

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO SAN ANDRES Y ANTONIO, ACCUSED-APPELLANT.*G.R. No. 134246. February 22, 2000*

Ponente: BELLOSILLO, J.

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This case was originally an appeal to the Court of Appeals from the judgment of the trial court convicting accused-appellant Eduardo San Andres of homicide. He now assails his conviction. On 29 May 1998 however the appellate court found him guilty instead of murder, not homicide, and accordingly sentenced him to reclusion perpetua. Consequently, pursuant to Sec. 13, par. 2, of Rule 124 of the Rules of Court, the Court of Appeals refrained from entering judgment and certified the case to this Court for review.[1]

These are the facts: On the night of 18 November 1994 the spouses Engracio and Sesona Albao of Tarosanan, Camaligan, Camarines Sur, attended the birthday celebration of their grandson, son of their son Arnulfo Albao, in the latter's residence. At around 11:00 o'clock in the evening Engracio and Sesona decided to go home. However, they had to take home another son, Enrico, who was already drunk.

After reaching Enrico's house and making sure he was already asleep, the couple left for home. On their way they passed through rice paddies and then trudged the elevated road where they met accused Eduardo San Andres and Henry San Andres. Eduardo and Henry were standing quietly about one and a half (1 1/2) meters away. They were armed with a samurai and a knife, respectively.[2] Engracio innocently asked them why they were armed and who their enemies were. But before he could get any answer Eduardo and Henry simultaneously attacked him. Eduardo hacked Engracio with his samurai while Henry stabbed him several times with his knife.[3]

Overwhelmed by the unexpected attack, Engracio was forced to parry off the repeated blows with his bare hands. But sensing the futility of any defense as his wounds were now mounting and sapping his strength, Engracio fled. He ran downwards to the rice paddies but Henry chased him.

The deep mud in the paddies coupled with his debilitating condition due to his injuries prevented his escape. He fell on his back, and in no time Henry caught up with him. Henry astraddled his fallen victim and then delivered the coup de grace. Meanwhile, Eduardo remained standing on the road with his samurai still on hand even as Senona shouted hysterically for help.[4]

When Enrico and his wife heard their mother shouting from outside they jumped out of bed and ran towards the place of the "incident." [5] But they were stopped in their tracks by Eduardo who drove them back to their house brandishing his samurai.[6] It took Enrico some three (3) minutes before he could muster enough courage to make another attempt to rescue his parents. But it was too late. His father was already mortally wounded. He could only bring his father with the help of some barangay officials to the city hospital where he eventually died.

The following day, or on 19 November 1994, Dr. Felix Prado conducted a postmortem examination on the cadaver of Engracio Albao. According to Dr. Prado, Engracio's death was the result of the multiple stab wounds

he received, and that of the twenty-two (22) wounds he sustained, wounds Nos. 1, 2, 3, 5, 6 and 20 were fatal, each of which being enough to cause the victim's death.[7] The examining physician further testified that the injuries of Engracio could have been caused by sharp and pointed instruments, e.g., a knife, a samurai, or a small bolo.

Accused-appellant Eduardo San Andres swore, in his defense, that he was not a party to the killing of Engracio; on the contrary, he was in fact a victim of Enrico's unlawful aggression. Eduardo claimed that at around 10:00 o'clock in the evening of 18 November 1994 he was attending the birthday party of a friend, Vic David, together with Henry San Andres, Enrico "Boboy" Albao and some other guests he was not familiar with. They ate and drank gin. As the party progressed, Enrico got angry for no apparent reason, venting his ire at no one in particular, which prompted Engracio, whom Eduardo intimately referred to as 'ta Jun, to take Enrico home. Shortly after, according to Eduardo, he also left. But moments after he arrived home, he heard someone shouting from the road around thirty (30) meters away. So he and his wife went out to see who was causing the disturbance. But as they were ascending the riprap towards the road they found themselves facing an infuriated Enrico brandishing a samurai. Since Enrico kept advancing and continuously swinging his samurai towards them they moved backwards which sent them falling down the riprap. But Enrico left them unharmed. They then climbed up the road and saw Henry some thirty (30) meters away running towards the direction of Mabulo. After that, they went back to their house.[8] It never crossed their minds to report the matter to the authorities.

At around 1:00 o'clock the following morning, 19 November 1994, Eduardo and his wife were awakened by two (2) policemen who invited him for questioning. Still in a daze, Eduardo asked them why but his protestations were met with a laconic reply, "just make my complaint at the police station." His query was finally answered when he was told at the police station that he was implicated in the killing of Engracio Albao.[9]

On 6 February 1995 an Information for murder qualified by treachery and abuse of superior strength was filed against Eduardo San Andres and Henry San Andres in the Regional Trial Court of Naga City. Only Eduardo San Andres was tried as his cousin Henry San Andres has remained at large up to the present.

On 5 March 1996 the trial court rendered a decision finding accused-appellant Eduardo San Andres guilty of homicide and meted him an indeterminate prison term of eight (8) years and one (1) day of prision mayor in its medium period to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period. He was ordered to pay the heirs of Engracio Albao P50,000.00 as civil indemnity, P30,000.00 as moral damages and P22,314.70 as actual damages.[10] The trial court found no basis to doubt the credibility of Senona Albao and her son Enrico who both positively identified accused-appellant Eduardo San Andres and the other accused, Henry San Andres, who is at large. Senona in particular was just one and a half (1 1/2) meters away from the two (2) assailants when they simultaneously attacked Engracio. She could not possibly be mistaken as to their identities as it was a moonlit night.

Finding conspiracy in the commission of the offense the trial court observed -

Eduardo San Andres' presence at the scene of the incident was not merely passive. He and Henry San Andres simultaneously attacked Engracio Albao. He may not have joined Henry San Andres in chasing Engracio Albao and did not strike the deceased anymore when the latter was already lying on his back with Henry San Andres on top of him repeatedly stabbing him, but he remained standing on the road still holding his samurai. When Enrico Albao, and his wife came he prevented them from helping the deceased by chasing them with his samurai x x x[11]

But the trial court ruled out treachery and abuse of superior strength as having attended the perpetration of the crime -

x x x x the qualifying circumstance of treachery was not, however, sufficiently established. Although the testimony of Senona Albao shows that the deceased was not aware that he would be attacked by the two accused, there is no showing the method of attack employed by the accused was deliberately chosen with a special view of accompanying the act without risk to themselves x x x x

With respect to the other alleged qualifying circumstance of abuse of superior strength, the same has not been proven beyond reasonable doubt either. While it is true that both accused were armed and the deceased was not, there is no sufficient evidence to show that both accused deliberately employed and used excessive force out of proportion to the means of defense available to the person attack (sic) (People v. Bacay, 132 SCRA 27). When the deceased was being stabbed by Henry San Andres when the former was already lying down, Eduardo San Andres merely stood by x x x x[12]

Perhaps believing, rightly or wrongly, that he deserved to be acquitted, accused Eduardo San Andres appealed his conviction to the Court of Appeals. However, on 29 May 1998 the appellate court found him guilty instead of murder, not homicide, and imposed upon him the higher penalty of reclusion perpetua while sustaining the award of damages in favor of the heirs of the victim.[13]

As found by the appellate court, as by the trial court, the circumstances surrounding the commission of the offense evinced a conspiratorial design between the perpetrators. The fact that both accused with unsheathed weapons waited for the victim and his wife at the place where the latter would pass; that they were together earlier in the same party; that both launched simultaneous attacks upon their victim when they saw him; and, that Eduardo remained standing on the road evidently as a lookout while Henry astraddled his fallen victim and finally delivered the death blow, created no other logical inference than that they were impelled by a common criminal effort and objective.

Whether the crime was attended by treachery, the appellate court found no showing that the two (2) accused employed schemes to render their victim defenseless. Engracio had all the opportunity to avoid the accused Eduardo and Henry since they did not conceal themselves and their weapons when they drew near the couple. Engracio simply misappreciated the impending danger from the posturing of his would-be attackers; thus it was his misjudgment, not the seemingly treacherous conduct of his assailants, that finally spelled his doom.

However, the appellate court appreciated the qualifying circumstance of abuse of superiority in view of the marked disparity in the age and strength of the parties. Accused-appellant Eduardo San Andres was thirty-four (34) years old when he viciously attacked, along with his cousin Henry, sixty-two (62)-year old Engracio Albao. But it was not only youth and numbers. There was also the glaring contrast between the victim who was totally unarmed and his two (2) killers who were in possession of fatal weapons which were already unsheathed. The act of accused-appellant of joining his co-accused in simultaneously attacking Engracio without any provocation from the latter, betrayed the desire of the two (2) to overwhelm their victim with their superior force.[14]

Accused-appellant insists in his defense that there was nary any evidence indicating that he and his co-accused connived to liquidate the deceased. The mere fact, according to him, that he was present when Henry stabbed Engracio, which in fact he denies, does not adequately prove any conspiracy. Granting without admitting that he was present and participated in the commission of the crime, accused-appellant assails the appreciation of the qualifying circumstance of abuse of superior strength, citing in his favor People v. Martinez[15] and People v. Ybañez[16] where this Court clarified that mere numerical superiority is not enough but that deliberate intent to take advantage of superior strength must be clearly shown for superiority to be properly considered.

The arguments of accused-appellant are puerile; utterly unpersuasive. His gratuitous denial cannot prevail over the positive testimony of the widow Senona and her son Enrico. Both were categorical in saying that they recognized accused-appellant as one of the two (2) slayers of Engracio. Senona, in particular, could not possibly

be mistaken because accused-appellant and his co-accused, who are first cousins, are quite familiar to her, being relatives of her husband Engracio.

The Court of Appeals correctly held, as did the lower court, that there was conspiracy in the commission of the crime. When the spouses Albao encountered the two (2) malefactors beside the road, the latter had their weapons unsheathed and drawn which prompted Engracio to ask innocently what was the matter and who were their enemies. Instead of answering him, the accused simultaneously attacked Engracio. Worse, while Henry chased Engracio after the latter took flight, accused-appellant stood by as lookout and thereafter drove back Enrico and his wife to their house to prevent them from extending aid to Engracio. Evidently, these circumstances indicated a common sentiment and community of purpose between the offenders who acted in unison towards the attainment of a common malevolent design.

Similarly, we sustain the conclusion of the appellate court that there was no treachery. For treachery to be appreciated as a qualifying circumstance, two (2) requisites must concur: (a) employment of means, methods or forms in the execution thereof which would deprive the person attacked of any opportunity to defend himself, much less retaliate; and, (b) the mode of attack must be consciously and deliberately adopted. But the means employed by the accused did not eliminate any risk to them from the defense which the victim might make. When asked what happened after her husband inquired from the two (2) accused why they were armed, Senona's reply was "x x x they attacked each other" (nag-aratakehan). Further, she disclosed that although Engracio did not fight back, he defended himself.^[17] Suddenness of the attack would not constitute treachery if the victim had the chance to defend or to ward off the aggression. Although at a notoriously disadvantaged position, Engracio was not altogether deprived of the opportunity to strike back as he managed to parry the initial thrusts. Neither can the simultaneity of the aggression give rise to treachery where it is not shown that the killers deliberately and consciously adopted a method intended to facilitate the perpetration of the offense without risk to themselves.

Where two (2) persons took part in the crime armed with deadly weapons, such as a samurai and a knife, as in this case, and made a simultaneous attack upon a defenseless person, the aggravating circumstance of abuse of superior strength should be taken into consideration.^[18] It is manifest that accused-appellant and his co-accused, both armed with bladed weapons, overwhelmed their unarmed victim with a sudden synchronized assault. As correctly pointed out by the appellate court, it is of no moment that after the initial attack accused-appellant merely stood afar while Henry San Andres chased and repeatedly stabbed the victim, when at the very outset the two (2) had already secured advantage of their superior power in subduing and killing Engracio. To underscore the disproportion in strength between the parties, we should also consider their relative ages. At the time of the killing, accused-appellant was only in his thirties while the victim was already in his sixties.

The reliance of accused-appellant on the Martinez and Ybañez cases is misplaced. In Martinez, this Court disallowed the appreciation of the qualifying circumstance of superior strength where it was shown that the participation of the accused's four companions was confined to applauding his act, without the use of force. In Ybañez, it was established that the two (2) accused did not conspire to kill the victim, implying that they did not jointly exploit their superior strength. In the instant case, however, both accused-appellant and his co-accused simultaneously and in concert attacked Engracio Albao in such a manner as to secure advantage from their combined strength. The proper crime, therefore, is murder qualified by abuse of superior strength.

WHEREFORE, the Decision of the Regional Trial Court of Naga City appealed from is MODIFIED. Accused-appellant EDUARDO SAN ANDRES y ANTONIO is found guilty of MURDER, not homicide, and accordingly sentenced to suffer the penalty of reclusion perpetua. The award of damages to the heirs of the deceased Engracio Albao in the amounts of P50,000.00 as civil indemnity, P30,000.00 as moral damages and P22,314.70 as actual damages, is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

Buena, J., on leave.

[1] Decision penned by Associate Justice Cancio Garcia, concurred in by Associate Justices Omar U. Amin and Bernardo P. Abesamis, Special Ninth Division, Court of Appeals.

[2] TSN, 20 April 1995, p. 9,

[3] Id., pp. 13 and 20.

[4] Id., p. 18.

[5] When asked on direct examination what incident he was referring to, his answer was: "That incident where my father was being hacked sir;" id., p. 8.

[6] Id., p. 9.

[7] TSN, 29 March 1995, p. 8.

[8] TSN, 2 October 1995, pp. 3-9.

[9] Id., pp. 10-11.

[10] Crim. Case No. RTC '95-5737; Decision penned by Judge Antonio N. Gerona, RTC-Br. 28, Naga City; Original Records, pp. 218-226.

[11] Id., p. 224.

[12] Id., pp. 224-225.

[13] See Note 1.

[14] Rollo, p. 136.

[15] No. L-31755, 31 March 1980, 96 SCRA 714.

[16] No. L-30421, 28 March 1974, 56 SCRA 210.

[17] TSN, 20 April 1995, p. 13.

[18] U. S. v. Banagale, 24 Phil. 69 (1913); U. S. v. Lasada, 21 Phil. 287 (1912).

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