PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT NAGUM, ACCUSED-APPELLANT.

G.R. No. 134003. January 19, 2000

Ponente: MELO, J.

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MELO, J.:

Once again we are given the heavy task of reviewing the imposition of the capital punishment, this time in a case involving the death of a detained prisoner.

Accused-appellant, ALBERT NAGUM, and the victim, AURELIO AGUSTIN, JR., were both detention prisoners at the Nueva Ecija Provincial Jail. That accused-appellant killed the victim is not in dispute. At issue is how the victim was killed. The People charged murder while the accused cried self-defense. The trial court believed the People and imposed the death penalty. Hence, this automatic review.

The case for the prosecution shows that on January 24, 1997, the victim's wife, JOLLY AGUSTIN, together with their son, visited her husband who was on solitary confinement (bartolina) at the Nueva Ecija Provincial Jail in Cabanatuan City where he was detained for the crime of frustrated homicide. The three of them had lunch together inside her husband's cell. After eating, her husband went out of the room to wash his hands. Their son followed. Moments later, she heard her husband shouting, "Tulungan n'yo ako! Tulungan n'yo ako!" Rushing out, she saw accused-appellant stabbing her husband with a balisong. Frantic, she sought the help of the other inmates who rushed her husband to the hospital. Unfortunately, her husband expired before he could be medically attended to.

Aurelio's body was brought to Muñoz, Nueva Ecija where it was autopsied by Dr. Ma. Teresa Fernandez. The results show that Aurelio died of cardio-pulmonary arrest due to multiple stab wounds inflicted by a sharp pointed object. The following were the injuries sustained by him:

- wd. Stabbed + nagus 2 cm x 3.5 cm penetrating;
- wd, stabbed, 3 cm 3rd ICS AAL;
- wd stabbed, 2.5 cm 4th ICS AAL;
- 3 cm penetrating wd incised;
- wd incised, cm, m/3;
- 3 cm D/3 media;
- 2 cm D/3 lat. Epicondiple wd, incised;
- wd stabbed, 3 cm x 2.5 cm periumbilical;
- wd incised, 1.5 cm D/3 forearm lateral;

- 1.25 cm hypithenar wd, incised;

- wd, incised, 1.5 cm D/3 forearm lateral;

- 1 cm PIPJ;

- 1 cm dipj;

- 1 cm DIPJ;

- 2 cm x 7 cm penetrating supra scapular (L); and

- 4.5 cm wd., incised, D/3 posterior.

(p. 57, Rollo.)

Dr. Fernandez testified that – based on the above-described wounds – the assailant could have been positioned at the back of the victim.

Accused-appellant had a completely different version of the incidents that led to Aurelio's death. He contended that at around 2 o'clock in the afternoon of January 24, 1997, he was at the bartolina of the Provincial Jail in Cabanatuan City where he himself was detained for another crime of murder. Aurelio arrived fuming mad and cursing him. Then Aurelio boxed him and he retaliated. While they were exchanging punches, Aurelio pulled out a knife but he was able to wrestle the knife from Aurelio. He thereupon likewise stabbed Aurelio. He could not remember how many times he stabbed Aurelio, but he admitted that he had to be restrained by another inmate, Francisco Caballero, from inflicting further injuries on Aurelio. However, the intervention came too late as the fatal blows had already been delivered on Aurelio.

The trial court did not give credence to the plea of self-defense as the evidence showed that it was the accused who provoked Aurelio by giving him menacing looks, and because the 16 stab wounds suffered by Aurelio negate self-defense, manifesting instead a determined effort to kill the victim.

On appeal by way of automatic review, accused-appellant assigns the following as the errors allegedly committed by the trial court, to wit:

- THE COURT ERRED IN NOT APPLYING THE PRINCIPLE OF SELF DEFENSE;

- THAT EVEN FOR THE SAKE OF ARGUMENT BUT NOT ADMITTING THAT SELF DEFENSE IS NOT APPLICABLE, THE COURT ERRED IN NOT APPLYING INCOMPLETE SELF-DEFENSE;

- THE COURT ERRED IN APPLYING TREACHERY IN THIS CASE.

(p. 52, Rollo.)

We find the appeal partly meritorious.

For self-defense to prosper, the accused must positively show that there was a previous unlawful and unprovoked attack which placed his life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the attack (People vs. Real, G.R. No. 121930, June 14, 1999). In the case at bar, accused-appellant did not suffer any injury, not even a slight scratch, from the hands of the victim. His life could not have been in danger and the butchering of Aurelio can not in any way be justified as defense of one's self. The intent to kill was patent. That there was a determined effort to kill Aurelio is glaring from the 16 stab wounds sustained by the victim, a number of which were located in some vital parts of his body. Thus, in People vs. Baniel, (275 SCRA 472 [1997]), we held that the nature, location, and number of wounds inflicted on

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the victim belie and negate the claim of self-defense. In Baniel, there were 11 wounds while here there were 16 wounds in different parts of the body of the victim such as his heart, lungs, and abdomen. The gravity of those wounds is indicative of a determined effort to kill and not just to defend oneself.

In his second assigned error, accused-appellant faults the court a quo for not appreciating incomplete self-defense in his favor when his defense of self failed. However, even in incomplete self-defense, there must be unlawful aggression attributable to the victim for the said plea to be appreciated by the courts. (People vs. Agapinay, 186 SCRA 601 [1990]) Unlawful aggression presupposes an actual, sudden, and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude (People vs. Cario, 288 SCRA 404 [1998] cited in People vs. Real, supra). Aurelio's alleged anger and vitriolic remarks against accused-appellant are not the unlawful aggression contemplated by law and jurisprudence that would justify accused-appellant killing Aurelio.

We, however, agree with the Office of the Solicitor General that treachery can not be appreciated in this case for failure of the prosecution to establish the same beyond reasonable doubt. Where no particulars are shown as to the manner by which the aggression was committed or how the act which resulted in the death of the victim began and developed, treachery can in no way be established from mere suppositions drawn solely from circumstances prior to the aggression (People vs. Narit, 197 SCRA 334 [1991]. Jolly, the victim's wife who allegedly witnessed her husband's killing, did not see how the fight between Aurelio and accused-appellant started. When she came out of her husband's room to answer his pleas for help, accused-appellant had commenced stabbing the victim with a balisong. Treachery can not be presumed. It must be proved by clear and convincing evidence or as conclusively as the killing itself (People vs. Nonoy Felix, et al., G.R. No. 126914, October 1, 1998).

The crime committed is, therefore, homicide, not murder. For where treachery is not adequately proved, the appellant can only be convicted of homicide (People vs. Beltran, 260 SCRA 141 [1996]. The felony of homicide carries with it the penalty of reclusion temporal (Art. 249, Revised Penal Code). Since there is neither aggravating nor mitigating circumstance, the imposable penalty, applying the Indeterminate Sentence Law, should range from within prision mayor to reclusion temporal medium.

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED with the modification that accused-appellant is found guilty beyond reasonable doubt of the crime of HOMICIDE only, for which he is sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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