

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARIO ALBA ALIAS “MARIO ALBA”, ACCUSED-APPELLANT.

G.R. No. 130523. January 29, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is an appeal from a decision[1] dated March 24, 1997, of the Regional Trial Court, Branch 33, in Dumaguete City, in Criminal Case No. 10632, convicting appellant Gario Alba alias “Mario Alba” of the crime of murder under Article 248 of the Revised Penal Code, before its amendment by Republic Act No. 7659.

On February 9, 1993, an Information was filed against Alba, charging him with murder allegedly committed as follows:

That at about 5:30 o’clock in the afternoon of January 31, 1993, at sitio Pananlaya-an, barangay Datagon, municipality of Pamplona, province of Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, that above-named accused with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack, assault and stab one Ricky Aguilar with the use of knife with which the accused was then armed and provided thereby inflicting upon the body of the victim, the hereunder described injuries:

Stab wound, 2 cm., 6[th] intercostal space, anterior, axillary line, right

Stab wound, 6 cm., level of the 1[st] and 2[nd] lumbar vertebra which injuries caused the instantaneous death of victim, Ricky Aguilar.

Contrary to Article 248 of the Revised Penal Code.[2]

During the arraignment, counsel for appellant manifested that his client was willing to enter a plea of guilty to the lesser offense of homicide. This was rejected by the prosecution. Thus, he pleaded not guilty to the offense charged.

Trial thereafter ensued. The prosecution presented as witnesses Dr. Quintin C. Bascos, senior resident physician of Bais District Hospital; Esterlito Aniñon, Aguilar’s friend; and Roland Ybasan, a pedicab driver; and the victim’s father, Valentin Aguilar.

DR. QUINTIN BASCOS testified that he conducted a post-mortem examination on the body of the victim, Ricky Aguilar. His findings showed that the victim suffered two (2) stab wounds as follows: stab wound no. 1, which was located in front, right side, about 15 inches from the top of the right shoulder; and stab wound no. 2, which was found at the right of his back, 2 inches from the vertebral lumbar. According to Dr. Bascos, the cause of death of the victim was massive bleeding due to the injury to the artery supplying the right kidney and the injury of the right lung causing the lung to collapse as well as the bleeding at the right thoracic region.[3] He testified that these wounds were inflicted by a sharp-bladed instrument.[4]

ESTERLITO ANIÑON testified that on January 31, 1993, at about 5:30 in the afternoon, the victim (Ricky Aguilar) and he were having a drinking spree at Paterno Flordeliza's store located at Pananlaya-an, Datagon, Pamplona, Negros Oriental. Aguilar ordered a bottle of Añejo rum. They had alternate shots of the rum from a single glass. According to the witness, when his turn to drink came, he saw appellant behind Aguilar, and suddenly appellant stabbed Aguilar at the back with a knife that appellant held by his left hand. He saw the knife pierce the front of the victim's chest. Appellant immediately fled the scene while Roland Ybasan, a pedicab driver, rushed the victim to the house of Iluminada Manahon. He explained he was not able to warn Aguilar because he was too stunned, and his first instinct was to run for cover lest he be the next victim.

ROLAND YBASAN[5] essentially corroborated the testimony of Aniñon.[6] He testified that he recognized the appellant as one of the regular passengers in his pedicab. He recalled that from where he stood, some 5 meters away, he saw appellant stab the victim once "at the right side of his back and the weapon penetrated the right side of the front chest." Ybasan touched his back and his front a few inches below the right nipple, to demonstrate the location of the victim's wound.[7]

The last witness for the prosecution was VALENTIN AGUILAR, father of the victim, who testified that he incurred P9,500 for the victim's coffin, the wake and the burial, and other miscellaneous expenses.[8]

Appellant Gario Alba, Ricardo Imbo, a laborer; and Wilfredo Jabar Rodriguez, a barangay councilman, were presented as witnesses for the defense. The defense version of the incident showed that appellant killed the victim allegedly in self-defense.

Appellant testified[9] that in the morning of January 31, 1993, he was alone, on his way home via Hacuton, Mamburao, Pamplona, Negros Oriental. He took this route because the Tanjay River, where he usually passed, was inundated due to heavy downpour. According to him, he had with him a hunting knife for his protection from marauders, who frequented the area. He said he did not know that the carrying of weapons outside residences was prohibited. Upon reaching Pananlaya-an in Barangay Datagon, at around 3:00 or 4:30 P.M., he took shelter by the side of a store. There were other people also taking shelter in that area, among them, Ricky Aguilar. According to appellant, Aguilar approached him and asked, "What is your purpose in passing here? Are you going to take revenge against me?" Appellant said in reply that he passed by the place because his usual route was flooded. Thereupon, according to appellant, Aguilar boxed him in the jaw which caused him to fall to the ground. As he lay, he saw Aguilar about to pull out a hunting knife, so he immediately stood up, pulled out his hunting knife, and stabbed Aguilar twice.

RICARDO IMBO, a laborer of Del Prado Ledesma Sugar Plantation, testified to corroborate appellant's story. A resident of Layawan, Tanjay, Negros Oriental, Imbo testified that at the time of the incident, he was at sitio Pananlaya-an, Datagon, to look for a pig to buy for his brother's wedding. He left his house after lunch and arrived at Pananlaya-an at about 3 o'clock in the afternoon on January 31, 1993. He had a snack in a store along the road. Because of the heavy rain, he remained in the store's waiting shed. He noted other people taking shelter in the shed. He also noticed appellant Alba, alone on the other side of the road, taking shelter in a house. He said that Alba was approximately fifty (50) meters away from him. At around 5:30 P.M., as he was leaving, he saw a stranger box Alba at the base of the latter's right arm. He noticed Alba reel and almost slump on the ground. Alba then stood up, pulled out a knife, and stabbed the person who boxed him.[10]

WILFREDO JABAR RODRIGUEZ, a barangay councilman, testified that appellant Alba sought his advice about the incident and he told him to surrender. Rodriguez accompanied Alba to the barangay captain who escorted the appellant to the authorities.[11]

On March 24, 1997, the trial court found appellant guilty, sentencing him as follows:

WHEREFORE, this Court finds the accused GUILTY beyond reasonable doubt of the offense charged in the information of MURDER, with one (1) mitigating circumstance of voluntary surrender and the penalty imposable consisting of one (1) divisible penalty of reclusion temporal and two (2) indivisible penalties, that of reclusion perpetua to death, the accused is hereby sentenced to a determinate penalty of RECLUSION PERPETUA; to indemnify the heirs of the victim Ricky Aguilar, the sum of Fifty Thousand (P50,000.00) Pesos; Thirty Thousand (P30,000.00) Pesos as moral damages; Twenty Thousand (P20,000.00) Pesos as exemplary damages, and to suffer the accessory penalties imposed by law.

x x x

SO ORDERED. [12]

From the above decision, appellant timely appealed. In his brief, he impugns that decision on the basis of a lone assignment of error, that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GARIO ALBA GUILTY OF MURDER DESPITE CLEAR AND CONVINCING EVIDENCE THAT TREACHERY WAS NOT PRESENT IN THE COMMISSION OF THE CRIME.[13]

Appellant essentially owns up to the killing of the victim but claims that he did so in self-defense.[14] He says that he stabbed the victim twice when the latter boxed him. He adds that he was in front of the victim when he stabbed him. According to appellant, an eye-witness, one Ricardo Imbo,[15] corroborated his testimony.

For the State, the Office of the Solicitor General contends that appellant's claim of self-defense pales against the clear testimony of the prosecution witnesses. According to the OSG, stealth attended the attack against the victim, Ricky Aguilar. The OSG concludes that appellant's conviction should be affirmed.

To exculpate an accused from any criminal liability on the ground of self-defense, the burden of proof shifts to the accused. He must prove the following elements of self-defense by clear and convincing evidence: (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.[16]

After careful consideration of the evidence on record, we are convinced that unlawful aggression on the part of the victim has not been shown. Appellant failed to overcome the evidence of the prosecution that appellant stabbed the victim, Ricky Aguilar, from behind without any provocation at all. His claim that he had a frontal encounter with the victim was belied by witnesses Aniñon and Ybasan, who testified that they saw appellant suddenly stab the victim from behind, with the knife penetrating from the back to the victim's front chest, on the right side. We note that although Ricardo Imbo, a bystander at the scene of the crime, tried to corroborate Alba's story, the trial court was unimpressed. Instead, the court gave credence to the testimony of prosecution witnesses Aniñon and Ybasan. The assessment of the trial court is generally received with great respect and is conclusive on appeal, barring any showing of any arbitrariness or oversight of material facts that could change the result. For it is the trial judge who directly observed the witnesses on the stand and could detect from their conduct "the furtive lie that will expose the hidden truth." [17]

The trial judge gave little weight to the testimony of Imbo, because it was peppered with improbabilities and inconsistencies. Imbo could not even tell for sure if appellant had companions at the time of the incident. As observed by the trial court with alacrity, Imbo in his first testimony declared that the appellant was alone when he saw him at the time the incident happened.[18] In the succeeding direct examination, Imbo changed his account and declared that Alba had companions.[19] But, upon further questioning, Imbo retracted his statement, saying that appellant had arrived alone walking but was caught in the rain.[20] Equally incredulous was Imbo's testimony that appellant was on the other side of the road, some 50 meters away[21] from where he was standing,

when he saw someone punch appellant at the base of his right arm.[22] From his vantage point 50 meters away from the appellant, it is doubtful if he could clearly see the victim hit at the base of his right arm. Significantly, this version by Imbo runs counter to appellant's own testimony that he was hit at the lower jaw.[23]

Imbo's declaration that he saw appellant stab the victim on the chest and on the side[24] is contradicted by the autopsy report revealing two wounds. The autopsy result revealed one at the back as the entrance wound, and the other in front of the victim's chest as the exit wound, both caused by one knife thrust. The report of Dr. Bascos did not support the testimony of Imbo that appellant stabbed the victim twice while face to face, and not from behind.

The trial court gave credence to the testimony of eyewitness Esterlito Aniñon, instead. He categorically declared that he saw the appellant stab the victim once from behind, with the knife piercing "through and through," so that the point of the knife exited in the frontal area, at the right side of the victim, that is to say, the chest of the deceased. Aniñon's narration dovetails with the physical evidence presented and explained by Dr. Bascos who testified that there were two stab wounds found in the deceased's body inflicted by a sharp-bladed instrument.[25] One wound is 2 cm. located at the sixth intercostal space, anterior[26] (front), axillary line, right, which Dr. Bascos explained to be located at the right side of the victim about 18 inches from the top of the shoulder going downwards.[27] The other wound is a 6-cm. stab wound found at the first and second lumbar vertebra, which Dr. Bascos demonstrated to be found at the right of the back about two inches from the vertebral lumbar.[28] These findings are consistent with the testimony of Aniñon that appellant stabbed the victim from behind at the right side, with the knife piercing "through and through" until the tip of the knife exited in the frontal right side of the victim. This also explains why the wound at the front (exit wound) is much smaller (2 cms.) than the entry wound, which is 6 centimeters wide found at the victim's back, corresponding to the bigger blade near the handle of the knife.

That there was stealth in the execution of the attack from behind, not frontally, appears clear from Aniñon's testimony. This point was corroborated by prosecution witness, Roland Ybasan, who also witnessed the incident.[29] Aniñon and Ybasan had no ulterior motive to implicate appellant, much less to falsely testify against him. That is why their testimonies were given full faith and credit by the trial court.

Under these circumstances, the claim of self-defense by appellant has no leg to stand on. Clearly there was no unlawful aggression. Nor was there sufficient provocation shown on the part of the victim. Appellant's attack from behind succeeded to mortally wound the victim, Ricky Aguilar, who had no weapon to defend himself nor any one to rush to his aid.

Thus, this Court is in full accord with the conclusion of the trial court that treachery attended the commission of the crime by appellant. As hereafter explained, however, in this case such treachery is only an aggravating, and not a qualifying circumstance.

There is treachery when the offender commits any of the crimes against persons 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.[30] Its essence lies in the adoption of ways that avoid or neutralize any resistance which may be put up by the offended party.

Aniñon and Ybasan testified on how the attack on the victim by appellant commenced and progressed. The nature and extent of the stab wounds confirm the treacherous attack on appellant. In *People vs. Delgado*,[31] there was treachery, as the stabbing was from behind, done in a sudden and unexpected manner while the deceased was sitting and his head down on his hands. And, in *People vs. Melgar*,[32] *alevosia* attended the killing where the victim was suddenly and without warning stabbed at the back of his nape by the assailant from behind with a

double-bladed knife. That treachery qualified the killing in this case is indubitable as the attack was done from behind and in such manner as to completely surprise the victim and makes him a defenseless target.[33]

We note however, that treachery, though stated in the information, was not alleged with specificity as qualifying the killing to murder. Sections 8 and 9 of the Revised Rules of Criminal Procedure which took effect on December 1, 2000, provide:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation.- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Pursuant to the aforementioned provisions of the Revised Rules of Criminal Procedure, the information should state not only the designation of the offense and the acts and omissions constituting it but shall also specify its qualifying and aggravating circumstances. Guided by the established rule that when a penal statute, whether substantive or remedial and procedural, is favorable to the accused, the courts shall give it a retroactive application.[34] Thus, we held that since the information in this case failed to specify treachery as a circumstance qualifying the killing to murder, under the present Revised Rules of Criminal Procedure, treachery has to be considered a generic aggravating circumstance only.

Anent the issue on evident premeditation, we agree with the trial court that such was not clearly established. There is no sufficient evidence to show (a) the time when the offender determined to commit the crime, (b) that the culprit had clung to his determination, and (c) a sufficient interval of time between the determination and execution of the crime to allow him to reflect upon the consequences of his act.[35] These elements of evident premeditation must be established with equal certainty and clarity as the criminal act itself before it can be appreciated as a qualifying circumstance.[36]

In sum, the crime committed by appellant is homicide and not murder. The penalty for homicide under Article 249[37] of the Revised Penal Code is reclusion temporal. There being one mitigating circumstance of voluntary surrender and one aggravating circumstance of treachery, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, appellant's sentence should be within the range of prision mayor as minimum, and reclusion temporal medium as maximum.

With respect to damages, pursuant to prevailing jurisprudence, the award of moral damages for P30,000 must be increased to P50,000. The award of P20,000 as exemplary damages is justified by the presence of an aggravating circumstance.[38]

WHEREFORE, the judgment of the trial court is set aside and a new one entered finding appellant Gario Alba guilty of the crime of homicide, and sentencing him to suffer the penalty of nine (9) years of prision mayor as minimum and fifteen (15) years of reclusion temporal medium as maximum,[39] to pay the heirs of the victim the amount of P50,000 as death indemnity, P50,000 as moral damages and P20,000 as exemplary damages. Costs de oficio.

SO ORDERED.

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

[1] Rollo, pp. 28-47.

[2] Id. at 13.

[3] TSN, July 30, 1993, p. 9.

[4] Id. at 21.

[5] Also spelled as “Ibasan” in some parts of the RTC Decision.

[6] TSN, October 21, 1994, pp. 4-17.

[7] Id. at 7.

[8] TSN, June 15, 1995, pp. 4-5, 15.

[9] TSN, August 21, 1995, pp. 17-24.

[10] TSN, February 7, 1996, pp. 14-17.

[11] TSN, December 15, 1995, pp. 9-10.

[12] Rollo, pp. 46-47.

[13] Id. at 85.

[14] TSN, July 5, 1995, pp. 2-5.

[15] TSN, February 7, 1996, pp. 16-19.

[16] *People v. Basadre*, G.R. No. 131851, February 22, 2001, pp. 9-10.

[17] *People v. De La Cruz*, G.R. Nos. 101000-01, 227 SCRA 278, 283 (1993).

[18] TSN, February 7, 1996, p. 10.

[19] Id. at 11-12.

[20] Id. at 12.

[21] TSN, February 7, 1996, p. 11.

[22] Id. at 15.

[23] TSN, August 21, 1995, pp. 20-21.

[24] TSN, February 7, 1996, p. 17.

[25] TSN, July 30, 1993, p. 21.

[26] Defined as situated before or toward the front. *Webster’s New Collegiate Dictionary*, 1979, p. 48.

[27] TSN, July 30, 1993, p. 8.

[28] Id. at 9.

[29] TSN, October 21, 1994, pp. 5, 7, 12.

[30] People vs. Abundo, et al., G.R. No. 138233, January 18, 2001, p. 17.

[31] People vs. Delgado, G.R. No. 79672, 182 SCRA 343, 351 (1990).

[32] People vs. Melgar, G.R. No. L-75268, 157 SCRA 718, 727 (1988).

[33] People vs. Jusep, G.R. No. L-45722, 151 SCRA 248, 267 (1987).

[34] People vs. Gano, G.R. No. 134373, February 28, 2001, pp. 13-14.

[35] People vs. Reyes, G.R. No. 118649, 287 SCRA 229, 241 (1998).

[36] Ibid.

[37] ART. 249. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[38] People vs. Reyes, G.R. No. 118649, 287 SCRA 229, 243-244 (1998).

[39] People vs. Acaya, G.R. No. 108381, 327 SCRA 269, 282 (2000).

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