

MARCIAL SIENES, BENITO SIENES, RICO SIENES AND ROGER BANAYBANAY, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT

G.R. NO. 132925. December 13, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

On October 15, 1981, in the then Court of First Instance (now Regional Trial Court [RTC]) of Negros Oriental, herein petitioner Marcial Sienes, along with his three (3) sons and co-petitioners, Benito Sienes (@ Baby Sienes), Roger Banaybanay (@ Boboy Sienes) and Rico Sienes were charged with the crime of Murder for the death of one Felipe de la Cruz, Sr., allegedly committed, per the indicting Information,[1] as follows:

That on or about the 15th day of May, 1981, at Barangay Kabulacan, Municipality of Sta. Catalina, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other and acting in concert, with evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab Felipe de la Cruz, Sr. with the use of canes long bolo and jungle knife with which said accused were then armed and provided, thereby inflicting upon the body of said victim the following injuries, to wit:

- * Stab wound, left chest, left parasternal line at the level of the 4th intercostals space, 1.5 inch in size, penetrating. Lung tissue about 1 inch was removed from the wound opening.
- * Stab wound, sternum, 1 inch in size.
- * Stab wound, Abdomen, median line, 4 inches above umbilicus.
- * Stab wound, left lumbar area 2 inches in size, 3 inches deep.
- * Stab wound, Postero-lateral aspect, proximal thirds, left forearm, 1.5 inch in size, 2 inches deep.
- * Hack wound, right temporo-occipital area (traversing thru the ear) 5 inches in size, inch deep.
- * Contusion-Hematoma, left post-auricular area.

which caused the death of said Felipe de la Cruz, Sr. immediately thereafter.

Contrary to Article 248 of the Revised Penal Code.

When arraigned on October 12, 1984, at which time the case was already assigned to Branch 21 of the RTC of Negros Oriental and thereat docketed as Criminal Case No. 4804, all four (4) petitioners, as accused, individually entered a plea of "Not Guilty." [2]

Thereafter, trial on the merits ensued.

In a decision[3] dated August 20, 1990, the trial court found all four (4) accused guilty beyond reasonable doubt

of the crime of Murder as charged, and sentenced them accordingly, thus:

WHEREFORE, premises considered and of the fact that the prosecution has proved the guilt of the four (4) accused beyond reasonable doubt, the court hereby finds the accused Marcial Sienes, Benito Sienes (alias Baby Sienes), Rico Sienes, and Roger Banaybanay (alias Boboy Sienes) guilty of the crime of murder, as charged. The accused, Marcial Sienes is entitled to the benefit of the mitigating circumstance of voluntary surrender in his favor, with no aggravating circumstance to offset the same and, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years, Four (4) months. With regards to the three (3) other co-accused, namely: Benito Sienes (alias Baby Seines), Rico Sienes and Roger Banaybanay (alias Boboy Seines), there being no aggravating and mitigating circumstance, to offset each other, and applying the Indeterminate Sentence Law, the Court hereby sentences them to suffer the penalty of Seventeen (17) years, Four (4) months and One (1) day to Twenty (20) years. All the four (4) accused shall indemnify, jointly and severally, the heirs of the deceased-victim, Felipe de la Cruz, the sum of Thirty Thousand (P30,000.00) Pesos as jurisprudential damages, plus the actual damages/expenses suffered in the sum of Six Thousand (P6,000.00) Pesos, representing Two Thousand (P2,000.00) Pesos for embalming costs, One Thousand (P1,000.00) for tomb-making expenses and Three Thousand Pesos for wake and vigil expenses, with an additional Five Thousand (P5,000.00) Pesos, as moral damages, and to pay the costs of the proceedings.

SO ORDERED.

Unable to accept the judgment of conviction, all the four (4) accused went on appeal to the Court of Appeals (CA) in CA-G.R. CR No. 10252. In a decision[4] dated January 31, 1996, the CA, thru its then 12[th] Division, modified the appealed decision of the trial court by ruling out the presence of conspiracy among the four (4) accused and the attendance of treachery and evident premeditation in the commission of the offense. Accordingly, the CA found the crime committed to have been merely Homicide, not Murder, of which only the father, Marcial Sienes, was sentenced as principal while his three (3) sons were adjudged as mere accomplices. More specifically, the CA decision dispositively reads:

WHEREFORE, the Decision of the trial court convicting accused-appellant [petitioners] Marcial Sienes, Benito Sienes, Rico Sienes and Roger Banaybanay is hereby MODIFIED. Appellant Marcial Sienes is hereby convicted of HOMICIDE, and taking into account the mitigating circumstance of voluntary surrender, is hereby sentenced to suffer the penalty of imprisonment from eight (8) years and one (1) day of prision mayor medium as minimum, to twelve (12) years and one (1) day of reclusion temporal minimum as maximum. The indemnity for the death of the victim, Felipe de la Cruz, Sr., is hereby increased to P50,000.00 in accordance with recent Jurisprudence.

On their part, appellants Benito Sienes, Rico Sienes and Roger Banaybanay are hereby convicted as accomplices to the crime of homicide, and are hereby sentenced each to suffer the penalty of four (4) years and two (2) months of prision correccional maximum as minimum to eight (8) years and one (1) day of prision mayor medium as maximum.

In all other respects, the Decision stands. Costs de officio.

SO ORDERED.

With their motion for reconsideration having been denied by the CA in its Resolution[5] of February 10, 1998, father and sons are now with this Court via this petition for review on certiorari under Rule 45 of the Rules of Court, claiming that the CA erred -

- XXX IN DECLARING ACCUSED RICO SIENES, BENITO SIENES AND ROGER BANAYBANAY AS ACCOMPLICES, CONTRARY TO ART. 18 OF THE RPC;

- XXX IN NOT CONSIDERING THE TESTIMONY OF THE OTHER PROSECUTION WITNESS ROMULO TUBONGBANUA WHICH MATERIALLY CONTRADICTED THE TESTIMONY OF CRESENCIO TABLO, AS CREATING DOUBT AS TO THE GUILT OF THE ACCUSED CONTRARY TO LAW THAT IN CASE OF DOUBT IT SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED, AND CONTRARY TO THE EVIDENCE ON RECORD;

- XXX IN NOT CONSIDERING AS MITIGATING CIRCUMSTANCE THE DEFENSE OF THE BARANGAY CAPTAIN, FOR THE VICTIM WAS IN THE ACT OF ASSAULTING A PERSON IN AUTHORITY.

We DENY.

In the course of trial in the court of origin, the prosecution presented two (2) alleged eyewitnesses to the incident, namely Cresencio Tablo and Romulo Tubongbanua. Also presented were Dr. Renato Moleta, acting Municipal Health Officer of Sta. Catalina, Negros Oriental, and Rizalina de la Cruz, wife of the victim. For its part, the defense presented all the four (4) accused themselves, and one Tiburcio Jamin, a member of the Integrated Police of Sta. Catalina, Negros Oriental.

Prosecution witness Cresencio Tablo testified that on May 14, 1981, during the eve of the barrio fiesta of Barangay Kabulukan, Sta. Catalina, Negros Oriental, he attended an evening dance party at the Primary School of Kabulukan. While the dance party was going on, the victim, Felipe de la Cruz, Sr. got hold of the microphone and announced a special dance number for some persons. The special dance number did not push through because petitioner Marcial Sienes, who was then the barangay captain of Kabulukan, prevented the music from being played and said over the microphone that the announcement made by the victim, who incidentally was his kumpadre, is foolish, then punched the victim on the face. Instead of retaliating, the victim just uttered, "Pare, why do we have to quarrel this?" Again, Marcial threw another punch at the victim. Thereupon, Marcial's son, Benito Sienes (@ Baby), struck the victim with a kamagong cane, hitting the latter on the forehead which caused him to feel dizzy and to fall down. With the victim already down, Marcial, using a hunting knife, his other son Roger Sienes (@ Boboy), using a pinuti, and his two (2) other sons, Benito and Rico, both using kamagong canes, took turns in striking the victim. This witness further testified that the father Marcial Sienes stabbed the victim thrice while both Benito and Roger stabbed him once, using the weapon called pinuti.

The other prosecution witness, Romulo Tubongbanua, testified that in the evening of May 14, 1981, he likewise attended the barangay dance party at the Primary School of Kabulukan, Sta. Catalina, Negros Oriental. While the dancing was going on, some young people were making trouble but Marcial Sienes, who was then the Barangay Captain, was able to maintain peace and order. According to this witness, he observed that Marcial and his three (3) sons, namely, Benito, Rico and Roger, were all armed at that time. At around one o'clock past midnight, the victim announced over the microphone a special dance number, but the music was stopped and few minutes later, he heard people shouting as fight erupted. Turning his head to the direction of the noise, he saw the victim hugging Marcial while the latter's sons Benito, Roger, and Rico were attacking the victim. When he went nearer, he saw Benito, who was behind the victim, hitting the latter with a cane or bartolina, while Roger, who was at the left side of the victim, holding a bartolina. He did not see Rico very clearly. Both Benito and Roger struck the victim once. It was after the two (Benito and Roger) struck the victim that he (witness) was able to reach for them and when he got hold of Benito's hand, he told the latter, "No, Be, let's talk about this." Then, Benito stopped and Roger went away. After the victim noticed that he was no longer being attacked, the victim managed to stand up. For his (witness) part, he released Marcial who thereupon ran away. However, after a few steps, the victim lost his balance and fell on the ground. Marcial then followed the victim and stabbed him with a dagger, which was tucked on Marcial's waist. The victim who was lying on his back was hit on the breast. The victim managed to

stand up again and run but tripped on a pupil's desk which caused him to fall down. Marcial followed the victim and stabbed him once more. For the third time, the victim tried to get up and run towards the stage, but again he fell down. Marcial knelt over him and, for the third time, stabbed the victim causing the latter's instantaneous death. As to how many times Marcial stabbed the victim on that third occasion, this witness was not certain.

Dr. Renato Moleta, Acting Municipal Health Officer of Sta. Catalina, Negros Oriental, performed the autopsy on the victim's cadaver on May 15, 1981 at the dancing area of Barangay Kabulukan and prepared a post-mortem report thereon. According to this witness, he discovered six (6) wounds on the body of the victim and a 7th injury with a contusion-hematoma. This witness further testified that when he examined the victim's body, it was already in rigid condition.

Rizalina de la Cruz, wife of the victim, testified on the funeral expenses amounting to P6,000.00 which the family incurred as a result of her husband's death. She added that during the lifetime of her husband, the latter farmed their 8.5 hectares of land which were planted with sugarcane, corn, bananas, and coconut. Her husband left her with 14 children.

In his defense, the father, Marcial Sienes, while admitting having killed the victim, insisted that he did so in self-defense. He stressed that he was the only one who inflicted all the wounds on the victim's body. According to him, while making a round outside the dance hall, his attention was called by Chairman Luz Badon informing him that there was a person causing disturbance in the dance hall. When he went inside, he saw the victim holding the microphone and telling the people that the music to be played was a special one and those who wanted to dance will pay a certain fee. After three musical records were played and nobody danced, he approached the victim, told the latter over the microphone to formalize the announcement as the price was not specified. Irrked, the victim grabbed the microphone from him and boxed him, hitting him at his right jaw below his right ear. Thereupon, he retaliated by slapping the victim at the right cheek, which resulted in their boxing and wrestling with each other. While wrestling, the victim tried to pull out a knife, but he was able to grab the knife and used it against the victim, hitting the latter at the right cheek and right ear. As the victim continued to grapple with him, the victim sustained several wounds, resulting to his death. After the incident, he surrendered to Pat. Jessie Navarro of the Sta. Catalina Police Station. He further declared that his sons, Benito and Roger, were not in the vicinity of the crime scene when the incident took place, while his other son, Rico, who was the escort of the queen that night, was at the gate of the barangay hall. He also confessed that all the wounds sustained by the victim were inflicted by him alone and no one else.

Both Rico and Roger testified that they witnessed the fight between their father and the victim, but they had no participation in it. For his part, Benito declared that at the time material to the case, he and his companions were outside the dance hall. Upon hearing a commotion that a fight was going on, he took his companions home. On his way back to the dance hall, he met his mother who informed him that his father had killed somebody. Upon entering the dance hall, he saw his father standing while the victim was lying down, already dead.

When an accused invokes self-defense, as Marcial Sienes did in this case, the onus probandi to substantiate such assertion rests on him. He must prove clearly and convincingly the three elements of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[6]

Going by Marcial's testimony, it would appear that after he grabbed the microphone from the victim, the latter boxed him, hitting him on his right jaw below the ear. Thereafter, the two of them boxed each other, and, while wrestling with one another, the victim tried to grab a hunting knife, as if to kill him, compelling him to repel the aggression by struggling for the possession of said knife and thrusting it upon the victim himself.

Marcial's account, however, was belied by prosecution witness Cresencio Tablo who categorically stated that the hunting knife in question came from Marcial himself who was already carrying it in his waist when Marcial entered the dance hall.[7]

For sure, the very testimony of Roger Banaybanay @ Boboy, no less a son of Marcial, shows that the victim was not the aggressor when attacked by Marcial, but was even making a frantic attempt to evade Marcial's assault.[8]

Moreover, the nature, location and number of stab wounds sustained by the victim also belie and negate Marcial's pretense of self-defense. It bears repeating that the nature and number of wounds inflicted on the victim are constantly and unremittingly considered as important indicia which disprove a plea for self-defense, demonstrative as they are of a determined effort to kill the victim and not just to defend oneself.[9] Here, the victim's wounds, seven (7) in all, most of which were inflicted on vital parts of the victim's body, are telltale signs of Marcial's determination to finish off the victim. Thus, absent an offensive attack on the part of the victim, Marcial's plea of self-defense must simply fail.

What is more, Marcial himself never claimed self-defense when he gave his sworn statement to the police authorities or during the preliminary investigation of the case. As it is, it was only during trial that he raised for the first time his theory of self-defense. Persons who act in legitimate defense of themselves describe fully and in all candor at the first opportune time all that has happened with a view to justify their acts. The Court is, therefore, inclined to believe that the idea of self-defense was a mere afterthought on the part of Marcial.

We now turn to the three other accused-petitioners.

The three presently contend that weight and credence should not be given to the inconsistent and conflicting testimonies of the two (2) principal prosecution witnesses, namely, Cresencio Tablo and Romulo Tubongbanua. They argue that the testimony of Tubongbanua on direct examination to the effect that this witness got hold of Baby's hand after Marcial hit the victim, and that of Tablo that, as soon as the victim fell down, the sons of Marcial took turns in stabbing him, contradicted Tubongbanua's declaration during cross-examination that before Marcial stabbed the victim, he (Tubongbanua) got hold of Baby's hand and released him only after Marcial's last thrust.[10]

We perceive no contradiction in the testimonies of Tablo and Tubongbanua. On the contrary, their testimonies substantially corroborate each other. Tubongbanua's pleading to Baby to settle the matter was made after the victim was attacked. To quote from the People's Comment:[11]

There is no material inconsistency in the testimonies of prosecution witnesses Tablo and Tubongbanua. The testimonies of these two prosecution witnesses are substantially corroborative of each other except with respect to the incident wherein witness Tubongbanua tried to pacify petitioners Baby and Boboy Sienes by pleading them that they just talk and settle the matter, upon which the two, according to Tubongbanua, desisted from further attacking the victim. However, it must be observed that this happened after they had already cooperated with their father in the commission of the crime by hacking and stabbing the victim with a pinuti and hitting him on the forehead with a kamagong cane, which undoubtedly were manifestations of the support and cooperation founded on one single objective, i.e., to kill the victim.

In any event, Tubongbanua's clear and positive testimony on direct-examination far outweighed whatever perceived inconsistencies there were during his cross-examination. On the other hand, Tablo's testimony successfully revealed the participation of each of the three accused-petitioners as accomplices in the commission of the crime.[12]

Petitioners made much of the fact that the judge who rendered the decision was not the same judge who presided over the entire proceedings below. While it may be true that a trial judge who conducted the hearing would be in a

better position to ascertain the truth or falsity of the testimonies of the witnesses, this does not mean, however, that a judge who did not hear a case would be less competent as the first to assess the credibility of witnesses. After all, the evidence presented are all on record and the witnesses' testimonies are reflected in the transcripts of stenographic notes. Reliance on the transcript does not violate substantive and procedural due process.[13]

After careful scrutiny of the records, particularly the testimonies of the two (2) principal prosecution witnesses, the Court finds no valid reason to disturb the findings of the trial court on this matter.

In the face of the prosecution witnesses' positive identification, the trial court, as well as the CA, correctly rejected the three (3) brothers' denial and alibi. Alibi is a weak defense. Positive identification, when categorical and consistent and without any ill-motive on the part of the eyewitness testifying on a matter at issue, prevails over sheer denial and alibi which are basically negative, self-serving and undeserving of any weight in law, unless substantiated by clear and convincing proof.[14] Furthermore, for alibi to prosper, the accused must prove that not only was he somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission,[15] which is not true in this case.

The Court is in full accord with the findings of the CA, and the observation of the People's counsel, that the crime was not attended by the qualifying aggravating circumstances of treachery and abuse of superior strength, hence, the crime committed for the death of the victim is only Homicide, not Murder, as charged in the Information. As aptly pointed out by the CA in the decision under review:

There was no treachery in this case. x x x. In this case, it is not shown that the victim was attacked suddenly and without warning. Appellant Marcial Sienes merely punched the victim, and when the latter protested, said appellant punched him again; and only after then did appellant and his sons strike him with their weapons. We fail to see anything treacherous in this situation, considering that the victim had been put on guard when he was first slugged. The Supreme Court said: "There is no treachery if the victim was forewarned of the attack by the assailant." (People vs. Estrellanes, Jr., GR. No. 111003, 239 SCRA 235 [1994]) We ruled that treachery was not proven sufficiently.

Neither can abuse of superior strength be appreciated in this case. There is no showing that appellant Marcial Sienes took advantage of the presence of his armed sons to overwhelm the victim. As was discussed earlier, the participation of appellant's sons was due to a desire to help their father rather than as part of a concerted and planned attack. It was mentioned earlier also that when restrained by witness Tubongbanua, appellants "Baby" and "Boboy" Sienes desisted. Thus, there was never any intention to overwhelm the victim by combined strength. The Supreme Court said: "To appreciate abuse of superiority, what should be considered is not that there were three, four or more assailants of one victim but whether the aggressors took advantage of their combined strength in order to consummate the offense." (People vs. Francisco, GR No. 106097, 234 SCRA 333 [1994]) Thus, abuse of superior strength cannot be appreciated in this case.

Without the two aggravating circumstances of treachery and abuse of superior strength, the crime in this case should only be homicide.[16]

We are also in agreement with the CA's finding that there was no conspiracy between and among the three accused-petitioners and their father. Conspiracy cannot be inferred from their acts. The fast sequence of unexpected events leading to the killing of the victim elicited the spontaneous, though erroneous reactions of the three. Their impulsive acts cannot but produce the conclusion that the same were triggered without prior or evident deliberation. The killing was not the result of a previous plot or sinister design to end the life of the victim. Conspiracy, like the crime itself, must be proven beyond reasonable doubt and the mere presence of a person at the scene of the crime does not make him a co-conspirator.[17] But though not enough to prove

conspiracy, the presence of Marcial's sons within the vicinity of the crime scene definitely defies their being mere innocent spectators.

Here, upon seeing their father assault the victim, the three sons approached and struck the victim with their weapons, thus concurring with their father's criminal design. In fact, the records show that Benito struck the victim on the forehead with his cane, causing the latter to fall down, leaving the victim helpless against the assaults that followed. We note, however, that Marcial's sons' participation was not indispensable for the death of the victim since Marcial could have killed the victim by himself without any need of assistance from his sons, he being armed with a hunting knife and the victim being intoxicated. This made the sons of Marcial not conspirators but mere accomplices.[18]

Lastly, Marcial contends that as the barangay captain of the place, he should be entitled to a privileged mitigating circumstance. He argued that he is a person in authority and the victim assaulted him, as a person in authority.

We view this as an attempt on the part of Marcial to avail of the privileged mitigating circumstance of incomplete justifying circumstance of performing a duty under paragraph 1, Article 13,[19] in relation to paragraph 5, Article 11,[20] of the Revised Penal Code. We must stress that there are two requisites for this justifying circumstance: (a) that the offender acted in the lawful exercise of a right or a duty; and (b) that the injury or offense committed be the necessary consequence of the due performance of such right or office.[21] These two requisites are wanting in this case. The victim was not committing any offense at the time and killing him under the circumstances of this case cannot in any wise be considered a valid performance of a lawful duty by a barangay captain.

WHEREFORE, the instant petition is DENIED and the assailed CA decision and resolution in CA-G.R. CR No. 10252 are AFFIRMED.

Costs against the petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] CA Rollo, pp. 10-11.

[2] RTC Records, p. 110.

[3] Id. at 268-309.

[4] Penned by Associate Justice Jesus M. Elbinias (ret.), with Associate Justices Ramon U. Mabutas, Jr. (ret.) and Salvador J. Valdez, Jr. (ret.) concurring; Rollo, pp. 16-46.

[5] Id. at 47.

[6] Cabanlig v. Sandiganbayan, G.R. No. 148431, July 28, 2005, 464 SCRA 324.

[7] Rollo, pp. 34-35.

[8] Id. at 31-32.

[9] People v. Anus, 453 Phil 1030 (2003).

[10] Id. at 23-24; 5; 6.

[11] Id. at 69.

[12] Id. at 21-25.

[13] People v. Cadley, G.R. No. 150735, March 15, 2004, 425 SCRA 493.

[14] People v. Reyes, 447 Phil 668 (2003).

[15] People v. Banela, 361 Phil 61 (1999), citing People v. Baniel, 341 Phil 471 (1997).

[16] Id. at 36-37.

[17] People v. Ortiz, 334 Phil 590 (1997).

[18] An accomplice is one who knows the criminal design of the principal and cooperates knowingly or intentionally therewith by an act which, even if not rendered, the crime would be committed just the same.

[19] ART. 13. Mitigating circumstance. - The following are mitigating circumstance:

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or exempt from criminal liability in the respective cases are not attendant.

[20] ART. 11. Justifying circumstances. - The following do not incur any criminal liability.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or duty.

[21] Angcaco v. People, 428 Phil. 351 (2002).

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