

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDULAJID SABDANI y SHUMARHARI, ACCUSED-APPELLANT.

G.R. No. 134262. June 28, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

By his plea of self-defense, appellant admits authorship of the killing. Hence, the burden is upon him to establish clearly and convincingly all the requisites of the justifying circumstance. Failure to discharge this burden warrants a judgment of conviction.

The Case

Abdulajid Sabdani y Shumarhari appeals the January 5, 1998 Decision^[1] of the Regional Trial Court of Quezon City (Branch 103) in Criminal Case No. Q-96-66945, finding him guilty of murder and sentencing him to reclusion perpetua.

In an Information dated July 16, 1996, Assistant City Prosecutor Donald T. Lee charged appellant with murder allegedly committed as follows:

"That on or about the 14th day of July, 1996, in Quezon City, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously with evident premeditation [and] treachery, assault, attack and employ personal violence upon the person of NORODIN IBRAHIM by then and there shooting him with a 45 cal. pistol hitting him on the different parts of the body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Norodin Ibrahim."^[2]

During his arraignment on October 15, 1996, appellant, duly assisted by Atty. Edilberto Barcelona, entered a plea of not guilty.^[3] Trial proceeded in due course. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"ACCORDINGLY, judgment is hereby rendered finding the accused[,] Police Chief Inspector and Muslim Imam ABDULAJID SABDANI Y SHUMARHARI[,] GUILTY beyond reasonable doubt of the crime of MURDER as principal in the perpetration thereof, with treachery as a qualifying [circumstance], over the death of NORODIN IBRAHIM, and said accused is hereby sentenced to suffer the penalty of [r]eclusion [p]erpetua in accordance with the Revised Penal Code.

"On the civil aspect, the accused Abdula[j]id Sabdani y Shumarhari is hereby ordered to pay the heirs of deceased Norodin Ibrahim the sum of P50,000.00 as indemnification da[ma]ges; and P100,000.00 as moral damages."^[4]

The Facts

Evidence for the Prosecution

In its Brief, the Office of the Solicitor General^[5] presents the following narration of the facts as viewed by the

prosecution:

"[O]n the morning of July 14, 1996, while tending their bakery located at 25-A Libya Street, Salam Mosque Compound, Culiati, Tandang Sora, Quezon City, Hairuden M. Abdul saw Norodin Ibrahim standing in front of appellant's house, watching a garbage truck as it backed up (TSN, November 12, 1996, pp. 7, 9, 14, 17-18). Unfortunately for Norodin, appellant, a police officer and an Imam or Moslem priest, saw him too (Ibid., pp. 14, 22, 24). Appellant forbade people from standing or talking in front of his house, and deeply resented those who did (Ibid., p. 11).

"Soon after having seen Norodin, appellant emerged from his house carrying his .45-caliber gun (Ibid., p. 24). Appellant walked towards Norodin who, upon seeing appellant, ran away (Ibid.). Before he could distance himself, however, Norodin stumbled (Ibid.). As he lay supine on the ground, appellant stood over him and shot him (Ibid., pp. 25, 31). Norodin, writhing in pain, put his hands up, as though begging for appellant's mercy (Ibid., p. 31). Instead of pitying him, however, appellant shot him again (Ibid., p. 32.).

"Appellant remained at the crime scene for several minutes, pointing his gun at bystanders and onlookers who, in turn, scampered away in fear (Ibid., pp. 38-41). Appellant then returned to his house (Ibid., p. 43).

"Around two minutes later, appellant came out of his house in police uniform (Ibid., pp. 45, 48). About the same time, four policemen arrived, pointing their guns at appellant (Ibid., p. 51). Appellant put down his gun and did not resist arrest (Ibid.). As the arresting officers led him away, appellant smiled and uttered, "Sample lang iyan, sample" (Ibid., pp. 52-54).

"Norodin was brought to the hospital for treatment, but failed to survive the gunshot wounds inflicted upon him by appellant (Ibid., p. 49)."[6]

Evidence for the Defense

In his Brief,[7] appellant interposes self-defense and presents the following version of the facts:

"Marilyn Sabdani testified that accused Abdulajid Sabdani is her husband. At around 7:30 [o]n the morning of July 14, 1996, she was standing near the window of their house carrying her son. At that time, her husband was preparing his personal belongings because he was going to Fort Bonifacio where he was under training. Her husband is a police Senior Inspector at the PNP. She then saw a person who was looking at their house wearing a long loose T-shirt and with both hands inside his maong pants. That person ha[d] been looking at their house for about ten (10) minutes. He was standing on the piece of wood which was placed on the canal in front of their house which was then under construction. Only one (1) person [could] pass by on that piece of wood. When her husband signaled that person to leave saying 'lalabas ako,' 'dadaan ako diyan,' that person did not say anything but he was very angry [with] her husband, [with] her and their children and his eyes were red. She saw a gun tucked on the waist line of that man. He told her husband 'may baril siya.' When that person was in the act of pulling his gun, her husband was able to fire at him first. She noticed a man [pull] the body of that person and [take] the gun from the waist of the victim. After a few minutes, policemen arrived and her husband voluntarily surrendered with his firearm. (TSN, April 29, 1997, p. 3-24).

"Accused Abdulajid Sabdani testified that at around 7:30 [o]n the morning of July 14, 1996, he was about to get out from his house to go back to Fort Bonifacio when there was a tough looking and [strange] man who blocked his way and was about to enter his house. The man was about one (1) meter from the door of his house. The man was wearing maong pants, brown shirt and rubber shoes and was about 5'6 to 6 feet tall and with medium [build]. Despite his continued gesture to give way, that man spontaneously and meaningly [sic] stared at him with a tiger eye and his companions said 'Banatan mo na'. There was a prodding [from] his companion and the right hand of that person was placed inside the right front waistline of his pants, so he decided to shoot him. There were five (5) to six (6) companions of the man. After shooting the man, he returned to his house to defend himself and his family from those companions of the man. In ten (10) to (15) minutes, the policemen arrived. They told him 'just surrender yourself.' He said 'Wala naman ito sir. Alam mo

namang nagdependa lang ako dito.' He was brought to [the] police detachment with his wife and father and then to the station. He was asked to give forty thousand pesos (P40,000) and because he ha[d] no money, the case against him was elevated to murder from homicide. He was then a Police Senior Inspector of the PNP. He ha[d] a license for his .45 caliber gun (TSN, July 1, 1997, p. 5-46).

"Police Sr. Inspector Addun Borrinaga testified that on July 14, 1996, he was the Block Commander of Culiati police block. He knows Abdulajid Sabdani being a fellow policemen and there were several occasions that he [was] coordinating with his office and according to Sabdani, there were people trying to threaten him in his residence.

"On July 14, 1996, there was a report of shooting at the Muslim compound and they responded. He saw Sabdani standing at the [v]eranda of his residence. He advised Sabdani to put down his firearm and he complied. He g[o]t Sabdani's gun and asked him to go with them at the police station and he complied (TSN, Sept. 9, 1997, p. 2-6)."

Ruling of the Trial Court

In rejecting the theory of self-defense, the trial court held that the refusal of the victim to get out of appellant's way when the latter signaled him to do so did not in any way constitute unlawful aggression or place appellant's life in danger. Indeed, considering that appellant was a police officer, he should have known better than just draw out his gun and fire at the victim.

The trial court also belied the claim that the victim had a gun hidden in his waistband because none was found immediately thereafter. The allegation that the gun was retrieved by his companions to protect his family was also dubious. The trial court noted that if there really were a gun, appellant would not have turned his back on the victim's companions who were standing nearby at the time.

Finally, the court a quo found that treachery attended the killing because the suddenness of the attack left the victim with no opportunity to defend himself.

Hence, this appeal.[8]

Assignment of Errors

Assailing the trial court's Decision, appellant presents this lone assignment of error:

"The trial court erred in finding the accused Abdulajid Sabdani y Shumarhari guilty beyond reasonable doubt of the crime of murder."[9]

In effect, appellant raises the issue of self-defense.

The Court's Ruling

The appeal has no merit.

Sole Issue:

Self-Defense

It is axiomatic that the accused who invokes self-defense admits authorship of the killing. Hence, the burden of proof shifts to that person, who must then establish with clear and convincing evidence all the elements of the justifying circumstance listed under Article 11 of the Revised Penal Code:[10]

"ART. 11. Justifying circumstances. -- The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it; [and]

Third. Lack of sufficient provocation on the part of the person defending himself."

Unlawful Aggression

We must stress that unlawful aggression is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked. As one commentator observed, "if there is no unlawful aggression, there is nothing to prevent or repel."^[11]

Unlawful aggression refers to an attack or a threat to attack, positively showing the intent of the aggressor to cause injury.^[12] It presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof,^[13] which imperils one's life or limb. Thus, when there is no peril, there is no unlawful aggression.

Appellant admits that he shot the victim, but that he did so in self-defense. He asserts that the victim, who was about to enter his house at the time, refused to step aside when told to do so and, instead, stared at him menacingly. Moreover, the victim allegedly placed his hand near his waistband under his shirt, which made appellant suspect that the former was about to draw a concealed weapon. Upon hearing the companions of the victim shout "Banatan mo na," appellant pulled out his gun and shot him.

The claim of appellant is not convincing. Although the victim was merely standing on the pathway doing nothing, appellant surmised that he was armed. Other than the fact that the victim had his hands inside his loose shirt, there was no clear showing that he had a gun. Furthermore, appellant, a policeman, did not ascertain whether he was really armed, or warn him to drop the supposed weapon. He merely signalled the victim to step aside; when the latter failed to comply, the former immediately shot him twice.

Likewise, the testimony of appellant's wife that she saw a gun tucked under the victim's waistband should be rejected. We note that appellant, who had already been alerted by then, was much closer because he was facing the victim, but he testified that he did not see any gun.

The theory of appellant that the gun was taken away by the victim's companions, as the former turned away to protect his wife, defies logic. If the victim really had companions, appellant would have at least tried to secure the supposed gun of the victim and prevent the latter's cohorts from taking and using it on him. There was no reason for him to turn away, thereby exposing his defenseless back and leaving the weapon to be picked up by the victim's supposed companions.

In any event, unconvincing is the defense claim that the victim had several companions, who allegedly goaded him by saying "Banatan mo na." The alleged remark, which was a crucial piece of evidence for the defense, was never mentioned in the Counter-affidavit that appellant submitted in connection with his Motion for Reinvestigation. Moreover, his conduct at the time clearly militated against the alleged presence of other men. As earlier stated, if it were true that the victim had companions at the time, appellant would not have given them any opportunity to retrieve the former's purported gun. Indeed, he would not have exposed his back to them.

Clearly, appellant failed to present any clear and convincing evidence that there was unlawful aggression on the part of the victim. The latter's conduct did not pose any threat or peril to the former. Under the circumstances, there was no reason for appellant to shoot.

Prosecution Eyewitness Account

Verily, appellant himself was the aggressor. This was clear from the narration of Prosecution Eyewitness Hairoden M. Abdul, a Salam Mosque Compound resident, who was standing a few meters away from the crime

scene at the time. He testified that the victim was merely staring at the facade of the house of appellant when the latter became angry and came out armed with a gun. As the former tried to flee, appellant suddenly shot him, causing him to fall. While the victim was writhing in pain, appellant came closer and shot him a second time. Abdul testified:

"Q And, Mr. Witness, can you just tell us where was the accused at the time you first saw him that morning of July 14, 1996?

WITNESS:

A That morning I first saw the accused cleaning his drainage and when he entered his house he was standing behind the window and looking at the victim at the time, sir.

x x x x x x x x

ATTY. VILLANUEVA:

Q [M]r. Witness can you just describe to us what Norodin Ibrahim was wearing at the time you saw him?

WITNESS:

A Norodin Ibrahim was wearing pajama and a shirt, sir.

ATTY. VILLANUEVA:

A A shirt without sleeves or t-shirt with sleeves, Mr. Witness?

WITNESS:

A I cannot remember but I know it is a shirt, sir.

ATTY. VILLANUEVA:

Q Now, Mr. Witness, can you just tell us what unusual incident, if any, happened involving the accused here and Norodin Ibrahim in the morning of July 14, 1996.

WITNESS:

A I saw the accused looking at the victim and then, suddenly, the accused entered his house and when he emerged from him house, I saw him carrying a gun, .45 caliber at the time and with his body ben[t] forward, he slowly approached the victim and when the victim saw the accused, he ran away and the other people around also scampered for safety and then after about several meters, the victim stumbled and when he was about to arise, the accused shot him at a close range, sir.

ATTY. VILLANUEVA:

Q The accused shot him, Mr. Witness?

WITNESS:

A Yes, sir.

ATTY. VILLANUEVA:

Q Now, Mr. Witness, dwelling only at the point when the accused approached Mr. Norodin Ibrahim, can you just show us from your position, please just tell us how far did the accused walk to approach the victim, Norodin Ibrahim.

x x x x x x x x

Q Mr. Witness, after the victim was shot at close range for the first time, when he stumbled, can you tell us Mr. Witness where was the victim facing, when he was shot for the first time?

WITNESS:

A He was facing the accused at the time, sir.

ATTY. VILLANUEVA:

Q Can you tell us, if you can recall, how long was the second shot from the first shot, Mr. Witness.

WITNESS:

A About ten seconds, sir.

ATTY. VILLANUEVA:

Q Ten seconds.

WITNESS:

A Yes, sir.

ATTY. VILLANUEVA:

Q And can you just tell us what was the position of the victim when the accused shot him for the second time, Mr. Witness.

WITNESS:

A The victim was lying, sir.

ATTY. VILLANUEVA:

Q Lying?

WITNESS:

A Yes, sir.

ATTY. VILLANUEVA:

Q Where was he facing, Mr. Witness?

WITNESS:

A He was facing the accused, sir."^[14]

Moreover, after clearly disabling the victim with the first shot, appellant calmly approached and shot him a second time. In fact, after the shooting, appellant even lingered at the scene of the crime and threatened the people around the area with his gun, causing them to run away:

"Q Can you just tell us, Mr. Witness, when the victim was shot, according to you, for the second time, what happened next, if any?

WITNESS:

A After the accused shot him for the second time, the accused stands from where he was situated, sir.

ATTY. VILLANUEVA:

Q You are saying, Mr. Witness, the accused did not immediately leave the place after shooting the victim again.

WITNESS:

A Yes, sir.

ATTY. VILLANUEVA:

Q So, Mr. Witness, how long did the accused stay in the scene of the crime?

WITNESS:

A Several minutes, sir.

ATTY. VILLANUEVA:

Q Several minutes?

WITNESS:

A Yes, sir.

ATTY. VILLANUEVA:

Q And all that time, Mr. Witness, can you just tell us were there people along the street when the shooting incident happened?

WITNESS:

A Where sir?

ATTY. VILLANUEVA:

Q Along the street.

WITNESS:

A Some people were looking at the incident, sir. Some are looking but they are far from where it happened, sir.

ATTY. VILLANUEVA:

Q But within a few meters from the scene of the crime, were there other people there other than the accused and the victim, Mr. Witness?

WITNESS:

A There are other people, sir.

ATTY. VILLANUEVA:

Q Mr. Witness can you just tell us what did the accused do, if any, considering the fact that there are other people there, after shooting the victim for the second time?

WITNESS:

A He was pointing his gun, sir.

ATTY. VILLANUEVA:

Q At whom, Mr. Witness?

WITNESS:

A At other people sir who are witnessing the crim.

ATTY. VILLANUEVA:

Q And could you just tell us, Mr. Witness, what was the reaction of those people whom you saw the gun was pointed at by the accused?

WITNESS:

A The people were scampering sir."[15]

The trial court was convinced of Abdul's credibility and the truthfulness of his assertions. Time and again, this Court has pronounced that the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe them firsthand and to note their demeanor, conduct and attitude. Its findings on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[16]

Treachery

The qualifying circumstance of treachery is present when the means, method and forms of execution employed give the person attacked no opportunity for self-defense or retaliation, and when such means, method and form of execution are deliberately and consciously adopted by the accused without danger to his or her person.[17] The essence of treachery is the swift and unexpected attack on an unarmed victim.[18] Hence, the Court has recognized that "even a frontal attack can x x x be treacherous if it is sudden and unexpected and the victim is unarmed." [19]

In this case, appellant suddenly approached and shot the unarmed victim. There was no warning or indication that the latter who was doing nothing would be attacked. Moreover, when he saw the appellant approach carrying a gun, he did not have any opportunity to defend himself or escape because he was immediately shot. Clearly, treachery was proven.

Damages

The trial court correctly ordered appellant to pay indemnity ex delicto in the sum of fifty thousand pesos (P50,000) to the heirs of Norodin Ibrahim.[20] We also affirm the award of moral damages in view of its finding that his family suffered anguish and sorrow because of the incident.[21] We believe, however, that the amount should be reduced to thirty thousand pesos (P30,000).

WHEREFORE, the appeal is hereby DENIED and the Decision of the Regional Trial Court AFFIRMED, with the sole modification that the award of moral damages is REDUCED to P30,000. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Jaime N. Salazar Jr.

[2] Rollo, p. 6; records, p. 1.

[3] Certificate of Arraignment, p. 1; records, p. 64.

- [4] Assailed Decision, pp. 4-5; rollo, pp. 22-23.
- [5] The Appellee's Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Nestor J. Ballacillo and Solicitor Alma Valerie C. Soriano.
- [6] Appellee's Brief, pp. 2-3; rollo, pp. 97-98.
- [7] Appellant's Brief, pp. 5-7; rollo, pp. 70-72. The Appellant's Brief was signed by Attys. Arceli A. Rubin and Bartolome P. Reus of the Public Attorney's Office.
- [8] The case was deemed submitted for decision on November 5, 1999, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.
- [9] Appellant's Brief, p. 7; rollo, p. 72.
- [10] *People v. Janairo*, GR No. 129254, July 22, 1999; *People v. Albao*, 287 SCRA 129, March 6, 1998; *People v. De la Cruz*, 291 SCRA 164, 180, June 26, 1998; *People v. Borreros*, GR No. 125185, May 5, 1999.
- [11] Regalado, *Criminal Law Conspectus*, 1st ed., p. 45.
- [12] See *U.S. v. Guy-sayco*, 13 Phil 292, March 25, 1909.
- [13] See *People v. Cario*, 288 SCRA 404, March 31, 1998; *People v. Ignacio*, 270 SCRA 445, March 26, 1997.
- [14] TSN, November 12, 1996, pp. 22-34.
- [15] TSN, November 12, 1996, pp. 37-41.
- [16] *People v. Oliano*, GR No. 119013, March 6, 1998. See also *People v. Gaurana*, GR Nos. 109138-39, April 27, 1998; *People v. Bersabe*, GR No. 122768, April 27, 1998; *People v. Tulop*, GR No. 124821, April 21, 1998; *People v. Castillo*, GR No. 120282, April 20, 1998; *People v. Siguin*, GR No. 126517, November 24, 1998; *People v. Sta. Ana*, GR Nos. 115657-59, June 26, 1998; *People v. Villamor*, 284 SCRA 184, January 16, 1998 and *People v. Bahatan*, 285 SCRA 282, January 28, 1998.
- [17] *People v. Castillo*, GR No. 120282, April 20, 1998. See also *People v. Pallarco*, GR No. 119971, March 26, 1998; *People v. Molina*, GR Nos. 115835-36, July 22, 1998; *People v. Sabalones*, GR No. 123485, August 31, 1998; *People v. Cawaling*, GR No. 117970, July 28, 1998 and *People v. Sumalpong*, 284 SCRA 464, January 20, 1998.
- [18] *People v. Oliano*, GR No. 119013, March 6, 1998. See also *People v. Villamor*, 284 SCRA 184, January 16, 1998; *People v. Sumalpong*, 284 SCRA 464, January 20, 1998; *People v. Andres*, GR No. 122735, September 25, 1998 and *People v. Navarro*, GR No. 129566, October 7, 1998.
- [19] *People v. Ben Francisco*, GR No. 121682, April 12, 2000, per Mendoza, J.
- [20] See *People v. Vermudez*, GR No. 119464, January 28, 1999.
- [21] RTC Decision, p. 4; rollo, p. 22.

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