

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO CABER, SR., ACCUSED-APPELLANT.

G.R. No. 129252. November 28, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 9, Tacloban City, finding accused-appellant Francisco Caber, Sr. guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of Teodolfo Ramirez the amount of P50,000.00 as indemnity.

The information against accused-appellant alleged:

That on or about the 20th day of November, 1994 in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill and with treachery and evident premeditation, armed with a bladed weapon (fan knife), did, then and there willfully, unlawfully and feloniously attack, assault, stab and wound one TEODOLFO RAMIREZ on his chest, thereby inflicting upon said TEODOLFO RAMIREZ stab wounds which caused his death.[2]

Accused-appellant pleaded not guilty to the charge and trial of the case followed.

The prosecution presented evidence showing the following:

At around 7:30 in the morning of November 20, 1994, Julian Rama, who was in the front yard of his house in Barangay 80, Marasbaras, Tacloban City, saw accused-appellant Francisco Caber, Sr. chasing Teodolfo Ramirez with a bladed weapon locally known as pisao. Rama knew both because Caber was his fellow barangay tanod while Ramirez was his kumpadre. The latter ran towards him asking for help. Rama said he raised his hands as he told Caber "Pare, don't come near us!" but his plea was not heeded. Although Ramirez sought cover behind Rama, accused-appellant was able to stab him (Ramirez) twice on the chest. Rama called on his neighbors to help, but they got scared and fled. Accused-appellant surrendered to Rama who instructed another tanod to take accused-appellant to the city police station.[3]

Rama and still another companion took Ramirez to the Tacloban City Hospital where he was pronounced dead on arrival. The attending physician, Dr. Leo B. Lagado, issued the following medico-legal report (Exh. B), dated October 3, 1995:

Stab wound, about 1-cm. in length, mid-sternal area at the level of the nipple, penetrating the left thoracic cavity.

Stab wound, about 2-cm. in length, left parasternal area, 1st intercostal space penetrating the left thoracic cavity.

....

REMARKS: Dead on arrival at hospital Emergency Room.[4]

Dr. Lagado testified that the victim died of hypovolemic shock secondary to the stab wounds. He opined that the stab wounds were caused by a bladed weapon, possibly by the fan knife locally known as pisao. The two stab wounds were fatal and the one in the mid-sternal area, which penetrated the victim's left thoracic cavity, by itself, could have caused the death of Ramirez.[5]

Accused-appellant testified in his behalf. He admitted killing Ramirez, but he claimed that he did so in self-defense. He declared that he was 63 years old, married, and that he worked at the Mercado's Caltex Gasoline Station in front of the Divine Word University in Tacloban City. He claimed that at around 7:30 in the morning of November 20, 1994, he took a pedicab to work. Just after he had alighted from the vehicle, he heard someone shout, "Manong Caber, someone is going to kill you!" Instinctively, he turned around and caught Ramirez' hand as the latter was about to stab him. Accused-appellant said he was able to parry the blow, turn the knife towards his attacker, and thrust it to the latter's chest. Accused-appellant claimed that Ramirez then ran towards Rama's house; that he gave chase; and that after catching up with Ramirez, he stabbed the latter on the chest once. Thereafter, he surrendered to a barangay tanod at the police outpost near the City Hospital and was detained at the Tacloban City Jail.[6]

Accused-appellant claimed that his wife, Adelina Caber, had filed a rape case on November 18, 1994 against the deceased, as a result of which Ramirez was arrested and detained. He said that prior to the stabbing incident, he did not know that Ramirez had been released from jail. He denied having harbored any grudge against the victim for what the latter had done to his wife.[7]

Adelina Caber corroborated her husband's testimony that on November 18, 1994, she filed a complaint for rape against Ramirez for which reason he was arrested and detained at the city jail on the same day. Asked whether her husband harbored any grudge against accused-appellant, Adelina Caber said that her husband merely told her that he was not going to harm her if she told everything to him.[8]

On August 20, 1996, the trial court rendered judgment the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby finds accused, Francisco Caber, Sr. GUILTY beyond reasonable doubt of the crime of Murder and considering in favor of the accused the mitigating circumstance of passion [or] obfuscation, the Court hereby imposes upon the accused the penalty of reclusion perpetua, together with all its accessory penalties. Furthermore, the Court hereby orders accused to pay the heirs of the victim the amount of P50,000.00 by way of indemnification for the damage and suffering caused the heirs of the victim.[9]

Hence this appeal. Accused-appellant contends that $\frac{3}{4}$

I. THE COURT A QUO GRAVELY ERRED IN RELYING SOLELY ON THE EYEWITNESS ACCOUNT OF JULIAN RAMA AND DISREGARDING COMPLETELY THE TESTIMONY OF THE ACCUSED-APPELLANT THAT HE WAS PREVIOUSLY ATTACKED BY THE VICTIM AND HE MERELY ACTED IN SELF-DEFENSE.

II. GRANTING ARGUENDO THAT THERE WAS NO SELF-DEFENSE, THE COURT A QUO STILL ERRED IN FINDING THE ACCUSED GUILTY OF MURDER AND [IN] NOT APPRECIATING FURTHER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[10]

First. Accused-appellant claims he acted in self-defense in killing Ramirez. He contends that the prosecution witness, Julian Rama, witnessed only the second stage of his encounter with Ramirez, i.e., when he chased Ramirez and stabbed him, but the initial aggression was actually committed by Ramirez by attacking him.[11]

This contention has no merit. To begin with, by invoking self-defense, accused-appellant admits to the crime for

which he is charged and, therefore, it becomes incumbent upon him to prove (a) that the victim was guilty of unlawful aggression; (b) that there was reasonable necessity for the means employed by him to repel the aggression; and (c) that there was sufficient provocation on his (accused-appellant's) part.[12] Proof of the first requirement (unlawful aggression of the victim) is indispensable since the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression. Even if initially there was unlawful aggression, the person attacked has no more right to kill or wound the former aggressor the moment the aggression ceases. When the danger or risk to him has disappeared, there should be a corresponding cessation of hostilities on the part of the person defending himself.[13]

In the case at bar, the evidence for the prosecution shows that accused-appellant ran after and then stabbed Ramirez twice, hitting him on the chest as the latter tried to seek cover behind Rama. This circumstance negates the presence of unlawful aggression on the part of the victim.

Accused-appellant claims that it was Ramirez who initially attacked him with a knife. Assuming this to be true, it would nonetheless appear that Ramirez's unlawful aggression had already ceased when he was stabbed by accused-appellant because, by the latter's own account, Ramirez ran away after accused-appellant turned the knife toward him and thrust it to him. If accused-appellant's claim is to be believed, Ramirez was already running away but accused-appellant still pursued him. There was clearly no longer any danger to accused-appellant. In *People v. Alconga*,^[14] the alleged aggressor, after being wounded, ran away but the accused nevertheless pursued and then mortally wounded him. This Court rejected the plea of self-defense and held that after the victim had already fled, the accused's right to inflict injury upon the assailant ceased.^[15]

Accused-appellant's defense is further weakened by his failure to present any corroborating evidence. He claimed that, without provocation, Ramirez tried to stab him with a knife as he was alighting from a pedicab, but he was able to ward off the attack because of the timely warning given by a bystander. It was therefore necessary for him to present the pedicab driver or the person who warned him to corroborate his testimony. His failure to do so puts in doubt his credibility.

Second. The foregoing notwithstanding, accused-appellant's contention that the prosecution failed to prove the qualifying circumstances of evident premeditation and treachery is meritorious.

Evident premeditation cannot be appreciated against accused-appellant because the prosecution failed to establish (a) the time when accused-appellant determined to commit the crime; (b) an act manifestly indicating that he had clung to his determination; and (c) a sufficient lapse of time between the determination and the execution to allow him the opportunity to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.^[16] The only evidence presented by the prosecution to prove this circumstance is that Ramirez's wife charged accused-appellant with rape. But this alone is insufficient to show that because of this fact accused-appellant premeditated on his revenge against Ramirez.

Nor can the qualifying circumstance of treachery be appreciated against accused-appellant. Treachery exists when the offender commits any of the crimes against person 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.^[17] To prove treachery, the prosecution must show (a) that at the time of the attack, the victim was not in a position to defend himself and (b) that the accused consciously adopted the particular means, method, or form of attack employed by him.^[18]

In the case at bar, the fact that accused-appellant chased Ramirez and then stabbed him as the latter tried to seek cover behind Rama precisely shows that Ramirez knew the danger facing him and he tried to escape from it, albeit unsuccessfully. Under such circumstances, there can be no treachery.

Accused-appellant testified that when he dealt the victim a second blow, Rama was holding the victim's hands. The victim's position was accidental. Accused-appellant could not have consciously or deliberately sought to take advantage of this fact to attack Ramirez.[19]

On the other hand, the Solicitor-General's contention that the trial court erred in crediting accused-appellant with the mitigating circumstance of passion or obfuscation is meritorious. This circumstance is considered mitigating because by reason of causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power.[20] In order that this circumstance may be appreciated, the defense must show (a) an act both unlawful and sufficient to produce such condition of mind; and (b) said act which produced the obfuscation must not be so far removed from the time of commission of the crime, because after a considerable length of time, the perpetrator might have recovered his equanimity.[21] Furthermore, it is necessary to show that the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.[22]

In this case, accused-appellant testified that he did not harbor any grudge against Ramirez and that he was not aware that the latter had been released from detention on November 20, 1994. He was thus surprised when Ramirez allegedly attacked him in the morning of that day.[23] These statements, coming no less from accused-appellant, totally negate his claim of passion or obfuscation on his part. Even assuming, however, that he really killed Ramirez because of passion or obfuscation in order to avenge the wrong done to his wife by the victim, still he cannot be credited with this circumstance as he would then have acted "in the spirit of revenge." Furthermore, although accused-appellant's wife was allegedly raped by Ramirez on November 17, 1994, the stabbing incident in question took place three days later or on November 20, 1994. Thus, the act which was supposed to have caused passion or obfuscation on the part of the accused-appellant was so far removed from the date of the stabbing. In *United States v. Sarikala*,[24] the Court ruled that the lapse of more than 24 hours, reckoned from the commission of the act which produced the passion or obfuscation up to the time of the commission of the felony, constituted a considerable period of time after which such circumstance would no longer be deemed present.

Nevertheless, accused-appellant should be credited with the mitigating circumstance of voluntary surrender. The requisites for this circumstance are: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender must be voluntary.[25] In this case, the evidence shows that shortly after stabbing Ramirez, accused-appellant gave himself up to barangay tanod Julian Rama who then arranged for his surrender to the city police. Although a barangay tanod is not a person in authority but only an agent of a person in authority,[26] nevertheless, Rama could be treated as an intermediary to accused-appellant's surrender so as to justify appreciating this mitigating circumstance in favor of accused-appellant.[27]

Third. Based on the foregoing, accused-appellant is liable for homicide only, which is punishable by reclusion temporal under Art. 249 of the Revised Penal Code. In view of the presence of the mitigating circumstance of voluntary surrender and the absence of any aggravating circumstance and applying the Indeterminate Sentence Law, the impossible penalty against accused-appellant is six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. In addition to the P50,000.00 civil indemnity awarded by the trial court, accused-appellant should also be ordered to pay the heirs of Teodolfo Ramirez moral damages in the amount of P50,000.00.[28]

WHEREFORE, the decision of the Regional Trial Court, Branch 9, Tacloban City is **AFFIRMED** with the **MODIFICATION** that accused-appellant Francisco Caber, Sr. is found guilty of **HOMICIDE** only and sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. He is also ordered to pay to the heirs of Teodolfo Ramirez

moral damages in the amount of P50,000.00, in addition to the amount of P50,000.00 as civil indemnity awarded by the trial court.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Walerico B. Butalid.

[2] Records, p. 1.

[3] TSN (Julian Rama), pp. 2-5, June 14, 1995.

[4] Records, p. 48.

[5] TSN (Dr. Leo Lagado), pp. 1-5, October 4, 1995.

[6] TSN (Francisco Caber, Sr.), pp. 2-6, Nov. 23, 1995.

[7] Id., pp. 6-7, 9.

[8] TSN (Adelina Caber), pp. 2-4, March 7, 1996.

[9] RTC Decision, p. 3; Records, p. 72.

[10] Accused-appellant's Brief, pp. 1-2; Rollo, pp. 83-84.

[11] Id., pp. 5-8; id., 87-90.

[12] REVISED PENAL CODE, ART. 11(1); People v. Magsombol, 252 SCRA 187 (1996); People v. Nalanzan, 270 SCRA 234 (1997); People v. Alvarez, 267 SCRA 266 (1997); People v. Camahalan, 241 SCRA 558 (1995); People v. Albarico, 238 SCRA 203 (1994).

[13] People v. Babor, 262 SCRA 359, 365 (1996); People v. Capoquian, 236 SCRA 655 (1994); People v. Alconga, 78 Phil. 366 (1947).

[14] 78 Phil. 366 (1947).

[15] Supra. at 372.

[16] See People v. Ladit, G.R. No. 127571, May 11, 2000; People v. Gutierrez, Jr., 302 SCRA 643 (1999).

[17] REVISED PENAL CODE, ART. 14(16).

[18] People v. Gutierrez, 302 SCRA 643 (1999).

[19] Cf. People v. Bautista, 254 SCRA 621 (1996); People v. Nitcha, 240 SCRA 283 (1995).

[20] People v. Leonor, 305 SCRA 285 (1999).

[21] People v. Javier, 311 SCRA 576 (1999); People v. Gervacio, 133 Phil. 805 (1968).

[22] People v. Pampanga, 139 SCRA 339 (1985); People v. Caliso, 58 Phil. 283 (1933); People v. Gravino, 122 SCRA 123 (1983).

[23] TSN (Federico Caber, Sr.), pp. 6 & 10, Nov. 23, 1995.

[24] 37 Phil. 486 (1918).

[25] *People v. Cotas*, G.R. No. 132043, May 31, 2000; *People v. Amaguin*, 229 SCRA 166 (1994).

[26] *People v. De Guzman*, 164 SCRA 225 (1988); *People v. Caricungan*, 202 SCRA 43 (1991).

[27] See *People v. Cotas*, G.R. No. 132043, May 31, 2000.

[28] *People v. Berzuela*, G.R. No. 132078, Sept. 25, 2000; *People v. Candare*, G.R. No. 129528, June 8, 2000.

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