

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELBERT CALLET Y SABANAL, ACCUSED-APPELLANT.

G.R. No. 135701. May 09, 2002

Ponente: PUNO, J.

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PUNO, J.:

The accused, ELBERT CALLET y SABANAL was charged with Murder before the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 30. The crime was allegedly committed as follows:[1]

“That on or about 5:00 o’clock in the afternoon of September 15, 1996, at Barangay Tambulan, Tayasan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one ALFREDO SENADOR with the use of a knife with which the said accused was then armed and provided, thereby inflicting upon said victim the following injury, to wit:

A stab wound measuring two (2) cm. in length, 0.3 cm. in width and eleven (11) cm. in deepness located at the left side of the trunk, about two (2) cm. above the left clavicular bone. The wound was directed downward and slightly to the right.

which injury or wound caused the death of said ALFREDO SENADOR shortly thereafter.

Contrary to Article 248 of the Revised Penal Code.”

When arraigned on June 11, 1997, the accused pled “not guilty.” [2]

The prosecution presented the testimonies of Dr. Rogelio Kho, Lecpoy Senador, Eduardo Perater, Manuel Gabonales and Francisca Senador. For the defense, the accused, Elbert Callet, PO3 Roy Balasabas, Barangay Captain Dominador Calijan and Nilo Callet testified.

The evidence for the prosecution shows that on September 15, 1996, at 5:00 p.m., the victim, Alfredo Senador, his 12-year old son, Lecpoy Senador, and Eduardo Perater were at the flea market of barangay Tambulan, Tayasan, Negros Oriental. There were many people in the vicinity. Some were playing cara y cruz while others were playing volleyball.

Alfredo, Lecpoy and Eduardo were beside each other as they watched a cara y cruz game. Alfredo sat close to the ground, with his buttocks resting on his right foot. Lecpoy and Eduardo sat on a piece of wood and on a stone, respectively.

Out of nowhere, the accused, Elbert Callet, appeared behind Alfredo and stabbed the latter on the left shoulder near the base of the neck with a 9-inch hunting knife. Instinctively, Alfredo stood up and managed to walk a few meters. When he fell on the ground, Lecpoy and Eduardo rushed to help him but to no avail. Alfredo died shortly thereafter.

Manuel Gabonales was also at the flea market at that time. At 5:00 p.m., he saw people running away from the place where there was a cara y cruz game. Next, he saw Alfredo and the accused. Alfredo was soaked in blood

while the accused was running towards the basketball court. He asked Alfredo what happened to him. Alfredo replied that the accused stabbed him. The accused was then standing at the basketball court. Manuel helped Lecpoy and Eduardo carry Alfredo under a mango tree. He thought of bringing Alfredo to the hospital when he saw blood oozing from his mouth. After a moment, Alfredo died.

Dr. Rogelio Kho, Municipal Health Officer at Tayasan, autopsied the body of Alfredo on September 16, 1996. The doctor found a stab wound on the left shoulder of Alfredo, near the base of the neck. He opined that the victim died due to “severe hemorrhage and irreversible shock due to stab wound.”[3]

The defense gave a different account of the stabbing incident.

Allegedly, at 3:00 p.m., the accused, Elbert Callet, played volleyball near the flea market. After two (2) games, he stopped playing. It was past 4:00 p.m. He stayed at the flea market and watched as others played volleyball. While watching the game, he was hit on the left side of the body by Alfredo’s elbow. He asked Alfredo why he hit him. Alfredo retorted, “Are you angry?” Next, Alfredo grabbed his left arm and tried to twist it. He pleaded with Alfredo to let go of his arm, but Alfredo warned that he would be his third victim if he would get angry with him. As Alfredo was pulling out a hunting knife from his waist, he (the accused) managed to stab him first. Thereafter, he ran towards the municipal hall to surrender.

Dominador Calijan, the Barangay Captain of Tayasan, happened to be at the basketball court near the scene of the crime. He encountered Alfredo along the road after the stabbing incident. Alfredo had a stab wound on the lower nape. Calijan asked Alfredo who stabbed him and the latter gave the name of the accused. He directed his barangay tanods to arrest the accused.

Barangay tanods Nilo Callet and Jesus Dagodog were able to catch up with the accused three (3) kilometers away from the scene of the crime. He was still holding the hunting knife and refused to surrender it for fear that the relatives of Alfredo would retaliate. The barangay tanods escorted him to the municipal hall. Along the way, they asked him why he stabbed Alfredo. The accused replied that he could not help it and that everything happened too fast. Upon reaching the municipal hall, the accused surrendered the hunting knife. He was turned over to PO3 Roy Balasbas for investigation.

After the trial, the accused was found guilty of murder. The fallo of the trial court’s decision[4] states:

“WHEREFORE, finding the accused ELBERT CALLET Y SABANAL guilty beyond a scintilla of doubt for the crime of MURDER penalized under Article 248 of the Revised Penal Code, taking into account the mitigating circumstance of voluntary surrender without any aggravating circumstance, the accused is hereby sentenced to RECLUSION PERPETUA with all the accessory penalties provided under Article 41 of the Revised Penal Code.

Accused is ordered to pay the legal heirs of Alfredo Senador the sum of Fifty Thousand Pesos (P50,000.00) as indemnity for his death.

Costs against the accused.”

Hence, the appeal. The accused contends that:[5]

“1. THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED AND COMMITTED GRAVE ABUSE IN FINDING THAT THE ACCUSED KILLED THE VICTIM WITH TREACHERY;

2. THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED AND COMMITTED GRAVE ABUSE IN FINDING THAT THE ACCUSED FAILED TO PROVE THE ELEMENTS OF SELF-DEFENSE;

3. THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE THAT THE ACCUSED DID NOT INTEND TO COMMIT SO GRAVE A WRONG.”

We affirm. The conviction of the accused is clearly supported by the evidence.

Two (2) eyewitnesses positively identified the accused, Elbert Callet, as the one who fatally stabbed the victim, Alfredo Senador. Eyewitness Lecpoy Senador testified as follows:[6]

“(PROS. HERMOSA):

Q:

About that time 5:00 ‘clock in the afternoon on September 15, 1996, where were you and your companions situated or stationed since you said you were particularly at the flea market?

X X X X X X X X

A:

We were in Tambulan.

Q:

In what particular place were you at the flea market?

A:

In the place where there was a “cara y cruz”.

X X X X X X X X

Q:

What were you and your father as well as Eduardo Perater doing at that moment at 5:00 o’clock on September 15 at the place where there was a game of “cara y cruz”?

A:

We were looking at the “cara y cruz”.

Q:

While you were looking at the “cara y cruz” game, do you recall if there was an unusual incident that happened?

A:

Yes, there was.

Q:

What was this unusual incident that happened?

A:

My father was stabbed.

Q:

Who stabbed your father?

A:

Elbert Callet.

Q:

Elbert Callet whom you just identified a while ago?

A:

Yes.

x x x x x x x x

Q:

Where was Elbert Callet in relation to your father when he stabbed your father?

A:

At the back of my father.

Q:

What was the position of your father when he was stabbed by the accused?

A:

He was sitting.

Q:

Where was your father hit if you know?

A:

Left shoulder.

Q:

What happened after Elbert Callet stabbed your father?

A:

My father walked.

Q:

Towards what place?

A:

Towards the area where there was a volleyball game.

Q:

And what eventually happened to him?

A:

He fell down.

Q:

And then, what happened after he fell down?

A:

We carried him to a place where there was a mango tree.

x x x x x x x x

Q:

What happened or what transpired after you brought your father towards the mango tree?

A:

My father died.

Q:

After stabbing your father, what did Elbert Callet do if he did anything?

A:

He ran away.

Q:

What did he use in stabbing your father?

A:

Hunting knife.”

(emphases ours)

Another eyewitness, Eduardo Perater, testified as follows:[7]

“(PROS. HERMOSA):

Q:

All right, at about 5:00 o’clock in the afternoon of that day, can you recall if there was an unusual incident that happened?

A:

Yes, there was.

Q:

What was that unusual incident?

A:

There was a stabbing incident.

Q:

Who was stabbed?

A:

Alfredo Senador.

Q:

Who stabbed Alfredo Senador?

A:

Elbert Callet.

Q:

The same Elbert Callet whom you just identified a while ago in the courtroom?

A:

Yes.

Q:

What was the position of Alfredo Senador when he was stabbed by Elbert Callet?

A:

He was sitting down.

Q:

Will you please demonstrate to us the manner how Alfredo Senador was sitting down at the time when he was stabbed by the accused in this case?

A:

(Witness in squatting position, he was sitting with his buttock on his right foot).

x x x x x x x x

Q:

Where was Elbert Callet situated when he stabbed Alfredo Senador?

A:

At the back of Alfredo Senador.

Q:

Was there any argument between Alfredo Senador and Elbert Callet before Alfredo Senador was stabbed?

A:

There was none.

x x x x x x x x

Q:

How many times did Elbert Callet stab Alfredo Senador?

A:

Only one (1).

Q:

Was Alfredo hit when he was stabbed by Elbert Callet?

A:

Yes.

Q:

In what part of the body of Alfredo Senador was hit?

A:

In the left shoulder.

x x x x x x x x

Q:

What happened after Alfredo Senador was hit by the stabbing of Elbert Callet?

A:

He stood up.

Q:

What did Elbert Callet use in stabbing Alfredo Senador?

A:

A hunting knife.

x x x x x x x x

Q:

What about Elbert Callet, what did he do after stabbing Alfredo Senador?

A:

He ran away.

Q:

What did he do with his knife which he used in stabbing Alfredo senador?

A:

He carried it with him.”

(emphases ours)

We give full faith and credit to the testimonies of Lecpoy and Eduardo. Their testimonies were vivid with details. They were clear and consistent with each other.

The accused laments that Lecpoy Senador is a biased witness, being a son of the victim. We are not convinced.

The fact that Lecpoy is a son of the victim would not necessarily make him untrustworthy. This Court has ruled that “(b)lood relationship between a witness and the victim does not by itself impair the credibility of witnesses. On the contrary, relationship may strengthen credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the real culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime.”[8] Significantly, there is no showing that this young eyewitness has any ill motive to testify falsely against the accused.

To be sure, even without the testimony of Lecpoy, the testimonies of Eduardo Perater and Manuel Gabonales would suffice to convict the accused. They are disinterested witnesses.[9] Their identification of the accused as the assailant is beyond question.

Still assailing the credibility of the eyewitnesses, the accused points out that in the joint affidavit[10] of Lecpoy and Eduardo, it was stated that the victim was “standing with his back facing Elbert Callet.” However, they contradicted their affidavit when they testified at the trial that the victim was “sitting, with his buttocks resting on his right foot.”

The cited inconsistency will not exculpate the accused. We quote with approval the following observations of the trial court:[11]

“...In the instant case, the direct and candid testimonies of eyewitnesses Lecpoy Senador and Eduardo Perater clearly showed that the killing of Alfredo Senador was attended by treachery. Alfredo Senador was sitting with his buttocks on his right foot watching the game of “cara y cruz” when Elbert Callet who was at the back of the victim stabbed him using a nine (9) inch hunting knife hitting him near the base of his neck. The victim ... was not in a position to defend himself from the accused who deliberately and consciously positioned himself at the back of the unsuspecting victim to ensure the accomplishment of his evil desire without risk to himself. The location of the stab wound at the left side of the trunk about two (2) centimeters from the base of the neck and four (4) centimeters above the left clavicular bone with a deepness of eleven (11) centimeters directed downward and slightly to the right also suggests that the accused deliberately and consciously selected that part

of the human body to ensure the instantaneous death of the victim. Although the counsel of the accused tried to discredit the testimonies of the prosecution witnesses by pointing that in their joint affidavit dated 20 September 1996 Lecpoy Senador and Eduardo Perater stated that Alfredo Senador was “standing” when he was stabbed, the said discrepancy could not in any way affect the categorical, candid, consistent and straightforward declaration of the said eyewitnesses made in open court that Alfredo Senador was sitting when he was stabbed by the accused. Discrepancies between sworn statements or affidavits and testimonies made at the witness stand do not necessarily discredit the witnesses (*People vs. Ferrer*, 255 SCRA 19). This is because it is a matter of judicial experience that an affidavit being taken *ex parte* is almost always incomplete and often inaccurate (*People vs. Castillo*, 261 SCRA 493). Moreover, as noted by this Court the word “standing” was superimposed after the original typewritten word was erased using a snopic (sic) or white substance.” (emphases ours)

In addition, we note that Lecpoy and Eduardo did not countersign the superimposition in the subject affidavit. In the absence of clear proof that they confirmed the change, they should not be bound by it.

The accused invokes self-defense for his acquittal. In self-defense, the burden of proof rests upon the accused. Thus, he must present clear and convincing evidence that the following elements are present, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[12] The accused failed to discharge this task.

The accused alleged that he and the victim had hunting knives during their encounter. After the victim’s elbow hit the left side of his body, the victim grabbed his left arm and tried to twist it with his right arm. A verbal exchange ensued between them and then the victim, using the left arm tried to unsheathe the knife that was tucked at his left side. However, the victim was not able to pull out the knife because it got entangled with his shirt tucked in his pants. In defense, the accused allegedly pulled out his own knife that was tucked in the right side of his waist using his left arm and stabbed the victim on the left shoulder. He then retreated and left as the victim was still trying to approach him.[13]

The version of the accused does not inspire belief. The incident happened in plain view of many witnesses at the flea market. He even claimed he was with a certain Gualde and one Sonny Boy at that time.[14] Yet, nobody corroborated his story. Indeed, his narration on how the victim “attacked” him is improbable. In the witness chair, he admitted that the victim was bigger than him and that his left hand was restrained by the victim.[15] It is thus incredible how he could pull out his knife from his right side, with the use of his left hand,[16] raise that knife high enough to hit the shoulder of the victim and inflict an 11-cm. deep wound upon him. It is more probable that the victim was sitting down when the accused attacked him from behind as the prosecution witnesses testified. Equally incredulous is the claim that after being injured, the victim still tried to approach and attack him, hence, he had to retreat. The accused’s uncorroborated plea of self-defense cannot be entertained, especially when it is, in itself, extremely doubtful.[17]

The Information charged that evident premeditation and treachery attended the commission of the crime. The evidence failed to prove evident premeditation. Evident premeditation requires proof of: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequences of his act.[18] The records show that the prosecution did not adduce any evidence to prove these elements.

Treachery or *alevosia* exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[19]

The trial court correctly held that treachery qualified the killing of the victim to murder. The stabbing was from behind, done in a sudden and unexpected manner while the victim was sitting close to the ground, with his buttocks resting on his right foot, and while his attention was focused on the on-going cara y cruz game.[20] Clearly, the victim was not able to defend himself from the mode of attack.

The trial court also correctly credited the accused with voluntary surrender to mitigate his liability. Voluntary surrender requires that the offender had not been actually arrested; that he surrendered himself to a person in authority or to the latter's agent; and that the surrender was voluntary.

The records reveal that the accused ran toward the municipal building after the stabbing incident. On his way to the municipal building, he admitted to Barangay Tanods Nilo Callet and Jesus Dagodog that he stabbed the victim. Although he did not immediately turn over his weapon to them for fear of retaliation from the victim's relatives, he did so as soon as they reached the municipal building. Undoubtedly, the conduct he displayed was spontaneous as it shows his interest to give himself up unconditionally to the authorities, thus saving the State the trouble and expenses necessarily incurred in his search and capture.[21]

The accused also claims that his liability should be mitigated by the fact that he had no intention to commit so grave a wrong. We are not persuaded.

The lack of "intent" to commit a wrong so grave is an internal state. It is weighed based on the weapon used, the part of the body injured, the injury inflicted and the manner it is inflicted. The fact that the accused used a 9-inch hunting knife in attacking the victim from behind, without giving him an opportunity to defend himself, clearly shows that he intended to do what he actually did, and he must be held responsible therefor, without the benefit of this mitigating circumstance.[22]

As the killing was attended by treachery, the accused is liable for the crime of murder. The prescribed penalty therefor is reclusion perpetua to death.[23] In view of the presence of the mitigating circumstance of voluntary surrender, the trial court correctly meted the penalty of reclusion perpetua against the accused.

The civil indemnity awarded in favor of the legal heirs of the victim, Alfredo Senador, in the amount of P50,000.00 is in accord with the Court's current policy.

IN VIEW WHEREOF, the decision appealed from, finding the accused, ELBERT CALLET, guilty beyond reasonable doubt of Murder in Criminal Case No. 12995, and sentencing him to suffer reclusion perpetua and to pay the legal heirs of the victim, ALFREDO SENADOR, the amount of P50,000.00 as civil indemnity, and to pay the costs, is AFFIRMED.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Information, dated April 28, 1997, Original Records, p. 1.

[2] Certificate of Arraignment, Original Records, p. 26.

[3] Exh. "A", Original Records, p. 6.

[4] Rollo, pp. 50-60.

[5] Appellant's Brief, p. 6; Rollo, p. 43.

- [6] TSN, Lecpoy Senador, June 25, 1997, pp. 3-5.
- [7] TSN, Eduardo Perater, June 24, 1997, pp. 10-12.
- [8] People vs. Realin, 301 SCRA 495 (1999).
- [9] TSN, Elbert Callet, August 4, 1997, pp. 20-21.
- [10] Original Records, p. 5.
- [11] Rollo, pp. 23-24.
- [12] Article 11 (1), Revised Penal Code.
- [13] TSN, Elbert Callet, August 4, 1997, pp. 23-30.
- [14] Id., pp. 2, 19.
- [15] Id., pp. 32-33.
- [16] Id., p. 29.
- [17] People vs. Palabrica, G.R. No. 129285, May 7, 2001.
- [18] People vs. Panabang, G.R. No. 137514-15, January 16, 2002.
- [19] Article 14 (16), Revised Penal Code.
- [20] People vs. Delgado, 182 SCRA 343, 351 (1990); People vs. Melgar, 157 SCRA 718 (1988).
- [21] People vs. Amazan, et al., G.R. No. 138606-07, January 16, 2001; People vs. People vs. Lagrana, 147 SCRA 281, 285 (1987).
- [22] People vs. Pajenado, 69 SCRA 172, 180 (1976).
- [23] Article 248, Revised Penal Code.

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