

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFISTO COTAS Y LIMPIAHYOY, ACCUSED-APPELLANT.

*G.R. No. 132043. May 31, 2000*

Ponente: MENDOZA, J.

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### MENDOZA, J.:

This case is here on automatic appeal of the decision[1] of the Regional Trial Court, Branch 31, San Pedro, Laguna, sentencing accused-appellant to death.

The Information against accused-appellant alleged:[2]

That on or about March 24, 1997 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court accused Teofisto Cotas y Limpiahoy while conveniently armed with a bladed weapon (Tres Cantos) with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault and stab one Rossman Asuncion y Kho with the said weapon inflicting upon him stab wounds on the different parts of his body which directly caused his death to the damage and prejudice of his surviving heirs.

Contrary to Law, and that the crime was committed with the attendance of aggravating circumstances of evident premeditation, treachery and abuse of superior strength.

Upon accused-appellant's plea of not guilty, the trial of the case commenced.

The prosecution evidence established the following: Rossman Asuncion, 22, and Geraldine Tungala, lived in common-law relationship. They have two daughters, Lady Angela, aged 4, and Carla May, aged 2. At the time material to this case, the family lived in Pitimini Village, Cuyab, San Pedro, Laguna.

At around 12 noon of March 24, 1997, Asuncion and his two daughters were taking a nap on the floor in the sala of their house when, without any warning, accused-appellant entered the house and stabbed Asuncion several times with a file popularly known in the localities as "tres cantos." At the time he was stabbed, Asuncion was lying on his stomach with his face down. Lady Angela, who was lying beside her father, was awakened by the commotion and saw accused-appellant stabbing her father. She jumped up and went outside to look for her mother. Asuncion's wife, Tungala, who was in a neighbor's house about two arms' length away from their own, heard her husband exclaim three times "Kuya Jovy, hindi po ako lalaban" ('Kuya'[3] Jovy, I won't fight you). Tungala rushed to their house. On the way, she met her daughter who told her "Mama, si Papa sinaksak ni Kuya Jovy" (Mama, Papa was stabbed by Kuya Jovy).[4]

Tungala saw accused-appellant coming down the front steps of their house, wiping his knife with his shirt. She was frightened, and so she ran away. Accused-appellant, on the other hand, jumped over the fence and fled.[5]

Asuncion was taken to the hospital but he was pronounced dead on arrival. At the request of his wife, Dr. Bienvenido Muñoz of the National Bureau of Investigation (NBI) performed an autopsy on the cadaver of Asuncion and later issued the following post-mortem report:[6]

## POSTMORTEM FINDINGS

Pallor, conjunctivae and integument.

Incised wounds, superficial: sternal region, 1.5 cm.; chest, anterior, left 1.5 cm.; chest, left, anterior, 2.0 cm.; forearm, right, upper third, anterior, 6.0 cm.; arm, middle third, posterior, 2.0 cm.; forearm, right, middle right, posterior, 2.5 cm.;

Stab wounds:

1. Slit-like, 1.5 cm., edges are contused, both extremities are blunt. Located at the back, level of 5th intercostal space, right, 4.0 cm. from posterior median line. Directed forward, downward and laterally, into the right thoracic cavity and then penetrating the lower lobe of right lung with an approximate depth of 11.0 cm.;
2. Slit-like, 0.5 cm., edges are contused, both extremities are blunt. Located at the back, level of 7th intercostal space, right, 20.0 cm. from posterior median line. Directed forward, upward and medially, into the right thoracic cavity and penetrating the lower lobe of right lung with an approximate depth of 10.0 cm.;
3. Slit-like, 0.6 cm., edges are contused, both extremities are blunt. Located at the back, level of 6th intercostal space, left, 13.0 cm. from posterior median line, directed forward, downward and medially, into the left thoracic cavity and then penetrating the lower lobe of left lung with an approximate depth of 10.0 cm.;
4. Slit-like, four (4) in number, sizes ranging from 0.5 cm. to 0.7 cm., edges are contused and both extremities are blunt. Located at the left axillary region, clustered over an area 2.0 cm x 10.0 cm. Directed backward, downward and medially, into the left thoracic cavity and then penetrating the upper lobe of left lung with an approximate depth of 10.0 cm.;
5. Slit-like, 1.0 cm., edges are contused, both extremities are blunt. Located at the left arm, anterior, upper third. Directed backward, downward and medially, involving skin and underlying soft tissues with an approximate depth of 3.0 cm.;
6. Slit-like, 0.8 cm., edges are contused, both extremities are blunt. Located at the right hand, posterior. Directed forward, upward and medially, involving skin and underlying soft tissues, with an approximate depth of 3.0 cm.;
7. Slit-like, 1.0 cm., edges are contused, both extremities are blunt. Located at the left thigh, middle third, posterior aspect. Directed forward, upward and medially, involving skin and underlying soft tissues with an approximate depth of 5.0 cm.

Hemothorax, right-1,200 c.c., left-950 c.c.

Brain and other visceral organs are pale.

Stomach-filled with rice and other food particles.

Dr. Muñoz testified that of the seven stab wounds and six incised wounds sustained by the victim, the three stab wounds on his back and the one near his left armpit were fatal. These wounds penetrated his lungs, causing massive hemorrhage in the area. He added that the wounds at the back of the victim were inflicted from behind, while the one near the left armpit was inflicted while the victim was raising his left arm, probably in an attempt to parry the blows of the assailant. In addition, Dr. Muñoz stated that the wounds found on the victim's arms were defensive in character, i.e., these were inflicted when the victim was attempting to protect himself from attack.[7]

With regard to the fatal weapon used, Dr. Muñoz testified that the victim's stab wounds were caused by a file,[8] specifically of the type more popularly known in the local dialect as tres cantos[9] or any other similar weapon. He ruled out the possibility that an ice pick was used by the assailant because the stab wounds exhibited contused edges and blunt extremities. An ice pick does not leave any serration on the edges of the wounds' entry point. As

for the incised wounds, Dr. Muñoz stated that these could have been caused also by a file or any other sharp pointed object such as a knife, pin or ice pick.[10]

To testify on matters relating to the arrest of accused-appellant, the prosecution presented PO2 Rizaldy Amion. Amion testified that at around one in the afternoon of March 24, 1997, while he was on duty at the Philippine National Police (PNP) station in San Pedro, Laguna, he received a call from Sofronio Lazarte, an acquaintance, who told him that accused-appellant had stabbed someone and was in Lazarte's house. After instructing the station's radio operator to contact the mobile patrol unit, Amion proceeded to Lazarte's house. When he got there, Lazarte told him that accused-appellant was in the toilet. Amion twice called out and identified himself to accused-appellant who then came out naked. Amion informed him that he was under arrest for the stabbing of Asuncion and read to him his Miranda rights in Tagalog. Accused-appellant was then taken to the San Pedro police station where he was booked for the fatal stabbing of Rossman Asuncion.[11]

The defense then presented its case. Accused-appellant did not deny stabbing Asuncion. He claimed, however, that he acted in self-defense. He said that at around 12 noon of March 24, 1997, while he was inside his house in Cuyab Street, San Pedro, Laguna, he saw Asuncion in their yard, sitting inside the chicken coop, putting a chicken inside a sack. According to him, he allegedly shouted at Asuncion "Hoy, anong ginagawa mo diyan?" (Hey, what are you doing there?). Apparently resenting the question, Asuncion allegedly pulled out a knife from the right side of his waist and attacked accused-appellant. The latter, who was then about two meters from Asuncion, allegedly was hit on both sides of his forehead and on his right arm. However, he was allegedly able to wrest the knife from Asuncion and with it, he stabbed Asuncion. Accused-appellant then went to the house of his cousin Sofronio Lazarte to turn himself in.[12]

On cross-examination, accused-appellant said he could not recall the number and location of the stab wounds he had inflicted on Asuncion nor the type and length of the weapon he used in stabbing the victim. With regard to the wounds he sustained, he stated that he treated himself with Betadine because the jailguard at the police station denied his request to see a doctor.[13]

On November 18, 1997, the trial court rendered judgment the dispositive portion of which provides:[14]

WHEREFORE, this Court renders judgment sentencing accused Teofisto Cotas to suffer the penalty of death, to pay the heirs of Rossman Asuncion the following sums: P50,000.00 as civil indemnity, P50,000.00 as moral damages, P20,000.00 representing expenses incurred during the funeral, burial and wake of the deceased and P1,840,000.00 as lost earnings/income and to pay the costs.

In this appeal, accused-appellant alleges that:[15]

THE TRIAL COURT ERRED IN NOT UPHOLDING SELF-DEFENSE AS A GROUND FOR [THE] ACQUITTAL OF ACCUSED-APPELLANT.

ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS AT ALL GUILTY, THE TRIAL COURT NEVERTHELESS ERRED IN CONVICTING HIM FOR MURDER INSTEAD OF ONLY HOMICIDE.

First. Accused-appellant reiterates his contention below that he acted in self-defense when he stabbed and killed Rossman Asuncion. He thus admits committing the acts constituting the crime for which he was charged,[16] and the burden of proof is on him to establish, by clear and convincing proof, the following requisites of self-defense: (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.[17] Of these requisites, unlawful aggression, i.e., the sudden and unprovoked attack on the person defending himself, is indispensable.[18] Absent such element, no claim of self-defense can be successfully interposed.[19]

In this case, the prosecution's principal witness, Lady Angela, despite the fact that she was then barely four years old, described very clearly how accused-appellant stabbed her father. She said:[20]

PROS. LOMARDA

....

Q What is the name of your father?

A Jojo, sir.

Q Do you know a person by the name of Kuya Jovy?

ATTY. PAJARES:

No basis, Your Honor.

COURT:

Witness may answer.

A Yes, sir.

PROS. LOMARDA:

Q If Kuya Jovy is inside the courtroom, will you please point to him.

A Yes, sir. He is there (pointing to a man inside the courtroom who, when asked[,]) answered by the name of Teofisto Cotas).

Q Where is your Papa Jojo now?

A In the cemetery, sir.

Q Why is he in the cemetery?

A He is already dead, sir.

Q Do you know how he died?

A He was stabbed, sir.

Q Who stabbed him?

A Kuya Jovy, sir.

....

Q How many times did your Kuya Jovy stab your father?

A Many times, sir....

Q Kitkat, what was your father doing when your Kuya Jovy stabbed him?

A He was sleeping, sir.

Q What was his position while he was sleeping?

A He was lying face down, sir.

Q Did you notice when your Kuya Jovy entered your house?

A Yes, sir.

Q Before your father was stabbed by your Kuya Jovy, did your father and your Kuya Jovy engage in any conversation?

A No, sir.

Q After you saw your Kuya Jovy stab your father, what did you do?

A I jumped, sir.

Q Where did you jump?

A In our stairs, sir.

Q Where did you go after jumping in your stairs?

A To my mother, sir.

Q Were you able to see your mother?

A Yes, sir.

Q What did you tell your mother?

A "Mama, Mama, si Papa ko, sinaksak ni Kuya Jovy."

....

COURT:

Q By the way, Kitkat, where was your Papa sleeping, was he sleeping on the bed, on the chair or on the floor?

A On the floor, ma'am.

Q There was a mat on the floor where your Papa slept?

A None, ma'am.

Q When Kuya Jovy stabbed your Papa, was your father still lying on the floor?

A Yes, ma'am.

....

Q Where were you when your Papa was stabbed by your Kuya Jovy?

A I was in our house, ma'am.

Q Were you near your Papa when he was stabbed by Kuya Jovy?

A Yes, ma'am.

Q Were you also lying down when your Kuya Jovy stabbed your Papa?

A Yes, ma'am.

Q Beside your Papa?

A Yes, ma'am.

Q And there were only the two of you lying down at the time, is that correct?

A We were three, ma'am.

Q Who was the other one?

A My sister ma'am.

Q And she was sleeping too like your father, is that correct?

A Yes, ma'am.

Q But you were not sleeping at that time?

A I was sleeping, ma'am.

Q When Kuya Jovy arrived[,] you were already awake, is that correct?

A Not yet, ma'am.

Q When Kuya Jovy was stabbing your Papa, you were already awake, is that correct?

A Yes, ma'am.

Q And your Papa was already awake when he was being stabbed by Kuya Jovy, is that correct?

A Yes, ma'am.

This account by a child of tender years is highly credible, especially because it is corroborated by the result of the autopsy examination showing that the victim sustained three fatal stab wounds at the back, in addition to other injuries which, according to Dr. Muñoz, the victim sustained while trying to defend himself from accused-appellant's blows. The nature, character, location and extent of these wounds belie accused-appellant's claim that the victim attacked him with a knife and it was in self-defense that after wresting the knife from the victim, accused-appellant used it against the former.

Indeed, the victim's common-law wife said her husband thrice said to accused-appellant, "Kuya Jovy, hindi po ako lalaban" (Kuya Jovy, I won't fight you). This statement, which constitutes *res gestae*,<sup>[21]</sup> belies that Asuncion was the aggressor.

Even assuming that Asuncion was the aggressor, it is clear that at the time he was killed, the danger to accused-appellant had already ceased. It is a settled rule that when unlawful aggression ceases, the defender has no longer any right to kill or wound the former aggressor,<sup>[22]</sup> otherwise, retaliation and not self-defense is committed.<sup>[23]</sup> In this case, accused-appellant stabbed Asuncion seven times and inflicted on him several incised wounds.

Accused-appellant says it is allegedly incredible for the child to have gone out of their house unscathed as "no criminal would allow someone who . . . witnessed his dastardly act to live another day . . . ."<sup>[24]</sup>

The contention has no merit. The fact that the child was able to come out of their house unharmed does not mean that she lied on the stand. The trial court, who observed her demeanor in court, stated:<sup>[25]</sup>

. . . prosecution witness [Lady Angela] at her very tender age who fears God and knows that lying is bad would not have testified as she did if it were not true that her father Rossman was lying down and sleeping on the floor when accused stabbed him with what appears to be an ice pick. In this instant case, there is no basis to doubt the testimony of Kitkat which was given in a candid, categorical and consistent manner. There is likewise no reason for her to testify falsely against accused whom she calls her "kuya." Thus, her positive

assertion that accused stabbed her sleeping father, . . . deserves full faith [and] belief .

That Lady Angela was able to slip out of their house may be explained by the fact that at the time she did so, accused-appellant was attacking the victim. In fact, when her mother arrived in their house, accused-appellant was just coming down the stairs of their house.

Second. Accused-appellant contends, in the alternative, that even if his act of killing Asuncion is not justified, he should only be held liable for homicide and not for murder as the prosecution allegedly failed to prove the qualifying circumstance of treachery and evident premeditation.[26]

We agree there was no evident premeditation as the prosecution failed to show: (1) the time when accused-appellant decided to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination; and (3) a sufficient lapse of time between such determination and its execution to allow him to reflect upon the consequence of his act.[27]

However, there is evidence of treachery. Lady Angela testified that when accused-appellant entered their house, her father, younger sister and herself were all asleep on the floor in the sala of their house. Her father was lying on his stomach,[28] with his face down, and it was in that position that he was killed by accused-appellant. It was only after he had been stabbed that Asuncion was awakened. It is settled that if the victim, when killed, was sleeping[29] or had just awakened,[30] the killing is with treachery because in such cases, the victim was not in a position to put up any form of defense.[31]

Although not raised in this appeal, the killing of Asuncion was attended by the generic aggravating circumstance of dwelling[32] as the victim was killed in his own house. However, this circumstance is offset by the generic mitigating circumstance of voluntary surrender of accused-appellant. The evidence shows that immediately after the stabbing, he went to the house of his cousin, Lazarte, who called the PNP station in San Pedro to inform them of the presence of accused-appellant in his (Lazarte's) house. When PO2 Amion arrived at Lazarte's house, he found accused-appellant who gave himself up without any resistance. The following requisites of voluntary surrender were present: (1) the offender has not been arrested; (2) he surrendered himself to a person in authority or to an agent of a person in authority; and (3) his surrender was voluntary.[33] That accused-appellant first went to his cousin and not directly to the police is of no moment because the latter merely acted as an intermediary and such is recognized by law.[34]

Under Art. 248 of the Revised Penal Code, murder is punishable by reclusion perpetua to death. Pursuant to Art. 63(2) thereof, the penalty of death should be imposed if, in addition to the requisite qualifying circumstances enumerated in Art. 248, the killing is attended by one or more generic aggravating circumstance. In this case, while it is true that the murder of Asuncion was also attended by the generic aggravating circumstance of dwelling, the same, as already stated, is offset by the mitigating circumstance of voluntary surrender. Consequently, the lower penalty of reclusion perpetua should be imposed.

Third. Modifications should be made with regard to the damages awarded by the lower court. The awards of P50,000.00 moral damages and P50,000.00 indemnity to the heirs of the victim were proper.[35] However the actual damages of P20,000.00 should be reduced to P12,000.00 as this is the amount shown in the receipt (Exh. C) presented by the prosecution to evidence the expenses incurred by the victim's family in relation to Asuncion's death.

In addition, the P1,840,000.00 unearned income awarded by the trial court should be deleted. Awards for the loss of earning capacity partake of the nature of damages[36] and must thus be proved not only by credible and satisfactory evidence but also by unbiased proof.[37]

In this case, the evidence is insufficient to support the lower court's award. The only evidence in the record is the testimony of Tungala that her common-law husband used to earn a monthly salary of P5,000.00 from Cosmos Bottling Corporation, although at the time he died, he was not gainfully employed. No other evidence was presented to corroborate her testimony. In *People v. Villanueva*,<sup>[38]</sup> which is analogous to this case, the only evidence presented to support the claim for unearned income was the testimony of the victim's widow that her late husband earned about P2,500.00 a week from fish vending. This Court ruled that such testimony was insufficient because it was self-serving. Hence, it ordered the award made by the lower court deleted. This ruling was followed in *People v. Sanchez*<sup>[39]</sup> and *People v. Ereño*.<sup>[40]</sup>

WHEREFORE, the decision of the Regional Trial Court, Branch 31, San Pedro, Laguna, is **AFFIRMED** with the **MODIFICATION** that accused-appellant's sentence is reduced to reclusion perpetua and the amount of actual damages is reduced to P12,000.00, while the award for unearned income is deleted.

**SO ORDERED.**

Bellosillo, Melo, Puno, Vitug, Kapunan, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Davide, Jr., C.J., on official business.

Panganiban, Quisumbing, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

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[1] Per Judge Stella Cabuco Andres.

[2] Records, p. 1.

[3] Accused-appellant and Asuncion are not related.

[4] TSN (Lady Angela Tungala), pp. 4-5, August 18, 1997; TSN (Geraldine Tungala), pp. 5-6, August 7, 1997.

[5] *Id.*, p. 5; *id.*, pp. 6-7.

[6] Exh. E; Records, p. 72.

[7] TSN, pp. 10-17, Oct. 13, 1997.

[8] A hardened steel tool in the form of a bar or rod that has cutting ridges on its surface made by chisel cuts and is used for forming or smoothing surfaces specially of metal by means of the cutting or abraiding action of the ridges. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 849 (15th ed., 1971)

[9] Usually used to sharpen handsaws, this file is triangular in shape thus the "three corners."

[10] TSN, pp. 10, 19, 22-23, Oct. 13, 1997.

[11] TSN, pp. 4-8, Aug. 29, 1997.

[12] TSN, pp. 3-6, Oct. 20, 1997.

[13] *Id.*, pp. 7-10.

[14] RTC Decision, p. 6; Rollo, p. 29.

[15] Rollo, pp. 36-37.

[16] *People v. Quiño*, 232 SCRA 400 (1994)

- [17] *People v. Alba*, 256 SCRA 505 (1996); *People v. Rapanut*, 263 SCRA 515 (1996)
- [18] *People v. Alba*, supra; *De Luna v. Court of Appeals*, 244 SCRA 758 (1995)
- [19] *People v. So*, 247 SCRA 708 (1995)
- [20] TSN, pp. 2-4, Aug. 18, 1997; TSN, pp. 4-5, 7-9, Sept. 17, 1997.
- [21] A statement made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof. (Rule 130, §42, REVISED RULES ON EVIDENCE.)
- [22] *Galang v. Court of Appeals*, G.R. No. 128536, Jan. 31, 2000.
- [23] *People v. Decena*, 235 SCRA 67 (1994)
- [24] Rollo, p.86.
- [25] RTC Decision, pp. 4-5; Rollo, pp. 27-28.
- [26] Rollo, pp. 37-39.
- [27] *People v. Caisip*, 290 SCRA 451 (1998); *People v. Pallarco*, 288 SCRA 151 (1998); *People v. Sumalpong*, 284 SCRA 464 (1998); *People v. Saliling*, 249 SCRA 185 (1995)
- [28] TSN, pp. 4-7, Sept. 17, 1997.
- [29] *People v. Caringas*, 176 SCRA 404 (1989); *People v. Evangelista*, 256 SCRA 611 (1996)
- [30] *People v. Yadaon*, 82 Phil. 160 (1948); *People v. Atencio*, 22 SCRA 88 (1968)
- [31] *People v. Atencio*, supra.
- [32] Art. 14(3), REVISED PENAL CODE, as amended.
- [33] *People v. Rapanut*, supra.
- [34] See *People v. De la Cruz*, 85 SCRA 285 (1978) where the father of the accused acted as intermediary in the latter's surrender.
- [35] *People v. Durado*, G.R. No. 121669, Dec. 23, 1999; *People v. Lopez*, supra; *People v. Atrejenio*, G.R. No. 120160, July 13, 1999; *People v. Suplito*, G.R. No. 104944, Sept. 16, 1999; *People v. Floro*, G.R. No. 120641, Oct. 7, 1999.
- [36] *People v. Villanueva*, 302 SCRA 380 (1999); *Shauf v. Court of Appeals*, 191 SCRA 713 (1990); *Kierulf v. Court of Appeals*, 269 SCRA 433 (1997). See also *Heirs of Castro v. Bustos*, 27 SCRA 327 (1969);
- [37] *People v. Villanueva*, supra; *People v. Sanchez*, G.R. No. 131116, Aug. 27, 1999; *People v. Ereño*, G.R. No. 124706, Feb. 22, 2000.

**[38] 302 SCRA 380 (1999)**

- [39] G.R. No. 131116, Aug. 27, 1999, where the only evidence presented consisted of the testimony of the deceased's common law wife that her husband earned P1,000,000.00 a year.
- [40] G.R. No. 124706, Feb. 22, 2000, where the victim's mother presented a handwritten list of her late daughter's supposed daily income (except Sunday) of P600.00 from fish vending.

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