime of MURDER as defined under Article 248 of the Revised Penal Code as amended by R.A. No. 7659, sentencing each of them to suffer the penalty of RECLUSION PERPETUA and to pay the costs. They are furthermore ordered to indemnify jointly and severally the heirs of the victim GOMERSINDO VALLEJOS in the sum of P50,000.00, without subsidiary imprisonment in case of insolvency.

"SO ORDERED."[7]

Hence, this appeal.[8]

In this appeal, accused-appellants fault the trial court for discrediting their plea of self-defense and in finding that treachery and abuse of superior strength attended the killing.

We find the conviction of the accused-appellants to be correct.

A plea of self-defense automatically shifts the burden of evidence to the defense since such a plea means that the accused admits having performed the criminal act, but disclaims legal liability on the ground that his act was justified in defense of himself. The requisites of self-defense 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.[9] The accused must prove the concurrent existence of all these elements by clear and convincing evidence.[10]

In this case, the reasonableness of the means employed to stave off the purported attack is absent.

Accused-appellant Eddison himself said that Gomersindo was unarmed when the latter attempted to box him. Clearly, accused-appellant Eddison's use of a bolo was a grossly disproportionate response to an unarmed assault by Gomersindo.[11]

Unlawful aggression was also absent in light of the uniform testimonies of prosecution eyewitnesses Amado Nellas and Ricardo Bacalso that it was accused-appellant Jessie who first attacked Gomersindo, followed by the fatal hack blows delivered by accused-appellant Eddison. These two (2) witnesses are indeed credible witnesses. The defense has not proven that they were moved by improper motives, thus, it must be presumed that they were not so moved. On the contrary, we find that the testimonies of these prosecution witnesses were clear and straightforward and coincided on all material points.[12]

We thus reiterate the rule that the assessment of the credibility of witnesses is within the province of the trial court. It is the trial court that had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths.[13]

The trial court did not err in finding that Gomersindo's killing was attended with treachery. Accused-appellant Eddison delivered three (3) hack blows on the head of an unarmed Gomersindo who was obviously defenseless at that time. The method employed in the execution of the crime insured no risk to the assailants arising from the defense which the victim might put up. Plainly, this is treachery.[14]

However, the trial court erred in further appreciating the aggravating circumstance of abuse of superior strength. Abuse of superior strength is absorbed in treachery, so that it can not be appreciated separately as another aggravating circumstance.[15]

There is no doubt that conspiracy attended the killing of Gomersindo. For conspiracy to exist it does not require an appreciable period lapsed prior to the occurrence. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose.[16]

In this case, accused-appellant Jessie's act of mauling Gomersindo and thereafter handing the bolo to his brother Eddison who hacked Gomersindo to death, clearly manifests the common intent of both accused-appellants to commit the crime.

As to as the penalty imposed, we note that the trial court gave a singular monetary award of P50,000.00, in favor of the heirs of Gomersindo. That can be considered as civil indemnity which is awarded without need of further proof other than the death of the victim.[17] However, another P50,000.00 may be awarded by way of moral damages which is mandatory and does not require proof other than the death of the victim.[18]

WHEREFORE, with the MODIFICATION that an additional amount of P50,000.00 as moral damages is awarded to the heirs of the victim, the decision of the Regional Trial Court, Bukidnon, Branch 9, Malaybalay, in Criminal Case No. 6867-94 convicting accused-appellants Eddison Casturia y Diacosta and Jessie Casturia y Diacosta of murder and sentencing each of them to reclusion perpetua, with all the accessory penalties of the law, and to pay jointly and severally the heirs of Gomersindo Vallejos in the amount of P50,000.00, is hereby AFFIRMED.

Costs in all instances against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santaigo, JJ., concur.

[1] Decision, dated September 6, 1996, Judge William M. Duhaylungsod, presiding, RTC Record, pp. 127-136.

- [2] RTC Record, p. 23.
- [3] RTC Record, p. 27.
- [4] TSNs, March 13, 1995, pp. 12; March 14, 1995.
- [5] TSN, January 30, 1996, pp. 27-36.
- [6] TSN, January 31, 1996, pp. 3-7.
- [7] RTC Record, pp. 127-136.
- [8] RTC Record, p. 142.
- [9] *Jayme v. People*, 314 SCRA 117, 124 [1999].
- [10] *People v. Meneque*, G. R. Nos. 129964-65, August 29, 2000; *People v. Aglipa*, G. R. No. 130941, August 3, 2000.
- [11] *People v. Artiaga*, 274 SCRA 685 [1997].
- [12] *People v. Meneque*, *supra*.
- [13] *People v. Gonzales*, G.R. No. 138402, August 18, 2000; *People v. Geral*, G.R. No. 12228, June 15, 2000.
- [14] *People v. Agpawan*, G. R. No. 123853, August 25, 2000; *People v. Barro*, G.R. No. 118098, August 17, 2000; *People v. Aspiras*, G.R. No. 121203, April 12, 2000.
- [15] *People v. Carillo*, G.R. No. 129528, June 8, 2000; *People v. Repollo*, G.R. No. 134631, May 4, 2000.
- [16] *People v. Orcula*, G.R. No. 132350, July 5, 2000; *People v. Adoc*, G.R. No. 132079, April 12, 2000.
- [17] *People v. Gonzales*, *supra*, citing *People v. Baluran*, G.R. No. 113940, February 15, 2000; *People v. Tolibas*, G.R. No. 103506, February 15, 2000; *People v. Hernandez*, G.R. No. 130809, March 15, 2000.
- [18] *People v. Carillo*, G.R. No. 129528, June 8, 2000; *People v. Bautista*, G.R. No. 131840, April 27, 2000.

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