

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DARIO CABANAS CUAL, AND DARIO MARANAN VILLOCENO, ACCUSED-APPELLANTS.

G.R. No. 131925. March 09, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In an information^[1] dated February 28, 1994, accused-appellants Dario Cabanas Cual and Dario Maranan Villoceno were charged with the crime of murder before the Regional Trial Court of Cagayan de Oro City, Branch 20. The information reads as follows:

"That on or about February 26, 1994 at more or less 9:00 o'clock in the evening, near NHA, Balulang, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named two (2) accused, with deliberate intent to kill, evident premeditation and treachery, conspiring, confederating and, mutually helping with one another, armed with a sharp bolo, did then and there willfully, unlawfully and feloniously attack, assault and wound one Ramil Macasalhig Sabturani by then and ther suddenly and abruptly hacking and stabbing said victim with the use of accused's said bolo, which directly caused said victim's instantaneous death at the scene of the crime due to 'shock due to hemorrhage due to multiple hacking wounds', to the great damage and prejudice to the injured party, his aggrieved family as well.

Accused's commission of the above felony was attended by the aggravating circumstance of superior strength.

Contrary to Article 248 in relation to Article 14, Revised Penal Code."

Upon arraignment, the two accused-appellants pleaded not guilty and thereafter, trial on the merits ensued.

To establish conviction, the prosecution anchored its case on the testimonies of four witnesses, namely: Leodivico Caayao, Amy Sabturani, Dr. Jerry Abroguena, and SPO1 Vicente Apag.

The first witness, Leodivico Caayao, a twenty-year old trisikad driver, testified that on February 26, 1994 at around 9:00 in the evening, he was sitting in his trisikad watching the television inside a store in Balulang, Cagayan de Oro City when he noticed a commotion taking place nearby.^[2] He turned to see what the commotion was about and saw accused-appellant Dario Villoceno and the victim, Ramil Sabturani, grappling for the possession of a steel pipe. The two were two (2) arms length away from him.^[3]

While the two were grappling for the possession of the steel pipe, he saw accused-appellant Dario Cual arrive at the scene and hack Ramil Sabturani with a bolo.^[4] Thereafter, Sabturani ran towards his trisikad and attempted to drive it. Ramil Sabturani was only able to make a turn on the trisikad before he was caught by Cual. Cual then repeatedly hacked Sabturani with the bolo while the latter was inside the trisikad.^[5] He heard the victim plead for mercy and say "that is enough because it was only a little trouble and you pity me."^[6] He then saw Cual slam the victim inside the trisikad and thereafter Cual walked away. At the time when Cual was hacking the victim inside the trisikad, he was about four meters away from the incident.^[7] When he left the scene of the crime to talk with

his employer, Ramil Sabturani was still breathing.

On cross-examination, he stated that he was not able to see how the commotion started as he only turned his attention to the incident while Dario Villoceno and Ramil Sabturani were already grappling for the possession of the steel pipe.[8] He likewise recalled seeing something at the tip of the steel pipe although he was not sure whether it was a pointed object.

Amy Sabturani, the widow of the victim, for her part, recalled that on the night of February 26, 1994, at around 9:00 p.m., her late husband asked permission from her to buy cigarettes.[9] After a while, a certain Julie Sison informed her that her husband was ganged up upon and so she went outside to check up on her husband. She was shocked to see her husband lying face down with a number of wounds on his back. It was her brother-in-law who brought her husband to the hospital as she was still in shock.[10]

She disclosed that her late husband was employed with G&P Builders at the time of his death with a weekly average income of P2,500.00.[11] On account of her husband's death, she testified that she incurred twenty five thousand pesos (P25,000.00) for the casket, the vigil, and other incidental expenses.[12] When asked whether her grief could be reduced to monetary terms by way of damages, she decided to leave the same to the discretion of the court. As to the motive behind the killing, she opined that it must have been work-related and that the accused-appellants pretended to be plumbers. Thus, they were able to take over the contract which was supposed to be for her husband.[13]

On cross-examination, she admitted that she did not actually see how the incident happened. She likewise stated that the receipts for the expenses she incurred were in the possession of her brother-in-law.[14]

Dr. Jerry Abroguena, the physician who conducted the post-mortem examination of the victim, testified that the victim suffered a total of twenty-one hacking and stab wounds on different parts of his body. He opined that the instrument probably used in the hacking and stabbing of the victim was a sharp-bladed weapon like a bolo.[15] He explained that all the wounds sustained by the victim contributed to his demise and that not one of the wounds, taken alone, will cause the death of the victim. In this regard, he pointed out that the cause of death of the victim was shock due to hemorrhage due to multiple hack wounds.[16] He further noted that the wounds on the back of the victim could have been inflicted while he was lying down or in the prone position.[17]

On cross-examination, he speculated that there was probably a struggle between the victim and his assailant as there was a wound on his left hand. He also stated that there were instances when the victim was facing the assailant due to the presence of wounds at his front.[18]

The last witness for the prosecution, SPO1 Vicente Apag, testified that on the evening of February 26, 1994 at about 9:00 p.m., he was on duty at the Carmen Police Precinct when he received a report that someone was killed in Balulang, Carmen, Cagayan de Oro City.[19] Upon receipt of the report, several policemen left the precinct to investigate the matter and when they returned, they brought with them accused-appellant Dario Cual so that the incident could be blotted. Afterwards, accused-appellant Cual was brought to the Maharlika Rehabilitation Center.[20] With respect to accused-appellant Dario Villoceno, he stated that he was brought to the precinct later that night. He also identified the bolo which was allegedly used in the killing of Ramil Sabturani and which was turned over to him by the apprehending officer.

On cross-examination, he stated that he was not the one who went to investigate the incident in Balulang, Cagayan de Oro City and that he based his report only on the testimony of those who responded to the call and on the testimony of witness Caayao.[21] He further testified that he did not investigate the accused Dario Villoceno when he came in and he just asked the apprehending officer if Villoceno had anything to do with the killing. He

stated that he could not remember whether accused-appellant Villoceno had injuries when he was brought to the precinct but he recalled the said accused telling him the following morning that he had some contusions and bruises.[22] When asked whether he knew whether accused-appellant Cual was pursued or whether he surrendered, he stated that he was only told that the accused was apprehended. He was not told whether the said accused voluntarily surrendered or whether the latter was pursued by the apprehending officers.[23]

The defense, for its part, introduced the testimonies of the two accused-appellants to support their contention that they were innocent of the crime charged against them.

Accused-appellant Dario Villoceno first narrated the events which led to the killing incident. He testified that two days before the incident or on February 24, 1994, at around 4:00 in the afternoon, the victim Ramil Sabturani approached him and challenged him to fight while he was eating his snack near the house which he was working on in Balulang, Cagayan de Oro City.[24] He admitted that he and the victim often worked together as sub-contractors. He surmised that the reason the victim was angry with him was because the project engineer had given him a task that was originally assigned to the victim but which had been delayed.[25] He did not accept the challenge and instead he simply stepped back, which prompted the victim to throw stones at him. He was able to evade the attack and afterwards, he ran towards the house he was working on while he saw the victim run towards the house of a certain Julie Sison. He surmised that the victim was looking for a weapon at this time as he heard somebody shout "do not do that." When the victim emerged from the house, he again threw stones at accused-appellant and his companion, the other accused Dario Cual.[26] They then retaliated by also throwing stones at the victim but they were not able to hit him. Afterwards, the victim went home but he returned soon thereafter brandishing two knives. The victim commenced hurling stones at them but again they were not hit. They then ran away from the victim but not before seeing the victim being disarmed by the guard of the NHA Subdivision.[27] They then went back to the house where they were staying in.

On that same day, at around 9:00 in the evening, Ramil Sabturani, his wife and a certain Rey Ligan threw stones at their house and shouted at them to go down. Instead of confronting the victim, accused-appellants decided to hide inside their house. Eventually, the group of the victim stopped their stone-throwing as the accused-appellants did not retaliate or answer back at them[28]. They were not able to report the incident to the police the following day as the victim and Rey Ligan were waiting for them. They were only able to report the incident and to have the same blotted at around 10:00 a.m. of February 26, 1994. They were then told that they should clear things up with the Barangay Captain of Balulang, Cagayan de Oro City but they were unable to do so as it was a Saturday and the offices were closed.[29]

Later that day, at around 8:00 in the evening, he, together with Dario Cual, decided to work overtime at their place of work. However, when they were about fifteen (15) meters away from their place of work, Ramil Sabturani and Rey Ligan ran after them. Ramil Sabturani was armed with a lead pipe. They ran away from their pursuers but eventually, Ramil Sabturani was able to catch up with him. Ramil Sabturani then proceeded to hit him with the lead pipe. He recounted that he was hit on left shoulder, right arm, forehead, and left jaw and that he fell down after being hit. Once he fell down, his companion, accused-appellant Dario Cual, approached and helped him by hacking Ramil Sabturani with a bolo. He explained that Dario Cual brought a bolo with him as they were going to use it in rendering overtime work at the house they were building.[30] He was not able to clearly see what happened to Ramil Sabturani afterwards as he immediately proceeded home after he stood up. The accused Cual also followed him to his house a while later but afterwards, Cual told his wife that he was going to surrender. Cual then immediately left the house.

A policeman later arrived at his house and brought him to the police station where he and Cual were both investigated. Initially only Cual was brought to the Maharlika Center as the arresting officer stated that he had

nothing to do with the incident. However, upon the prodding of a certain Engineer Eleno Dingue, the cousin of the victim, he was likewise detained.[31]

On cross-examination, accused-appellant Villoceno explained that the bolo Cual was carrying was to be used for forming the wood for mixing the cement. At that time only Cual was carrying a bolo, as the work they were doing did not require a good finish.[32] He likewise testified that it was the victim who carried a lead pipe while his companion did not carry anything. Consequently, it was the victim who beat him up with the lead pipe. He did not know what the latter's companion was doing while this was happening. He likewise stated that the accused Cual helped him by hacking Ramil Sabturani with the bolo he was carrying. He further stated that once the attention of Ramil Sabturani was on Dario Cual, he stood up slowly and left while the two were still fighting.[33] Before leaving the scene, he stated that he saw the victim ride a trisikad and attempt to bump Dario Cual.

The other accused, Dario Cual, corroborated the testimony of Dario Villoceno as to the events that led to the killing incident including the challenge made by the victim to his co-accused and the stone-throwing incidents. As to the reason for these confrontations, he stated that Villoceno and the victim had a previous quarrel regarding a certain plumbing job which was given to Villoceno by the project engineer.[34]

Dario Cual had a different version as to the events which happened on February 26, 1994. He testified that on that date at around 8:00 in the evening, he and Villoceno decided to render some overtime work. On their way to work, they saw the victim and Rey Ligan run towards them. They tried to run away but Villoceno was caught by Ramil Sabturani and beaten with a lead pipe.[35] After he saw Villoceno being hit with the lead pipe, he approached the two and told Ramil Sabturani to stop what he was doing. Thereafter, Ramil Sabturani faced him and tried to stab him with the lead pipe which had a knife at the other end. The victim kept on trying to stab him while he kept on moving backward. When his back was against the wall, he hacked the victim on the head with the bolo he was carrying.[36] Afterwards, the victim ran towards a parked trisikad and rode on it. The victim then attempted to run over him but he was only hit by the steering wheel of the vehicle. Thereafter, he hacked the victim again although, he could not remember the exact number of times he was able to hit the victim.[37] He denied that he pursued the victim when the latter ran to the trisikad and he maintains that he stood his ground and that it was the victim who went to him.[38]

After the incident, he walked towards his house where he met his wife who was already crying because of the incident. When they reached their house, he talked with his wife and told her he was going to surrender.[39] He was not able to reach the police station as he met the policemen on the way to the precinct at Balongis. When the policemen got off their vehicle, he gave them his bolo and he told them that he was going to surrender.[40]

On 25 September 1996, the court a quo rendered its questioned decision the dispositive portion of which states:

"In view of the foregoing observations and deliberate perception of this court, this court is morally convinced that the guilt of the two (2) accused was duly established and proved by the prosecution beyond reasonable doubt over the crime charged in the information and as such the accused DARIO CUAL is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA for not being a heinous crime. The other accused DARIO VILLOCENO is likewise found guilty of the crime herein charged as an accomplice and he is hereby sentenced to the penalty of RECLUSION TEMPORAL which is the next lower in degree to that of reclusion perpetua under Art. 52 in relation to Art. 27 of the Revised Penal Code in consummated felonies.

Both accused are further condemned, jointly and severally, to pay to the heirs of the victim the amount of Fifty Thousand (P50,000.00) Pesos for the death of Ramil M. Sabturani and the further sum of P100,000.00 for actual and moral damages plus costs.

SO ORDERED."[41]

The trial court was of the impression that the prosecution's version of the events and witnesses was more credible than those of the defense. It struck down appellant's tale of self-defense particularly of the contention of the defense that the victim was the aggressor and that he was armed with a lead pipe.[42] Moreover, the court stated that the presence of twenty-one (21) stab wounds could not have been inflicted without the conspiracy and mutual participation of the two accused-appellants.

The Court held that the killing was qualified to murder in this wise:

"The several stab wounds received by the victim which is beyond the normal impulse of a person who is attacked has rendered the victim so helpless and unable to defend himself from the superior strength abusively applied by the accused Dario Cual thus qualifying the present case to the crime of Murder punishable and defined under Art. 248 of the Revised Penal Code as amended.

Both accused never denied that the cause of the death of the victim was the twenty-one (21) stab wounds inflicted by Dario Cual on the person of Ramil Sabturani during the incident. Evidence was clearly shown that Dario Cual suddenly stabbed the victim with a bolo with such tenacity and persistence that the presence of twenty-one (21) stab wounds amounts to abuse of superior strength thereby employing means to weaken the defense of the victim who was then unarmed."[43]

With respect to accused-appellant Dario Villoceno, the court was convinced that he was an accomplice to the murder as his act of grappling with the victim for the possession of a lead pipe gave accused-appellant Dario Cual the "necessary inspiration and impetus in consummating the act of murder." [44]

In this appeal accused-appellants raise the following assignment of errors:

I.

THE COURT A QUO ERRONEOUSLY CONVICTED THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER NOTWITHSTANDING THE FACT THAT THE EVIDENCE ON RECORD CLEARLY DISCLOSE THAT THE CRIME COMMITTED WAS ONLY HOMICIDE.

II.

THE COURT A QUO GRAVELY ERRED IN QUALIFYING THE KILLING TO MURDER ON THE BASIS OF THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH CONSIDERING THAT THE SAME WAS NEVER ALLEGED IN THE INFORMATION.

III.

THE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER, INCOMPLETE SELF-DEFENSE AND LACK OF INTENT TO COMMIT SO GRAVE A WRONG IN FAVOR OF THE ACCUSED DARIO CUAL.

IV.

ACCUSED-APPELLANT SHOULD NOT HAVE BEEN CONVICTED AS AN ACCOMPLICE BUT SHOULD HAVE BEEN ACQUITTED.[45]

We will first take up the liability of accused-appellant Dario Cual.

A cursory analysis of the arguments offered by accused-appellant Cual in his appellant's brief shows that he is praying, not for his acquittal, but that he be convicted only of homicide and thus be made to suffer a reduced penalty corresponding thereto. Accused-appellant Cual admits that he killed the victim and the force he used in doing so was excessive. However, accused-appellant argues that the evidence on record cannot sustain the conclusion that murder had indeed been committed considering that no qualifying circumstance was established by the prosecution to qualify the killing to murder.

There is merit in accused-appellant's plea.

In order to qualify the killing to murder, the prosecution must prove that the killing was attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code, as amended. Moreover, the prosecution is necessarily limited by the allegations in the complaint as to the qualifying circumstances that attended the killing of Ramil Sabturani, namely evident premeditation, treachery, and abuse of superior strength.[46]

To arrive at a conviction, the prosecution principally relied on the testimony of the alleged eyewitness, Leodico Caayao who testified as follows:

Q: And while you were watching TV, can you recall if there was any unusual incident that happened that evening?

A: There was.

Q: And tell the court what was that unusual incident?

A: There were two persons grappling for the possession of the steel pipe.

Q: And how far were these two persons from you whom you said was grappling for the possession of the steel pipe?

A: About two arms length.

Q: And did you recognize these two persons whom you said was grappling for the possession of the steel pipe?

A: Yes, sir.

Q: Who were these two persons?

A: Ramil and Dario Villoceno.

X X X

Q: When you saw Ramil Sabturani and Dario Villoceno grappling for the possession of the steel pipe, what happened next?

A: Another person arrived?

Q: And who was this person that arrived?

A: Dario Cual.

X X X

Q: What happened when Dario Cual arrived at the scene?

A: He hacked Ramil.

Q: What weapon did you see was used by Dario Cual in hacking Ramil?

A: A bolo.

Q: Did you see what part of the body of Ramil Sabturani was hacked by Dario Cual?

A: I did not see anymore.

Q: What happened after Ramil Sabturani was hacked by Dario Cual with a bolo?

A: Ramil was able to run to my trisikad.

Q: And when Ramil reached your trisikad, what did he do?

A: He attempted to drive my trisikad.

Q: Was he able to drive away your trisikad?

A: He was able to only make a turn.

Q: Why was he able to make only a turn of your trisikad?

A: Because he was then chased upon and caught.

Q: Caught by whom?

A: Dario Cual.

Q: What happened when Dario Cual caught Ramil?

A: He then hacked successively Ramil Sabturani.

Q: Using the same bolo?

A: Yes, the same bolo.

Q: Where was Ramil hacked by Dario Cual, inside your trisikad?

A: Inside.

X X X

Q: Did you hear anything coming from Dario Cual or from Ramil Sabturani while he was being hacked by Dario Cual?

A: Yes, sir.

Q: What did you hear and from whom did you hear?

A: I heard Ramil asking for pity or mercy.

Q: What exactly were the words uttered by Ramil Sabturani pleading for mercy from Dario Cual?

A: And he said, that is enough because that was only a little trouble and you pity me.

Q: Did you hear if Dario Cual also replied for a plea of mercy from Ramil Sabturani?

A: None.[47]

From the above narration, it is clear that evident premeditation cannot be appreciated. For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act.[48] As shown above, however, the prosecution failed to prove any element of this qualifying circumstance as their only eyewitness merely testified on the actual commission of the crime. Where there is no showing as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist.[49]

We likewise find that no treachery attended the killing. The requisites for appreciating alevosia in the commission

of a crime are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) appellant consciously and deliberately adopted the particular means, methods or forms of the attack employed by him.[50]

In the instant case, although accused-appellant Dario Cual initially attacked the victim while the latter was grappling for the possession of a lead pipe, this circumstance by itself does not amount to treachery. For one, it cannot be said that the victim was not given any opportunity to defend himself. As narrated by Leodivico Caayao, the victim was able to defend himself after the initial assault made by Cual as he even managed to run away – without success however, – before Cual hacked him to death. Moreover, there was absolutely no evidence produced by the prosecution which show that accused-appellants consciously and deliberately employed this specific form of attack which would especially and directly ensure its commission without impunity.[51] The decision by accused-appellant Cual to attack the victim could have been a product of impulsiveness or a spur of the moment decision provoked by the struggle of the victim with his friend, accused Villoceno. Hence, it was unlikely that he deliberated on the means to carry out his decision.[52]

To summarize, the presence of treachery in the case at bench has not been proven as fully and convincingly as the crime itself. The doubt must, therefore, be resolved in favor of the appellant.[53]

With respect to the qualifying circumstance of abuse of superior strength, we likewise find that it is not attendant under the circumstances. In order to appreciate this qualifying circumstance, there must be evidence introduced that the two accused-appellants were physically stronger than the victim and that they abused such superiority by taking advantage of their combined strength in order to consummate the offense.[54] In the case at bench, the prosecution failed to introduce any evidence as to the relative physical strength of the parties involved. In fact, the lone eyewitness to the incident, Leodivico Caayao, was non-committal on this aspect:

"Atty. Merlas (to the witness)

Q: And this Sabtorani, you can recall is builded. Is it not?

A: Tall and slim. I could not tell correctly as to his height.

Q: When you say taller, between this accused Villoceno and the deceased Sabturani, who is taller?

A: Sabturani was taller.

Q: And, in fact, he was also bigger than the accused?

A: I did not see clearly because he was seated."[55]

Moreover, the testimony of the eyewitness shows that at no point did the two accused-appellants attack the victim simultaneously as it was only accused Cual who deliberately attacked the latter. And even assuming that accused-appellant Cual was stronger than the victim, abuse of superior strength still cannot be appreciated as there is no showing that accused-appellant deliberately intended to take advantage of such superiority.

In sum, the prosecution failed to prove any of the aggravating circumstances alleged in the information. As such, accused-appellant can only be convicted of the crime of homicide.

Accused-appellants next argue that the trial court should have appreciated in favor of accused Cual, the mitigating circumstances of voluntary surrender, incomplete self-defense and lack of intent to commit so grave a wrong.

We agree with the accused-appellants that the mitigating circumstance of voluntary surrender should have been appreciated. As we have previously held, the following requisites must be proven for voluntary surrender to be considered: (1) the offender had not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary. On this point, accused-appellant testified as follows:

"Q: Now after the incident, can you tell us where did you proceed after that?

A: Yes, sir.

Q: Where?

A: After the incident I walked towards home and then before reaching the house I met my wife who was already crying so I brought her home. But before we reached the house the wife of Ramil Sabturani (i.e. the victim), Amy Sabturani, quarreled with my wife.

Q: Now, were you able to finally reach your house?

A: Yes, sir. When we reached home, I talked with my wife and then I told her since we cannot do anything and it already happened, you just wait and stay here because I am going to surrender.

Q: Before whom?

A: I wasn't able to reach the police station but I met the policemen at Balongis.

Q: So, what did you do when you saw the policemen?

A: When they saw me they then alighted from their vehicle and then I gave them the bolo and told them that I am going to surrender."[56]

From this narration, it is evident that accused Cual's surrender satisfied the above-mentioned requisites. He had not been arrested as the police were, in fact, still looking for him to verify his participation in the crime. Upon seeing the policemen, he immediately gave them his weapon and told them that he was surrendering. Finally, his surrender was through his own volition as he was on his way to the precinct when he was met by the police.

The Solicitor-General, in his Appellee's Brief, disputes accused Cual's statement that he voluntarily surrendered by stating that it was only upon the arrival of the policemen at his house that he was forced to go out of his house to surrender.[57] However, we have examined the records carefully and we find no evidence to this effect. In fact, the policeman who actually arrested accused-appellant Cual was supposed to be called to the witness stand but due to his failure to appear, despite summons, the prosecution dispensed with his evidence. Verily, the mitigating circumstance of voluntary surrender should properly be appreciated as the prosecution failed to dispute the same.[58]

The Court does not, however, agree to the argument of accused-appellant Cual that he should also benefit from the mitigating circumstances of lack of intent to commit so grave a wrong. The sheer number of wounds, twenty-one in all, inflicted by the accused-appellant Cual on the body of the victim brings forth in bold relief the intention of the accused to snuff out the life of the deceased, and definitely negates any pretense of lack of intention to commit so grave a wrong.[59]

The Court cannot likewise appreciate the privileged mitigating circumstance of incomplete self-defense. Under Article 69 of the Revised Penal Code[60], in order to avail of the privileged mitigating circumstance of incomplete self-defense, accused-appellant must prove the existence of a majority of the requisites for self-defense, namely: (1) unlawful aggression; (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.[61]

On this point, accused-appellant admits that the numerous hack and stab wounds found on the victim negates complete self-defense. However, they argue that accused-appellant Dario Cual should still be given the benefit of the said privileged mitigating circumstance considering that the defense was able to prove aggression on the part of the victim and the lack of provocation on the part of the defendant.

We do not agree.

Under prevailing law and jurisprudence, there can be no defense, complete or incomplete unless the victim committed an unlawful aggression against the person defending.[62] The testimony of witness Leodivico Caayao effectively negated any pretense that there was aggression on the part of the victim as against accused Cual. The witness, who had no motive to fabricate his testimony, clearly stated that the victim was locked in a struggle with accused Dario Villoceno when accused Cual approached the victim and hacked him with the bolo. After the initial assault made by Cual, the victim immediately ran from Dario Cual to go to a parked trisikad where he was immediately pursued by Cual.[63] At no instance did the witness see the victim attack or hit accused Cual. Thus, as proven by the prosecution, there was no unlawful aggression on the part of the victim Ramil Sabturani.

Moreover, even assuming that there was unlawful aggression on the part of the victim, such unlawful aggression had already ceased when the victim ran away from accused Cual to a parked trisikad. At this point, there was no longer any reason for accused-appellant Dario Cual to pursue the victim and inflict more injuries. Once the unlawful aggression had ceased with the victim's attempt to escape, accused-appellant Dario Cual was no longer justified in pursuing the victim and inflicting the fatal wounds.

In sum, accused-appellant Dario Cual should only be convicted of the crime of homicide with the mitigating circumstance of voluntary surrender. Applying the benefit of the Indeterminate Sentence Law[64], accused-appellant Dario Cual should be sentenced to an indeterminate sentence of six (6) years and one (1) day of Prison Mayor as minimum to twelve (12) years and one (1) day of Reclusion Temporal as maximum.

We shall now look into the participation of accused-appellant Dario Villoceno in the crime. As stated previously, the lower court convicted Dario Villoceno as an accomplice to the crime. It reasoned that Villoceno deliberately grappled with the victim for the possession of a steel pipe and thus gave accused Cual the necessary impetus and inspiration to consummate the deed.[65]

Under current jurisprudence, in order that a person may be considered an accomplice, the following requisites must concur: (1) community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution of the offense by previous or simultaneous acts, with the intention of supplying material and moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts and those attributed to the person charged as an accomplice.[66]

The cooperation that the law punishes is the assistance knowingly rendered, which cannot exist without the previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable as an accomplice, that the accused must unite with the criminal design of the principal by direct participation.[67]

In the case at bench, there is nothing in the records which show that accused-appellant Villoceno knew that accused Cual was going to hack Ramil Sabturani. Neither was it shown that accused-appellant Villoceno concurred in the criminal design of his co-accused.

The only involvement of accused-appellant Cual in the incident was when he was engaged in a struggle with the victim just before Villoceno made his initial attack on the victim. This circumstance does not by itself show his unity with the criminal design of Villoceno. On this point, we are inclined to believe his testimony that the struggle was not deliberate on his part and that, in fact, it was the victim who initiated the struggle. The victim, who had just been deprived of a job opportunity by accused-appellant Cual, surely had more reason to feel aggrieved and thus engage accused-appellant Cual to a fight.

The fact that accused-appellant Cual immediately disengaged from his struggle with the victim after Villoceno's

attack is yet another indication that he is innocent of the charge against him. Verily, if he had indeed conspired with Villoceno, he would have continued to hold the victim and prevent him from escaping until he expired from Villoceno's attack.

The prosecution having failed to establish that there was community of design between accused Villoceno and Cual, the former cannot be held liable as accomplice to the homicide. Accused-appellant Dario Villoceno should therefore be acquitted of the charges against him.

The last issue to be resolved is the whether the heirs of the victim Ramil Sabturani are entitled to the damages awarded by the trial court, namely P50,000.00 as death indemnity and P100,000.00 as actual and moral damages.[68]

We affirm the award of P50,000.00 to the heirs of Ramil Sabturani as this is in accord with current jurisprudence.[69] However, we note that the trial court erred in awarding to the heirs of the victim the lump sum of P100,000.00 as actual and moral damages. These are separate in nature and require separate determination.

With respect to actual damages, according to Article 2199 of the New Civil Code, one is entitled to adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Moreover, only expenses supported by receipts and which appears to have actually been expended in connection with the death of the victim should be allowed for actual damages.[70] In the case at bench, the wife of the victim testified that she spent the amount of P25,000.00 on account of the death of her husband.[71] However, she failed to produce any receipt to support these expenses as these were allegedly with her brother.[72] Thus, we cannot take these expenses into consideration, as these are unsupported by any documentary evidence.

However, the heirs are entitled to damages for the loss of earning capacity of the deceased Ramil Sabturani. The fact that the prosecution did not present documentary evidence to support its claim for damages for loss of earning capacity of the deceased does not preclude recovery of said damages.[73] The testimony of the victim's wife, Amy Sabturani, as to the earning capacity of her husband sufficiently establishes the basis for making such an award. It was established that Ramil Sabturani was 24 years old at the time of his death in 1994. His average weekly income was P2,500.00.[74] Hence, in accordance with the American Expectancy Table of Mortality that has been consistently adopted by the Court[75], the loss of his earning capacity is to be calculated as follows:

$$\begin{aligned}\text{Award for Lost earnings} &= 2/3 [80\text{-age at time of death}] \times [\text{gross annual income} - 80\% (\text{GAI})] \\ &= 2/3 [80-24] \times [P130,000.00 - 80\%(P130,000.00)] \\ &= (37.3333) \times (P26,000.00) \\ &= P970,666.65\end{aligned}$$

Finally, the heirs of the victim are likewise entitled to moral damages considering that the wife of the deceased asked for it and testified that she experienced moral suffering. An award of P50,000.00 is sufficient to compensate the heirs of the victim for the injuries to their feelings.[76]

IN VIEW OF THE FOREGOING, judgment is hereby rendered modifying the judgment appealed from. As MODIFIED, the accused-appellant DARIO CUAL is found guilty of the crime of homicide as defined and penalized under Art. 249 of the Revised Penal Code and is sentenced to suffer 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 likewise ordered to pay the heirs of Ramil Sabturani the sum of P50,000.00 as civil indemnity for the latter's death, the sum of P970,666.65 as compensation for lost earnings and the sum of P50,000.00 as moral damages.

Accused-appellant Dario Villoceno is hereby ACQUITTED on the ground that his guilt has not been proven beyond reasonable doubt.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

- [1] Rollo, p. 10.
- [2] T.S.N. October 13, 1994, pp. 7-8.
- [3] Ibid, p. 8.
- [4] Ibid, pp. 10-11.
- [5] Ibid, pp. 11-12.
- [6] Ibid, p. 13.
- [7] Ibid, p. 14.
- [8] Ibid, pp. 18-19.
- [9] T.S.N., February 20, 1995, p. 8.
- [10] Ibid., pp. 9-11.
- [11] Ibid. p. 12.
- [12] Ibid, p. 13.
- [13] Ibid. p. 14.
- [14] Ibid. p. 17.
- [15] T.S.N., April 11, 1995, p. 25.
- [16] Ibid., pp. 23-26.
- [17] Ibid, p. 33.
- [18] Ibid., pp. 37-38.
- [19] Ibid., pp. 42-43.
- [20] Ibid. p. 43.
- [21] Ibid. p. 51.
- [22] Ibid., pp. 51-52.
- [23] Ibid. p. 55.
- [24] T.S.N., May 3, 1995, p. 19.
- [25] Ibid. , pp. 20-21.
- [26] Ibid. p. 24.
- [27] Ibid., pp. 25-26.
- [28] Ibid., pp. 28-29.
- [29] Ibid., pp. 30-31.
- [30] Ibid. pp, 34-35.
- [31] Ibid., pp. 36-37.
- [32] T.S.N., June 28, 1995, pp. 9-11.
- [33] Ibid., pp. 19-21.
- [34] T.S.N., June 19, 1995, pp. 9-12.
- [35] Ibid, pp. 19-21.
- [36] Ibid., pp. 21-22.
- [37] Ibid., pp. 22-23.
- [38] Ibid., p. 24.

- [39] Ibid., p. 25.
- [40] Ibid., pp. 25-26.
- [41] Rollo, p.28.
- [42] Rollo, p. 27.
- [43] Rollo, pp. 27-28.
- [44] Rollo, p. 28.
- [45] Rollo, pp. 82-83.
- [46] Rollo, p. 10.
- [47] T.S.N., October 13, 1994, pp. 7-13.
- [48] People vs. Sumalpong, 286 SCRA 464.
- [49] People vs. Sambulan, 289 SCRA 500.
- [50] People vs. Reyes, 287 SCRA 229.
- [51] People vs. Chua, 297 SCRA 227.
- [52] People vs. Galapin, 293 SCRA 474.
- [53] People vs. Balabare, 264 SCRA 350.
- [54] People vs. Bustos, 51 Phil. 385; People vs. Diokno, 63 Phil. 601; People vs. Maloloyon, 189 SCRA 250; People vs. Balano, 272 SCRA 782.
- [55] T.S.N., October 13, 1994, p. 20.
- [56] T.S.N., June 29, 1995, pp. 24-46.
- [57] Rollo, p. 134.
- [58] People vs. Malabago, 265 SCRA 198.
- [59] People vs. Brana, 30 SCRA 307.
- [60] Revised Penal Code, Article 69. Penalty to be imposed when the crime committed is not wholly excusable. – A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.
- [61] Article 11, Revised Penal Code.
- [62] People vs. Agravante, 236 SCRA 300; People vs. Bautista, 254 SCRA 621.
- [63] T.S.N. October 13, 1994, pp. 11-12.
- [64] Act No. 4103 as amended by Act No. 4225.
- [65] Rollo, p. 43.
- [66] People vs. Villanueva, 270 SCRA 456.
- [67] People vs. Jorge, 231 SCRA 693.
- [68] Rollo, p. 28.
- [69] People vs. Verde, G.R. No. 119077, February 10, 1999.
- [70] David vs. Court of Appeals, 290 SCRA 727.
- [71] T.S.N. February 20, 1995, p. 13.
- [72] Ibid., p. 17.
- [73] People vs. Verde, 302 SCRA 690.
- [74] T.S.N., February 20, 1995, p. 12.
- [75] People vs. Dizon, G.R. No. 129893, December 10, 1999.
- [76] People vs. Verde, *supra*.

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