

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EULOGIO IGNACIO, ACCUSED-APPELLANT.

G.R. No. 134568. February 10, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

There is treachery when the accused unexpectedly and deliberately shoots an unarmed minor who is thus not in a position to put up a defense or to inflict harm on the former. Voluntary surrender is not appreciated even if the accused submits himself to the members of the barangay tanod who, by their presence in his house, precluded his escape.

The Case

Before us is an appeal of the May 18, 1998 Decision[1] of the Regional Trial Court (RTC) of Masbate, Masbate (Branch 44), convicting Eulogio Ignacio of murder in Criminal Case No. 8385. The RTC disposed of the case as follows:

"WHEREFORE, premises considered, the guilt of accused EULOGIO IGNACIO alias 'LOLOY' for the crime of MURDER having been established by proof beyond reasonable doubt for the killing of Jessie Lacson, and without the presence of any aggravating or mitigating circumstance, this court hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the victim the sum of FIFTY THOUSAND (P50,000.00) PESOS, without subsidiary [imprisonment] in case of insolvency.

"Accused Eulogio Ignacio being a detention prisoner, the period of his detention shall be credited in his favor in the computation of his sentence.

"Finally, the Provincial Warden of Masbate is directed to ship the accused to the National Penitentiary, Muntinlupa City, within thirty (30) days from the finality of this decision and to report to this court within fifteen (15) days from compliance thereof."[2]

Second Assistant Provincial Prosecutor Alberto A. Alforte charged appellant with the murder of Jessie Lacson in an Information dated February 28, 1997, the pertinent portion of which reads:

"That on or about January 11, 1997, [o]n the morning thereof, at Barangay Divisoria, Municipality of Dimasalang, 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 wilfully, unlawfully and feloniously attack, assault and shoot with a 12 gauge homemade shotgun (riot) one Jessie Lacson, hitting him on the chest, thereby inflicting wound, which caused his death."[3]

With the assistance of Counsel Percival Castillo, appellant pleaded not guilty when arraigned on September 18, 1997.[4] After trial in due course, the RTC rendered the assailed Decision. Hence, this appeal.[5]

The Facts

Version of the Prosecution

In the Brief for the Appellee, the solicitor general narrated the facts as follows:

"On January 11, 1997, at Divisoria, Dimasalang, Masbate, at 9:00 a.m., the victim, Jessie Lacson, and Edwin Velasco were gathering shells by the seashore. This work had caused them to feel thirsty. The two decided to go to the fishpond and get young coconuts or 'butong.' This fishpond is owned by Cleto Cortes alias 'Milagring' with appellant Eulogio Ignacio alias 'Loloy' as the caretaker. Inside the fishpond is a house where appellant sometimes stays.

"At the fishpond, Jessie got one young coconut. Then, Jessie walked ahead of Edwin in going to the dike, where he would break open the young coconut.

"Eulogio came out [of] his house and saw Jessie as he reached the dike. However, Eulogio did not see Edwin who was standing behind some coconut trees. Edwin heard Eulogio shout at Jessie to put down the young coconut, which the latter did. Then, Edwin saw Eulogio fire his homemade shotgun at Jessie who was hit on the left portion of the breast. At that time, Eulogio was standing forty (40) meters away from Jessie while Edwin was standing six (6) meters away from his friend. Edwin saw Jessie fall down on the ground. Then, Eulogio cranked his homemade shotgun, aimed it at Edwin but did not fire. Edwin immediately left said place to report the shooting incident to Jessie's parents.

"Edwin went to the house of Carlito Alcover, their Barangay Tanod and reported the shooting. Carlito went to Eulogio's house, failed to find him there, but waited. After three (3) minutes, Eulogio arrived, carrying his homemade shotgun. Then, Barangay Tanods Atel Lachica and Rodolfo Gulpan came by. Carlito asked Eulogio to surrender, which he heeded. Carlito asked Eulogio why he fired his long gun at Jessie. Eulogio answered that Jessie stole some young coconuts. Thereafter, they brought Eulogio to the police precinct. The homemade shotgun was surrendered to SPO3 Arturo Hernando.

"Meanwhile, Helen Alcovindas went to Dominador Lacson, Jessie's father, who was gathering coconut fruits in another plantation. She told Dominador that Eulogio shot Jessie. Dominador ran towards the fishpond, saw Jessie's dead body, and brought it to the clinic of Dr. Alino. Per examination by Dr. Ernesto Tamayo, Municipal Health Officer of Dimasalang, Masbate, the victim suffered from a single gunshot wound fatally injuring the heart."[6]

Version of the Defense

Arguing that he had acted in defense of property with no intention to kill the victim, appellant countered:

"Appellant EULOGIO IGNACIO, caretaker of the fishpond of Cleto Cortes, testified that on January 9, 1997, he was informed by his neighbor, Gil Aristotles, regarding a theft incident in the fishpond that he administered. On January 11, 1997, while roaming around the fishpond, he saw Jessie Lacson and Edwin Velasco, coming out [of] his house with a basket. It so happened that in his house there were twenty-eight (28) pieces of crabs stocked. Upon seeing herein appellant, Jessie and Edwin fled. Appellant ordered them to stop. Since the two did not stop, appellant who was then fifty (50) meters away and without any intention to kill Jessie and Edwin, fired his gun. He left and informed Kagawad Gil Aritotles about the incident. Afterwards, he reported to Barangay Tanod Saratiel Lachica."[7]

Ruling of the Trial Court

The trial court ruled that appellant failed to prove by credible, clear and convincing evidence that he had acted in lawful defense of the landowner's property. There was no legal reason for him to shoot the victim, an unarmed minor at the time of the incident. The said court qualified the killing to murder because of the presence of treachery.

Assignment of Errors

In his Brief, appellant submits the following:

"I. The lower court gravely erred in convicting accused-appellant of murder.

"II. The lower court gravely erred in finding that the qualifying circumstance of treachery [was] attendant in the case at bar.

"III. The lower court gravely erred in not appreciating the mitigating circumstance of voluntary surrender."[8]

This Court's Ruling

The appeal has no merit.

First Issue:

Evidence of Appellant's Guilt

In arguing that the trial court erred in convicting him of murder, appellant merely posits that the killing was not qualified by treachery, without challenging the ruling that he had killed the victim. Nonetheless, the Court examined the records *motu proprio*, because of the well-ingrained doctrine that a conviction must rest on the strength of the prosecution's evidence, and not on the weakness, insufficiency or impropriety of the defense.[9] After all, even in cases in which the accused pleads guilty to a capital offense, the prosecution is still required to present evidence to prove his guilt and the precise degree of his culpability.[10]

In the present case, we find ample evidence that appellant did shoot the victim. He himself admitted doing so, because he believed that the deceased and a companion, Edwin Velasco, had stolen crabs. Allegedly, he saw them carrying a basket and coming out of his house. When he approached, the two ran away. After they failed to heed his call for them to stop, he shot the victim with a homemade shotgun.

It should be stressed that appellant's conduct cannot be justified as a lawful defense of property rights. For this justifying circumstance to be appreciated, the accused has the burden of proving unlawful aggression on the part of the victim and reasonable necessity of the means employed to prevent or repel it. In this case, the first requisite was not proven, because he was not attacked by the victim. In fact, he did not even see the victim steal the crabs; he merely suspected him of doing so. Furthermore, assuming that unlawful aggression was proven, there was no necessity to shoot because, according to him, the victim was already running away when hit.

In any event, the victim's companion at the time, Edwin Velasco whose testimony will be reproduced later, positively identified appellant as the killer.

Second Issue:

Treachery

Appellant argues in the main that treachery should not be appreciated, because there was no proof that he "deliberately and consciously adopted any means to kill" Lacson, but "merely acted on impulse to stop the fleeing culprits." [11]

We disagree. Appellant carried out the attack deliberately and consciously; he did not act on mere impulse. This is clear from Edwin Velasco's testimony, pertinent portions of which are reproduced hereunder:

"Q.

And when your companion Jessie Lacson was able to gather that one young coconut, what happened next,

what did you do?

A.

We went to the dike to break the coconut.

Q.

And were you able to open that young coconut?

A.

No sir.

Q.

Why?

A.

We were not able to open the young coconut because Jessie Lacson was shouted [at] by Eulogio Ignacio ordering him to put down the young coconut.

Q.

Did Jessie Lacson put down the young coconut?

A.

Yes, sir.

Q.

And what else transpired next?

A.

He was shot.

Q.

By whom?

A.

By Loloy.

Q.

The accused in this case?

A.

Yes, sir.

Q.

How far was the accused when he fired at Jessie Lacson?

A.

40 meters.

Q.

How about you, what was or can you estimate the distance from the place where you were to the place when you saw the accused [fire] at Jessie Lacson?

A.

I was very far from him.

Q.

Who is that him you are referring to?

A.

From Jessie Lacson.

Q.

Now, was Jessie Lacson hit when he was fired at by the accused?

A.

Yes, sir.

COURT: Sclaw

Q.

That 40 meters distance of Eulogio Ignacio to the victim, Jessie Lacson, will you please demonstrate or point that distance from where you were seated?

A.

(Witness pointing to the store outside the courtroom which is around 40 meters away)

ALFORTE:

Q.

Was Jessie Lacson hit?

A.

Yes, sir.

Q.

What happened to him when he was hit by the firing caused by the accused?

A.

He fell down.

Q.

Were you able to recognize what kind was . . . what kind of gun was used by the accused in firing [at] the victim in this case, Jessie Lacson?

A.

Yes, sir.

Q.

Can you demonstrate that gun if you were able to recognize that it was a gun?

A.

It was a long gun."[12]

The foregoing testimony belies appellant's contention. The victim and his companion stopped after appellant shouted at them. In fact, they were already facing him when he fired the fatal shot from a distance of around forty meters. This was affirmed by Dr. Ernesto L. Tamayo, who had conducted the postmortem examination on the victim, when he testified that the entry point of the gunshot wound was at the chest, not at the back.[13]

Clearly, the evidence proves that appellant killed the victim, and that he did so without risk to himself. A killing is qualified by treachery when the accused employs means, methods or forms in the execution thereof without risk to himself arising from the defense which the offended party might make.[14] To repeat, there was no more reason for appellant to shoot; that he did so was unexpected and surprising. Furthermore, Lacson was unarmed and a mere minor then. Because he had no weapon, there was no risk at all that appellant would be harmed. We stress that the former was only fourteen years old at the time, and that he could not have put up an effective defense.[15]

Third Issue:

No Voluntary Surrender

Appellant maintains that the trial court should have appreciated the mitigating circumstance of voluntary surrender, because he allegedly gave himself up to three members of the barangay tanod who had gone to his house.

We are not persuaded. In order that the mitigating circumstance may be appreciated, the defense must clearly satisfy three requisites: (a) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or the latter's agent; and (c) the surrender is voluntary.[16] The defense must show an intent to surrender unconditionally to the authorities, because of an acknowledgement of guilt or because of a wish to spare them the trouble and the expense concomitant to the search and the capture of the accused.[17]

Appellant's surrender was not voluntary. Rather, he was forced to give himself up, because members of the barangay tanod were already inside his house, thereby precluding his escape.

WHEREFORE, the appeal is hereby DENIED, and the assailed Decision AFFIRMED. Costs against appellant.

SO ORDERED.

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

[1] Penned by Judge Felimon C. Abelita III.

[2] Decision, pp. 5-6; rollo, pp. 19-20.

[3] Rollo, p. 5.

[4] Records, p. 27.

- [5] The case was deemed submitted for resolution on October 28, 1999, when this Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.
- [6] Brief for the Appellee, pp. 2-4 (citations omitted). It was signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Maria Aurora P. Cortez and (for) Sol. Sherma Cecile O. Miranda.
- [7] Appellant's Brief, p. 5; rollo, p. 41a. It was signed by Attys. Eden B. Chavez and Amelia C. Garchitorena of the Public Attorney's Office.
- [8] Appellant's Brief, pp. 1-2; rollo, pp. 38-39.
- [9] *People v. Perucho*, GR No. 128869, April 14, 1999; *People v. Llaguno*, 285 SCRA 124, January 28, 1998; *People v. Paguntalan*, 242 SCRA 753, March 27, 1995; *People v. Rugay*, 291 SCRA 692, July 2, 1998; *People v. Manambit*, 271 SCRA 344, April 18, 1997.
- [10] Section 3, Rule 116, Rules of Court.
- [11] Appellant's Brief, p. 8; rollo, p. 44.
- [12] TSN, September 18, 1997, pp. 7-9.
- [13] TSN, October 1, 1997, p. 4.
- [14] *People v. Cortes*, 286 SCRA 295, February 12, 1998; *People v. Aranjuez*, 285 SCRA 466, January 29, 1998; *People v. Aquino*, 284 SCRA 369, January 16, 1998.
- [15] *People v. Gonzales*, GR No. 130507, July 28, 1999; *People v. Yam-Id*, GR No. 126116, June 21, 1999; and, *People v. Palomar*, 278 SCRA 114, 149, August 21, 1997.
- [16] *People v. Deopante*, 263 SCRA 691, October 30, 1996.
- [17] *People v. Ramos*, 296 SCRA 559, September 25, 1998; *People v. Umadhay*, 293 SCRA 545, August 3, 1998.

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