

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO QUENING Y VERSOZA, ACCUSED-APPELLANT.

G.R. No. 132167. January 08, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated October 9, 1997, of the Regional Trial Court of Masbate, Branch 46, in Criminal Case No. 7737, finding appellant guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua.

Appellant was charged under the following Information:

That on or about March 12, 1995, in the afternoon thereof, at sitio Siwayan, barangay Bangon, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack with a bolo one Antonio dela Cruz y Rebesi, hitting the latter on the different parts of the body therefore inflicting wounds which cause[d] his instantaneous death.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty when arraigned. Thereafter, trial on the merits ensued. The facts of the case, as culled from the testimonies of the prosecution and defense witnesses, are as follows:

BERNADETH DELA CRUZ,[3] widow of the victim and the first witness for the prosecution, testified that on March 12, 1995, her husband, Antonio dela Cruz, attended a birthday party. In the afternoon of that same day, she saw him walking towards their house but stopped at appellant's house, which was about 10 to 15 meters from theirs. There was a rumor in their sitio that her husband and appellant's wife were having an affair. She saw her husband talking to appellant's wife just outside the latter's house. Seeing this, she went over to join them. She overheard her husband telling appellant's wife that should appellant die, he would take the latter's place. She interrupted them and said that this could not be true. She and her husband were about to leave when suddenly appellant arrived. She then tried to explain to appellant that her husband was just joking. Piqued, appellant immediately boxed her husband. She said she tried to hold on to appellant to stop him from further hurting her husband, but instead both fell to the ground. She recalled that appellant's brother-in-law, nicknamed Egoy, appeared and tried to hit her as well. However, her husband hit Egoy first, and the latter fell. The spouses hurriedly went home. Upon reaching their house, her husband remained and sat by the gate, facing the house, with his back to the road. She was standing about 4 to 5 meters away from him, just outside their gate, when she saw appellant, who was armed with a bolo, walking towards her husband. She recalled that she tried to shout and warn him but to no avail as no sound came out of her throat. She saw appellant hack her husband to death. She said appellant killed her husband because appellant might have envied her family. [4]

On cross-examination, Bernadeth admitted that when her husband left, she stayed behind and talked to appellant's wife who apologized for the rumor. According to her, when she neared her home, Egoy arrived and

engaged her husband in a fistfight in the middle of the road. She reiterated what she narrated in her direct testimony. [5]

The second witness for the prosecution was JULITO RABINO,[6] a neighbor of the victim and the appellant. He testified that on March 12, 1995, at around 3:30 P.M., while he was riding his bicycle, he saw appellant hacking at Antonio, near the gate in front of the latter's house. He shouted for appellant to stop but appellant only looked back at him and continued to hack Antonio. The victim sustained wounds on his head and shoulder. Julito said he was just three (3) arms length away. He saw appellant leave and go to the house of Rafael Mendoza, a barangay kagawad, to surrender. Meanwhile, he saw Bernadeth faint by the side of the road. He then brought her to her parents' house.[7]

DR. ARTEMIO G. CAPELLAN, Municipal Health Officer of Masbate, testified and interpreted the medico-legal findings of Dr. Noel Jazul, who conducted the autopsy and prepared the autopsy report, as follows: (1) Hacking type of wound located at the left side of the head. (2) Hacking wound, 11 cm. x 5 cm., parieto occipital right. (3) Hack wound 5 cm. x 3 cm., extended from maxillary area, located at the right cheek up to the back passing through the right ear. (4) Hacking wound, 11 cm. x 2 cm., right postero lateral aspect, at the right side of the neck through his back. (5) Hacking wound, 8 cm. x 4 cm., with complete fracture at the right shoulder. (6) Hacking wound, 10 cm. x 10 cm., right scapula, at the right side of the back. (7) Hacking wound at 17 cm. x 2.5 cm., scapular area posterior chest, at the left side of the back. Dr. Capellan clarified that of the seven wounds, nos. 6 and 7 were at the back. All the wounds were fatal. However, he was not certain which of the wounds caused the actual death of the victim.[8]

For the defense, witness ORLANDO BARTOLAY CABILES testified that on March 12, 1995, while standing six (6) meters away from the house of appellant, he saw Antonio, armed with a bolo, running towards the direction of appellant's residence. Antonio then found appellant in his yard. Antonio tried to hit appellant with the bolo but missed. They grappled for the bolo and appellant, after getting the weapon, hacked Antonio. Appellant then went up his house while Antonio ran towards the middle of the road where he fell. Cabiles also noticed that there were other people who saw the incident but were too afraid to come forward. When cross-examined, he admitted that he resided in Sitio Bangon while the incident was in Sitio Siwayan; that he was in the vicinity of the crime because there was a shorter road in the area leading to his house; and that when he ran for councilor in the local elections, appellant and he were political allies. He likewise admitted that had he not been asked by appellant, he would not have testified for him. He claimed that he never saw what or how the incident started and that he witnessed only the part when Antonio armed with a bolo rushed towards appellant.[9]

The final witness was appellant himself. In his own defense, ARMANDO QUENING recounted that on March 12, 1995, at around 3:30 P.M., he was awakened by a commotion near the gate of his house. When he looked out the window, he saw Antonio boxing his brother-in-law, Egoy. He went down to pacify them but to no avail. When Antonio saw him, Antonio was uttering "It is good that you came here.", while lunging at him with a twelve (12) inch-knife. Antonio missed. They grappled for the knife and he managed to get hold of it then he thrust the knife at Antonio. He explained that perhaps out of blind rage, he hit the victim four (4) times. At this point, he claimed, he no longer knew where Egoy was. He surrendered to Councilor Rafael Mendoza who brought him to the Municipal Building of Aroroy.[10]

In its decision, the trial court found appellant guilty for the murder of Antonio dela Cruz. The fallo reads:

WHEREFORE, the accused Armando Quening y Versoza is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of Antonio dela Cruz y Rebesi the amount of fifty thousand pesos (P50,000.00) as moral damages. The accused is further ordered to be transferred to the National Penitentiary.

SO ORDERED. [11]

In this appeal, he avers that the trial court erred:

- ... IN APPRECIATING THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY.
[12]

- ... IN FINDING THE ACCUSED-APPELLANT ARMANDO QUENING GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED AND PENALIZED UNDER ARTICLE 248 OF THE REVISED PENAL CODE. [13]

Appellant seeks the reversal of his conviction and raises principally the issue of credibility of the prosecution witnesses as well as the propriety of the trial court's appreciation of treachery as a qualifying circumstance in the commission of the offense.

On the issue of credibility, appellant contends that the trial court erred in giving full faith and credence to the testimony of the prosecution witnesses. He avers that the court a quo merely adopted the testimonies of the prosecution witnesses but wholly disregarded those of the witnesses for the defense. [14]

For the State, the Office of the Solicitor General posits that the trial court did not err in finding appellant guilty of murder qualified by treachery. However, the State moves for the modification of the trial court's decision insofar as the award of moral damages is concerned, which according to the State should have been denominated as indemnity ex delicto and should be increased from P50,000 to P75,000.

It is well settled that in assessing the credibility of witnesses, this Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment while testifying. Such an opportunity is denied the appellate courts, which rely on the cold pages of the records of the case.[15] Only when such assessment is tainted with arbitrariness or oversight of a significant fact or circumstance that could affect the result will the appellate court depart from the trial court's factual conclusions.[16]

Appellant claims self-defense. For self-defense to prosper, the following requirements should be met: (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]

Appellant avers that he merely came to the aid of his brother-in-law, Egoy, who was being attacked with fistblows by the victim. However, Bernadeth dela Cruz, the victim's wife, positively testified that appellant stabbed her husband without any provocation on his part.

Between these contradicting testimonies, we are constrained to uphold the findings of the lower court. It found that there was no unlawful aggression on the part of the victim. Appellant claimed he was attacked by the victim with a bolo. We find it less than credible that the victim who was a bigger man, and armed with a bolo, could be disarmed by appellant, who was unarmed and of smaller built. Noteworthy too is the fact that despite appellant's claim that they grappled for the possession of the bolo, appellant did not sustain any wound or bruise. Other than his bare allegation, there is no evidence on record, testimonial or documentary, to support appellant's claim that the victim was the unlawful aggressor.

Curiously too, as observed by the trial court, appellant's brother-in-law, Christopher dela Peña nicknamed Egoy, was not presented as a witness, when Egoy was the person that appellant allegedly aided. Appellant could not even account for the whereabouts of Egoy after the stabbing took place. If it is true that appellant merely came to Egoy's rescue, it was crucial that Egoy corroborate his plea of self-defense. But Egoy was not put on the witness

stand. There was no sufficient proof of unlawful aggression on the victim's part. Thus, appellant's claim of self-defense could not prosper since unlawful aggression is an indispensable element thereof. [18]

Appellant when cross-examined by the prosecutor testified, thus,

Q:

What is the name of your brother-in-law with a quarrel with Antonio dela Cruz?

A:

Christopher dela Peña.[19]

Q:

And according to you, the victim, Antonio dela Cruz boxed on the face your brother-in-law?

A:

Yes sir.

Q:

He boxed your brother-in-law?

A:

Yes sir.

Q:

And after boxing your brother-in-law, Antonio dela Cruz stopped boxing your brother-in-law?

A:

Yes sir, because my brother-in-law fel[l] unconscious.

Q:

But when your brother-in-law fel[l] unconscious, Antonio dela Cruz felt aggressive?

A:

Antonio dela Cruz fell in the perimeter fence.

Q:

But is it not that you said, you pacified the quarrel between Antonio dela Cruz and your brother-in-law Charlie dela Peña?

A:

Yes sir.

Q:

At the time Antonio dela Cruz [was] boxing your brother-in-law, Antonio dela Cruz was not carrying any weapon that is why he only boxed your brother-in-law?

A:

There was.

Q:

You mean that at the time Antonio dela Cruz boxed your brother-in-law, he was already carrying that weapon?

A:

Yes sir.

Q:

But he did not use it against your brother-in-law?

A:

No sir. He was not able to use it because it was still [on] his waist.

Q:

It was only when you pacified that Antonio dela Cruz would like to attack you with his bladed weapon, is that correct?

A:

Yes sir.

x x x

Q:

And you were able to grab into possession that bladed weapon from Antonio dela Cruz?

A:

Yes sir.

Q:

So after you have wrestled from Antonio dela Cruz that bladed weapon, Antonio has no weapon anymore?

A:

Yes sir.

Q:

Therefore, there was no more danger in yourself because Antonio's weapon was in your possession?

A:

Yes sir.

x x x

Q:

How many times did you hack Antonio?

A:

Four (4) times.

x x x

Q:

Actually Mr. Witness, according to you when you hacked Antonio dela Cruz you lost control of yourself, you could not really count the number of times you hacked the victim because according to you, you lost control of yourself?

Atty. Sulat: Misleading, Your Honor.

A:

Yes sir.[20]

Given the aforecited circumstances in this case, appellant's plea of self-defense has no leg to stand on. Further, as shown by the autopsy report, the victim suffered seven hack wounds, all of which were deemed fatal by the medico-legal officer. The gravity of these hack wounds negates the claim of self-defense. It is an oft-repeated rule that the presence of a large number of wounds, their location and their seriousness would negate self-defense. Instead, they indicate a determined effort to kill.[21]

Additionally, we note that the testimony of appellant's corroborating witness, Orlando Bartolay Cabiles, is

suspect. Cabiles admitted that he was a political ally of appellant; that he came forward upon the invitation of the latter; and that conveniently he was in the area by chance when he took a shortcut home. Compare this with the testimony of prosecution witness Julito Rabino. Despite the grueling cross-examination by the defense, his testimony was consistent, straightforward, and candid. The defense had not imputed any ill-motive against him for testifying. It is settled that where there is no evidence that the witness was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[22]

Was the crime qualified by treachery? There is treachery when the offender commits any of the crimes against the 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.[23]

As revealed by witnesses in their testimony, on the day of the crime, there was a previous altercation between appellant and the deceased. Not long after, the stabbing incident took place. The victim's wife testified that appellant tapped her husband's right shoulder before appellant hacked her husband, a warning that the latter's life was in danger.[24] Also, since witness Rabino said he did not see how the incident commenced, his testimony could not be utilized to support the allegation of treachery. The fatal wounds found at the back of the deceased do not, by themselves, indicate treachery.[25] In the absence of other details that would confirm that indeed appellant deliberately adopted the means employed to kill the deceased, the qualifying aggravating circumstance of treachery cannot be appreciated. Treachery cannot be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself.[26] Hence, the conviction of appellant must be modified so that he is declared guilty not of murder but only homicide.

Moreover, we find in favor of appellant the mitigating circumstance of voluntary surrender. For surrender to be voluntary, it must be spontaneous and must show the intent of the accused to submit himself unconditionally to the authorities, either: (1) because he acknowledges his guilt; or (2) because he wishes to save the authorities the trouble and expense incidental to his search and capture.[27] Appellant testified that after the hacking incident he went to the house of kagawad Rafael Mendoza who brought him to the Municipal Building of Aroroy to admit to the killing, albeit in self-defense. This was effectively corroborated by the prosecution through witness Julito Rabino. [28]

Finally, the award of damages needs modification. The trial court improperly awarded P50,000 as moral damages. Moral damages can be awarded only upon sufficient proof that the aggrieved party is entitled to it in accordance with Article 2217 of the Civil Code.[29] Nothing on record shows that the wife asked for moral damages. Since moral damages was not prayed for and no evidence to substantiate the award for moral damages was presented,[30] moral damages may not be awarded. Nonetheless, the heirs of the victim are entitled to civil indemnity in the amount of P50,000, pursuant to prevailing jurisprudence.[31]

WHEREFORE, the decision of the Regional Trial Court of Masbate, Branch 46, in Criminal Case No. 7737, is **AFFIRMED**, with the **MODIFICATION** that appellant is found guilty only of **HOMICIDE**, not murder. With the mitigating circumstance of voluntary surrender in his favor, and applying the Indeterminate Sentence Law, he is sentenced to suffer the penalty of reclusion temporal in its minimum period of 6 years and 1 day of prision mayor as minimum and 12 years and 1 day of reclusion temporal as maximum in relation to Article 64[32] of the Revised Penal Code. The award for moral damages in the amount of P50,000 is deleted for lack of basis. But appellant is ordered to pay the heirs of the victim the amount of P50,000 as indemnity ex delicto.

Costs de oficio.

SO ORDERED.

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

Buena, J., on official leave.

[1] Rollo, p.10.

[2] Id. at 4.

[3] Also referred to as Bernardita dela Cruz and Bernadette dela Cruz elsewhere in the TSN, August 21, 1995, p.12; September 26, 1995, p. 1.

[4] TSN, August 21, 1995, pp. 2-6.

[5] TSN, August 21, 1995, pp. 7-12.

[6] Also referred to as “Dioleto Rabino” in some part of the records.

[7] TSN, September 26, 1995, pp. 3-10.

[8] TSN, July 24, 1996, pp. 2-6.

[9] TSN, January 7, 1997, pp. 1-5.

[10] TSN, February 18, 1997, pp. 2-6.

[11] Rollo, p. 16.

[12] Id. at 31.

[13] Id. at 33.

[14] Id. at 34.

[15] People vs. Garcia, G.R. Nos. 137379-81, 341 SCRA 502, 509 (2000); citing People vs. Castillo, G.R. No. 132025, 335 SCRA 100, 111-112 (2000); People vs. Babera, G.R. No. 130609, 332 SCRA 257, 266 (2000).

[16] People vs. De Guzman, G.R. No. 124368, 333 SCRA 269, 280 (2000); People vs. Balgos, G.R. No. 126115, 323 SCRA 372, 380 (2000).

[17] Art. 11, par. 1, Revised Penal Code.

[18] People vs. Lascota, G.R. No. 113527, July 17, 1997, 275 SCRA 591, 601 (1997).

[19] Also referred as “Charlie dela Peña”.

[20] TSN, February 18, 1997, pp. 7-10.

[21] People vs. Rivero, G.R. No. 112721, 242 SCRA 354, 360 (1995), citing People vs. Maceda, G.R. No. 91106, 197 SCRA 499 (1991); People vs. Sagadsad, G.R. No. 88042, 215 SCRA 641 (1992); People vs. Nuestro, G.R. No. 111288, 240 SCRA 221, 228 (1995), citing People vs. Boniao, G.R. No. 100800, 217 SCRA 653 (1993).

[22] People vs. Alfeche, G.R. No. 124213, 294 SCRA 352, 376 (1998), citing People vs. Simon, G.R. No. 56925, 209 SCRA 148 (1992); People vs. Rostata, 218 SCRA 657 (1993); People vs. Bergante, G.R. Nos. 120369-70, 286 SCRA 629, 642 (1998).

[23] Art.14, par. 16, Revised Penal Code.

[24] TSN, August 21, 1995, p. 5.

[25] *People vs. Maturgo, Sr.*, G.R. No. 111872, 248 SCRA 519, 531 (1995).

[26] *People vs. Silvestre*, G.R. No. 109142, 244 SCRA 479, 494 (1995).

[27] *People vs. Sion*, G.R. No. 109617, 277 SCRA 127, 154 (1997).

[28] TSN, September 26, 1995, p. 5.

[29] *People vs. Manegdeg*, G.R. No. 115470, 316 SCRA 689, 709 (1999).

[30] Citing *Kierulf vs. Court of Appeals*, G.R. No. 114383, 269 SCRA 433, 452 (1997) and *People vs. Corea*, G.R. No. 114383, 269 SCRA 76, 94 (1997).

[31] *People vs. Verde*, G.R. No. 119077, 302 SCRA 690, 706 (1999).

[32] ART. 64. Rules for the application of penalties which contain three periods.- In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or no mitigating or aggravating circumstances:

x x x

(2) When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

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