PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAUDIOSO MORE, ERNESTO, MORE AND JERWIN MORE, ACCUSED-APPELLANTS.

G.R. No. 128820. December 23, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

GAUDIOSO, ERNESTO and JERWIN, all surnamed MORE, were found guilty of murder by the trial court for the killing of Valentino Pagumay on 22 February 1994 and sentenced to reclusion perpetua with all its accessory penalties and to pay P28,977.00 for funeral services and other expenses, P133,333.00 for loss of income for five (5) years, P100,000.00 for moral damages, and the costs.[1] They now come to us appealing their conviction.

The factual backdrop: On 22 February 1994 at about six o'clock in the evening, Valentino Pagumay and Romeo Muralla were walking along the river in Brgy. Igsoligue, Miag-ao, Iloilo, on their way to nearby Brgy. Igbogo to get some tuba when they chanced upon the More brothers Gaudioso alias "Nono," Ernesto alias "Didoy" and Jerwin alias "Max" some three hundred (300) meters away. As they drew near, the accused who were armed with a gun and knives, inexplicably shouted why Valentino and Romeo were pointing guns at them. Both Valentino and Romeo were unarmed. When Valentino nervously told Romeo, who had no quarrel with the accused, that the More brothers were going to kill him, the duo ran as fast as they could. But the accused chased them.

About three hundred (300) meters from where the chase began, the accused led by Jerwin finally caught up with Valentino who was lagging behind Romeo. Jerwin stabbed Valentino at the left side of his mouth. Ernesto followed by stabbing the victim in the chest. While Jerwin and Ernesto were stabbing Valentino Gaudioso held their captive by the shoulders. Gaudioso then took his turn and stabbed Valentino on the chest causing the latter to fall to the ground. The three (3) accused persisted in their criminal design and pinned their victim down with their hands and knees. They took turns in stabbing him again several times.

As the stabbing progressed Romeo was having an unobstructed view of the occurrence some ten (10) meters away. After they were through with Valentino the accused turned to Romeo and warned him against telling anybody about the incident and ordered him to go home. The three (3) More brothers then ran away.

When the More brothers were already farther down the river Romeo noticed Juanito Faromal standing a few meters away from the crime scene. After seeing Valentino already lifeless Romeo left to inform the victim's wife, but on the way he met Sgt. Romeo Gersa so he reported the matter to him.[2] Sgt. Gersa pursued the accused but could not apprehend them as he already got tired. When he fired a warning shot the three (3) accused retaliated and fired three (3) shots instead. Juanito corroborated the testimony of Romeo regarding the assault except that according to him it was only Gaudioso who stabbed the victim while his brothers Jerwin and Ernesto only assisted in restraining the victim.

The accused, on their part, invoked self defense. The version of Ernesto and Jerwin was that at about six o'clock in the evening of 22 February 1994 they were walking along a road in Brgy. Igsoligue about ten (10) arms' length

ahead of their brother Gaudioso when they heard someone ask the latter for a light for his cigarette. Ernesto and Jerwin did not recognize the voice. About two (2) minutes later they heard a gun explode. They looked back and saw Gaudioso and Valentino already on the ground wrestling with each other. Gaudioso was sitting astride Valentino as he stabbed the latter.[3] Ernesto and Jerwin rushed towards the two (2) - Gaudioso and Valentino - entreating Gaudioso to stop, but to no avail. Gaudioso only stopped when Valentino was already dead. Gaudioso then explained to his brothers that he stabbed Valentino because the latter was going to shoot him. Afterwards they went home and did not report the incident anymore to the barangay captain since it was already late.

Gaudioso claimed that when he handed his cigarette to Valentino upon the latter's request he, instead of taking the cigarette, suddenly drew a .38 caliber gun and pointed it at him with the words: "I will shoot you."[4] Reacting immediately, Gaudioso, using both hands, frustrated Valentino's attempt by grabbing the latter's right hand that was holding the gun, twisted it, and then used his foot to outbalance Valentino sending the latter to the ground. Thus Valentino was not able to fire his gun. Gaudioso then straddled Valentino and pinned his left hand with his right knee while his left hand held Valentino's right that was clutching the gun. In this position, Gaudioso repeatedly stabbed Valentino until the latter died.[5]

On 9 May 1996 the trial court found all three (3) accused, Gaudioso, Ernesto and Jerwin More, guilty as principals by conspiracy for the murder of Valentino Pagumay, qualified by abuse of superior strength. The trial court sustained the version of the prosecution and rejected the theory of self-defense primarily in view of the eighteen (18) stab wounds sustained by the victim and the fact that they were caused by at least two (2) different knives, one single-bladed and the other double-bladed, indicating that there were at least two (2) assailants. The three (3) accused were accordingly sentenced to suffer the penalty of reclusion perpetua with all its accessory penalties, and to pay damages in the total amount of P262,310.00 plus the costs.

Accused-appellants contend in this appeal that the trial court erred: (a) in not appreciating in their favor the justifying circumstance of self-defense, insisting that all the elements thereof were successfully established, and, (b) in finding them guilty beyond reasonable doubt of murder notwithstanding the inconsistencies in the testimonies of prosecution witnesses Romeo Muralla, Juanito Faromal and Sgt. Gersa.

We find no merit in the appeal. When self-defense is invoked by an accused charged with murder or homicide he necessarily owns up to the killing but may escape criminal liability by proving that it was justified and that he incurred no criminal liability therefor.[6] Hence, the three (3) elements of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the aggression; and, (c) lack of sufficient provocation on the part of the person defending himself, which must be proved by clear and convincing evidence.[7] However, without unlawful aggression there can be no self-defense, either complete or incomplete.[8]

In the instant case, accused-appellants sought to establish unlawful aggression on the part of Valentino Pagumay by testifying that the latter, after asking Gaudioso for a light for his cigarette, suddenly and for no reason at all, drew his gun and pointed it at Gaudioso with the threatening words, "I will shoot you." However, quite an enlightening and revealing narrative follows thus:

> Q:
>
> When Valentino Pagumay drew his gun from his waist what did you do?
>
> A:
>
> Both my hands caught his hand holding the firearm x x x x
>
> Q:

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When you were able to grab the hand of Valentino Pagumay what happened next?

A:

He fell to the ground.

Q:

So you want to tell the Court that immediately after you grabbed or took hold of his hand he immediately fell to the ground?

A:

Yes sir because he wrestled with me when I took hold both of his hand (sic) and twisted his arm.

Q:

When Valentino Pagumay fell to the ground what did you do?

A:

After he fell to the ground I sat on his abdomen. My right knee was pinning down his left hand while my left hand was pinning on the ground his right hand and then I delivered several successive stab blows on his breast x x x x

Q:

And how many times did you stab him?

A:

I was not able to count the number of times because I was stabbing him successively.

Q:

And you cannot estimate the number of stab blows you delivered to him?

A:

I was not able to count the number of blows because I was stabbing and hitting him until his death (underscoring ours).[9]

Clearly, the unlawful aggression allegedly started by Valentino - assuming it to be true - had already ceased by the time Gaudioso repeatedly stabbed Valentino to death. Gaudioso himself testified that after Valentino threatened to shoot him, he was able to grab Valentino's right hand which was holding the gun, outbalance him, and then pin both his hands while the latter was lying prone on the ground. Having thus immobilized Valentino, there was obviously no more reason for Gaudioso to stab Valentino eighteen (18) times as he did because the alleged unlawful aggression from Valentino had stopped. In legitimate self-defense the aggression must still be existing or continuing when the person making the defense attacks or injures the aggressor.[10] Thus when the unlawful aggression ceases to exist, the one making the defense has no more right to kill the former aggressor.[11] In such cases, less violent means would have sufficed; hence, if not resorted to, the plea of self-defense must fail.[12]

In the instant case Valentino was already effectively immobilized by Gaudioso, hence, the latter could have either simply boxed the former with his free right hand, hit him on a non-vital part of his body,[13] or better yet, summoned his brothers Ernesto and Jerwin who were just standing a few meters away to help him in ensuring no further aggression from Valentino. However, quite inconsistent with his plea of self-defense, Gaudioso did none

of these things. Instead, he even ignored his brothers' entreaties for him to stop, rebuffed their efforts to the extent of even accidentally hitting Jerwin as claimed by the latter,[14] and continued stabbing Valentino successively until the latter died.[15] Considering all these, the plea of self-defense cannot but be received with incredulity and disbelief.

In addition to the foregoing, several other circumstances exist to further undermine the plea of self-defense and establish accused-appellants' collective guilt.

First, the trial court correctly noted that the victim sustained a total of eighteen (18) stab wounds, fourteen (14) of which were inflicted on the anterior chest alone, and four (4) of which were fatal. It is an oft-repeated rule that the presence of a large number of wounds on the part of the victim negates self-defense because, rather than suggest an effort to defend oneself, it instead strongly indicates a determined effort to kill the victim.[16] Second, the claim that Gaudioso alone killed Valentino in self-defense and that Ernesto and Jerwin had nothing to do with the killing was disproved not only by Romeo and Juanito's positive identification of Ernesto and Jerwin as co-conspirators (at least) to the crime but, more importantly, by the fact that the stab wounds themselves indicated that there was actually more than one assailant. As testified to by Dr. Mary Joyce M. Faeldan, the Acting Municipal Health Officer of Miag-ao who autopsied the cadaver, the eighteen (18) stab wounds sustained by the victim were not all caused by a single weapon but by two (2) kinds of knives, i.e., one single-bladed, and the other, double-bladed. While three (3) stab wounds had blunt and contussed extremities indicating that they were inflicted with the use of a blunt single-bladed knife, the remaining fourteen (14) stab wounds had regular distinct clean-cut edges and sharp extremities indicating a sharp double-bladed knife as the murder weapon.[17] Since only Gaudioso's right hand was free to hold a weapon, his left hand already gripping Valentino's right hand, then it is quite obvious that his brothers likewise participated in the assault as claimed by the prosecution witnesses because Gaudioso, evidently, could not have managed two (2) weapons at the same time with only his right hand free.

Third, accused-appellants did not inform the authorities about the incident. If they were really innocent as they claimed to be, they should have told the authorities about the accidental killing.[18] Their excuse that it was already late is not only shallow but quite incredible considering three (3) factors: (a) accused-appellants managed to get home at the relatively early hour of 6:30 in the evening;[19] (b) the house of the barangay captain to whom they could have reported the incident was a mere fifty (50) meters away from their own house;[20] and, (c) Gaudioso was himself a barangay official making it easier for him to approach the other barangay authorities who were but his colleagues.[21]

Fourth, accused-appellants do not deny that they did not surrender to Sgt. Gersa when the latter saw them immediately after the killing. In fact, they ignored his warning shot and ran away. Worse, accused-appellants even returned fire with three (3) gunshots of their own, continued their flight until Sgt. Gersa gave up the chase through sheer exhaustion, and yielded only when they were already invited for questioning by the police after having been identified as the killers by eyewitnesses Romeo Muralla and Juanito Faromal.

On the alleged inconsistencies in the testimonies of the prosecution witnesses, suffice it to say that inconsistencies on minor and trivial matters do not diminish but rather bolster a witness's credibility as they in fact manifest spontaneity and lack of scheming.[22] In other words, they are badges of truth rather than indicia of falsehood.[23] Thus the alleged contradictions on the relative positions of Romeo and Valentino while the latter was being stabbed, whether it was Romeo or Juanito who informed the victim's wife about the incident, and whether Juanito was indeed taken by Sgt. Gersa to Camp Monteclaro after the incident, are but trivial and minor inconsistencies which neither detract from the essential integrity of the prosecution's evidence nor strengthen accused-appellants' flagging plea of self-defense. Having already pleaded self-defense, accused-appellants could

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not invoke the alleged weakness of the prosecution's evidence, for, even if the latter were weak (which is certainly not so in the instant case), it could not be disbelieved in view of their open admission of responsibility for the killing.[24]

On the civil liabilities of accused-appellants a modification of the amounts awarded by the trial court is in order. By way of moral damages, the trial court awarded P100,000.00. Since the award is not meant to enrich the heirs of the victim but only to compensate them for injuries sustained to their feelings we reduce the amount to P50,000.00 consistent with prevailing jurisprudence.[25] A reduction of the actual damages awarded is likewise proper. The trial court awarded P28,977.00 for various expenses incurred by the victim's widow as a result of the killing. However, since only the costs of the tomb, coffin, embalming and funeral services in the total amount of P8,977.00 were properly receipted[26] the estimated amount of P20,000.00 allegedly spent for food and drinks consumed during the wake must be disallowed for not having been competently proved. The Court can only give credit to expenses which have been duly substantiated.[27]

On the victim's loss of earning capacity, Victoria Pagumay testified that her husband, a farmer, was 53 years old when he was killed, with an average annual income of P40,000.00 to P50,000.00.[28] Using P40,000.00 as the deceased's average annual income while still alive, the trial court awarded P133,333.00 for loss of earning capacity after multiplying two-thirds (P26,666.67) of the victim's average annual income[29]by five (5) years. No reason was given, and no legal basis exists, why lost income was awarded for only five (5) years. On the contrary, the victim's lost earnings are to be computed according to the formula adopted by the Court in several decided cases,[30] to wit: net earning capacity ("X") equals life expectancy[31] multiplied by gross annual income[32] less living expenses.[33] Thus, the victim's lost earning capacity amounted to P405,000.00 as may be shown hereunder -

X = 2(80-53) x [P45,000 - P22,500]

3

X = 2 (27) x P22,500

3

X = 54 x P22,500

3

X = 18 x P22, 500

X = P405,000.00

Finally, an award of another P50,000.00 is warranted as civil indemnity for the death of the victim without need of evidence or proof of damages.[34]

WHEREFORE, the appealed Decision dated 9 May 1996 of the Regional Trial Court of Iloilo City, Branch 25, finding accused-appellants GAUDIOSO MORE, ERNESTO MORE and JERWIN MORE guilty beyond reasonable doubt of Murder is AFFIRMED. Accused-appellants are ordered to pay, jointly and severally, the heirs of Valentino Pagumay the following amounts: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P8,977.00 as actual damages; and, (d) P405,000.00 for loss of earning capacity. Costs against accused-appellants.

SO ORDERED.

Mendoza, Quisumbing, Buena and De Leon, Jr., JJ., concur.

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[1] Decision penned by Judge Bartolome M. Fanuñal, RTC-Br. 25, Iloilo City; Rollo, pp. 21-33.

[2] TSN, 23 September 1994, pp. 5-16.

[3] TSN, 10 November 1994, pp. 3-7.

[4] TSN, 8 June 1995, p. 16.

[5] Id., p. 12.

[6] People v. Galapin, G.R. No. 124215, 31 July 1998, 293 SCRA 474, 488; People v. Molina, G.R. Nos. 115835-36, 22 July 1998, 292 SCRA 742, 776; People v. Villamor, G.R. No. 124981, 10 July 1998, 292 SCRA 384, 395; People v. Aguilar, G.R. Nos. 120622-23, 10 July 1998, 292 SCRA 349, 356; People v. Magaro, G.R. No. 113021, 2 July 1998, 291 SCRA 681, 686; People v. Amamangpang, G.R. No. 108491, 2 July 1998, 291 SCRA 638, 649-650; People v. Solis, G.R. No. 124127, 29 June 1998, 291 SCRA 529, 534-535; People v. De la Cruz, G.R. Nos. 109619-23, 26 June 1998, 291 SCRA 164,180.

[7] People v. Navarro, G.R. No. 125538, 3 September 1998, 295 SCRA 139, 144.

[8] People v. Sol, G.R. No. 118504, 7 May 1997, 272 SCRA 392, 401; People v. Ignacio, G.R. No. 107801, 26 March 1997, 270 SCRA 445, 451; People v. Agravante, G.R. Nos. 105402-04, 5 September 1994, 236 SCRA 300, 313.

[9] TSN, 8 June 1995, pp. 8-12.

[10] People v. Decena, G.R. No. 107874, 4 August 1994, 235 SCRA 67, 74.

[11] People v. Babor, G.R. No. 106875, 24 September 1996, 262 SCRA 359, 365; People v. Santos, G.R. No. 99259-60, 29 March 1996, 255 SCRA 309, 318-319; People v. So, G.R. No. 104664, 28 August 1995, 247 SCRA 708, 720; People v. Maceda, G.R. No. 91106, 27 May 1991, 197 SCRA 499, 509.

[12] See People c. Capoquian, G.R. No. 109145, 22 September 1994, 236 SCRA 655, 664.

[13] Ibid.

[14] TSN, 23 February 1995, pp. 20-30.

[15] TSN, 8 June 1995, p. 12.

[16] People v. Magallanes, G.R. No. 114265, 8 July 1997, 275 SCRA 222, 231; People v. Alvarez, G.R. No. 117689, 30 January 1997, 267 SCRA 266, 276.

[17] TSN, 30 September 1994, p. 12.

[18] People v. Rivera, G.R. No. 101798, 10 May 1993, 221 SCRA 647, 654.

[19] TSN, 23 February 1995, pp. 29-30.

[20] TSN, 10 November 1994, p. 22.

[21] TSN, 8 June 1995, p. 24.

[22] People v. Cristobal, G.R. No. 116279, 29 January 1996, 252 SCRA 507, 517.

[23] People v. Laray, G.R. No. 101809, 20 February 1996, 253 SCRA 654, 665.

[24] People v. Peña, G.R. No. 116022, 1 July 1998, 291 SCRA 606,614.

[25] People v. Iligan, G.R. No. 128286, 20 July 1999.

[26] See Exhs. "F," "G," and "H."

[27] See People v. Gutierrez, Jr., G.R. No. 116281, 8 February 1999.

[28] TSN, 20 October 1994, p. 5.

[29] The widow testified that 1/3 of her husband's annual income was always spent for his "personal support;" TSN, 20 October 1994, p. 6.

[30] People v. Panida, G.R. Nos. 127125 and 138952, 6 July 1999; People v. Verde, G.R. No. 119077, 10 February 1999 citing Sanitary Steam Laundry, Inc. v. Court of Appeals, G.R. No. 119092, 10 December 1998, Metro Manila Transit Corporation v. Court of Appeals, G.R. Nos. 116617 and 126395, 16 November 1998, Negros Navigation Co., Inc. v. Court of Appeals, 281 SCRA 534 (1997), and Villa-Rey Transit, Inc. v. Court of Appeals, 31 SCRA 511 (1970).

[31] The accepted formula for determining life expectancy is 2/3 multiplied by [80 minus age of the deceased] (Negros Navigation Co., Inc. v. Court of Appeals, G.R. No. 110398, 7 November 1997, 281 SCRA 534, 546-547).

[32] Gross annual income is the deceased's annual income before deduction of living expenses [50% of gross annual income] (Davila v. Philippine Airlines, No. L-28512, 28 February 1973, 49 SCRA 497, 505, citing Villa Rey Transit, Inc. v. Court of Appeals, No. L-25499, 18 February 1970, 31 SCRA 511).

[33] Living expenses are computed at 50% of gross annual income. See People v. Panida, G.R. Nos. 127125 , and 138952, 6 July 1999, and People v. Verde, G.R. No. 119077, 10 February 1999.

[34] People v. Espanola, G.R. No. 119308, 18 April 1997, 271 SCRA 689, 716; People v. Eribal, G.R. No. 127662, 25 March 1999; People v. Piamonte, G.R. No. 91999, 25 February 1999; People v. Batidor, G.R. No. 126027, 18 February 1999.

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