

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL SOLAYAO, ACCUSED-APPELLANT.

G.R. No. 137043. December 12, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Accused-appellant Joel Solayao (JOEL) was charged with murder before the Regional Trial Court, Branch 30, in Basey, Samar, in Criminal Case No. 95-2091 under an information^[1] whose accusatory portion reads as follows:

That on or about the 29th day of March, 1995, at about 5:00 o'clock in the afternoon, at Brgy. Pagsulhogon, Municipality of Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and deliberate intent to kill one ANTONIO LACABA, did, then and there, wilfully, unlawfully and feloniously attacked *[sic]*, assaulted *[sic]*, and stabbed *[sic]* the said victim who was seated on the front yard while enjoying with two others in munching bettle *[sic]* nuts, with a deadly weapon locally known as "pisao", which accused had provided himself for the purpose, thereby inflicting upon the victim wounds on his body resulting in his death.

CONTRARY TO LAW.

JOEL entered a plea of not guilty upon arraignment.^[2]

At the trial, the prosecution presented as witnesses Julita Cabañero, Elderio Betasolo, P/Supt. Angel A. Cordero and PNP member Dionaldo Tampil. For its part, the defense presented JOEL and Antonio Flor.

Julita Cabañero testified that on 29 March 1995 at about 5:00 P.M., she was eating some dried peas at the porch of her house in Barangay Pagsulhogon, Sta. Rita, Samar. Her neighbor Antonio Lacaba (ANTONIO) was then sitting on the cement pavement of MacArthur Highway chewing betel nuts, together with Iluminado Ortillo, Elderio Betasolo, Dominador Asadon, Lazaro Ortillo and Narciso Florante. The distance between Julita and ANTONIO's group was about eight arms-length or fifteen meters. Suddenly, Julita saw her godson by marriage JOEL, who just came from his father's house across the road, stab ANTONIO. No argument preceded the stabbing. ANTONIO was hit on the right side of his back. ANTONIO ran towards his house but was overtaken by JOEL, who then stabbed him the second time at the left side of his body causing the former to fall near the stairs of his house. JOEL stabbed ANTONIO again, hitting the latter on the left leg. ANTONIO, though bigger than JOEL, was not able to get the weapon because JOEL immediately ran to his father's house after stabbing him three times. ANTONIO's companions also scampered away. Julita ran towards ANTONIO and shouted for help. Her son and two neighbors Pio Tabuyan and Teresita Asadon came to assist her.^[3]

Julita's testimony was substantially corroborated by witness Elderio Betasolo. He recounted that on 29 March 1995 at about 5:00 P.M., he went out of his house to cut some firewood. He saw ANTONIO chewing some betel nuts, together with Doming Asadon, Iluminado Ortillo and others. There were also children playing around. After a short while, he saw JOEL, with both arms crossed at his chest, cross the road and walk towards ANTONIO. Without much ado, JOEL held ANTONIO's hair and stabbed him on the back. Afraid of what he just witnessed,

Elderio rushed back to his house. He learned later that ANTONIO was brought to the hospital by his wife and a certain Junior Cabañero.[4]

Elderio further testified that he saw Julita at the porch of her house before the stabbing incident. But contrary to Julita's statement, he was not with ANTONIO's group. He confirmed that ANTONIO's companions dispersed while the stabbing incident was taking place: Iluminado Ortillo ran to call a barangay tanod; while two others sought assistance from soldiers, who thereafter arrested JOEL and brought him to the PNP Sub-station in Barangay Tulay, Sta. Rita, Samar. Julita hastily went towards ANTONIO to help him and tried to bandage his wounds.[5]

Witness P/Supt. Angel Cordero, Chief Medico-Legal Officer of PNP Crime Laboratory, Camp Ruperto Kangleon, Palo, Leyte, whom the defense admitted as an expert witness, was the one who conducted a post mortem examination on the cadaver of ANTONIO and prepared the Medico-Legal Necropsy Report,[6] which the defense likewise admitted. His findings were as follows:

POSTMORTEM FINDINGS:

GENERAL:

Fairly nourished, fairly developed, male cadaver in rigor mortis with postmortem lividity on the dependent portions of the body. Lips and nailbeds are cyanotic. Conjunctiva are pale.

CHEST:

- Stab wound, right scapular region, inferior portion, measuring 2x1x17cms. PML, directed inwards non-penetrating.
- Stab wound, lateral portion of the left chest at the left midaxillary line, directed medially inwards, penetrating the thoracic cavity, puncturing the middle lobe of the lung. This measures 2x1x18cms AML.
- Stab wound, left, thigh, posterior portion upper third, measuring 2x1cm.
- Blood clots were found at the left thoracic cavity.

REMARKS:

Cause of death is shock and intrathoracic hemorrhage due to stab wounds of the chest, puncturing the left lung.

Considering the positions of the wounds ANTONIO sustained, P/Supt. Angel believed that all the three wounds were inflicted from behind. The second wound was fatal, since it penetrated the lungs. From the relative positions of the parties, he likewise opined that the assailant was left-handed.[7]

Witness Dionaldo Tampil, the desk officer of the Philippine National Police Station at Sta. Rita, Samar, declared that he received the report about the stabbing incident in question on 29 March 1995. JOEL was voluntarily surrendered to him, as well as the knife used in the commission of the crime. Thus, he entered in the police blotter[8] the facts supplied by the barangay officials who turned JOEL in. When he asked JOEL why he stabbed ANTONIO, the former answered that they had an altercation.[9]

On the part of the defense, JOEL testified that on 29 March 1995 at about 4:00 P.M., after working in the farm, he rested at his father's house while listening to a radio cassette. On his way home, he was accosted by ANTONIO and the latter's cousin Doming Lacaba. Both had been drinking at ANTONIO's house that morning, together with Emelito Lacaba and Iluminado Ortillo. When they approached him, ANTONIO immediately tried to stab JOEL three times with a pisao (knife). JOEL was not hit because at the first blow he moved backward; on the second blow he made himself fall upon a fence; and on the third blow he was able to duck by the fence and the pisao hit

the bamboo fence instead and was imbedded therein. He and ANTONIO wrestled for the possession of the weapon for some time. As they rolled on the ground, he noticed that ANTONIO's face was red and he had a drunken smell.[10]

During the struggle, ANTONIO got wounded with the pisao and fell down, giving JOEL an opportunity to run away with the pisao which he later surrendered to Barangay Kagawad Tony Flor. He identified the weapon in court and disclosed that it was bent because it hit the bamboo fence while he and ANTONIO were wrestling.[11]

As to the motive of the attack, JOEL declared that ANTONIO had a grudge against him because of the mauling incident on 31 December 1994. On said date at about 4:00 P.M. there was a drinking spree in the house of his father. Jimmy Lacaba, Anecito Lacaba, ANTONIO, a certain Fermo, and JOEL's brothers Lito and Marlo were there. JOEL did not join them, as he was so tired. Suddenly, he saw Doming Lacaba, Jimmy Lacaba and ANTONIO maul his father. Seeing this, his brother Lito attacked ANTONIO, hitting him on the right shoulder and left arm. Wounded, ANTONIO ran towards his house. ANTONIO did not file a case against Lito, but JOEL learned from other people that ANTONIO vowed to get even, thus the stabbing incident in the case at bar.[12]

Defense witness Antonio Flor corroborated the narration of JOEL on how the incident on 29 March 1995 happened. He confirmed that ANTONIO was very much bigger than JOEL. He said that when ANTONIO attacked JOEL, the latter could not escape because of the bamboo fence. As a Kagawad, he tried to pacify the opponents, but both did not heed him. When they were finally separated from each other, JOEL ran towards his father's house, while ANTONIO went inside his house.[13]

Flor followed JOEL to his father's house and told the latter to surrender. JOEL agreed by giving the knife to him. JOEL then requested Flor to bring him to the police station, which he did. As regards ANTONIO, Flor later learned that he was brought to the hospital and subsequently died.[14]

The trial court gave credence to the testimonies of the prosecution witnesses and discarded those of the defense witnesses because they were not coordinated in substantial aspects and did not jibe with the natural course of things. It appreciated the qualifying circumstance of treachery and the mitigating circumstance of voluntary surrender. It therefore convicted him of the crime of murder in its decision[15] dated 2 May 1997, the dispositive portion of which reads:

WHEREFORE, finding the accused JOEL SOLAYAO, guilty beyond reasonable doubt of the crime of Murder for the treacherous killing of the deceased Antonio Lacaba, but taking into consideration the lone mitigating circumstance of voluntary surrender, he is hereby sentenced to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Antonio Lacaba the amount of P50,000.00, but without subsidiary imprisonment in case of insolvency; and to pay the costs of this case, if any.

Dissatisfied with the judgment JOEL interposed the instant appeal. In his Appellant's Brief, JOEL alleges that the trial court erred in

I

FINDING THE ACCUSED [sic] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

FINDING TREACHERY AS A QUALIFYING CIRCUMSTANCE FOR THE KILLING OF THE VICTIM.

III

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE ACCUSED [sic] IS GUILTY, HE IS GUILTY

OF THE CRIME OF HOMICIDE WITH THE GENERIC MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

In his first two assigned errors, JOEL argues that the narration of the prosecution witnesses failed to prove that the crime committed was murder qualified by treachery. He claims that the specific design or manner of the attack on ANTONIO was not proved. The mere fact that the accused was at the back of the victim at the inception of the attack or that the attack was sudden and unexpected would not forthwith establish the element of *alevosia* necessary to elevate homicide to murder. Thus, the crime committed was homicide, and not murder.

In his third assigned error, JOEL asserts that the generic mitigating circumstance of voluntary surrender should have been appreciated in his favor to reduce the penalty imposed.

Clearly then, JOEL does not seek for his acquittal but for the modification of the judgment of the court. He prays that he be convicted of homicide only and be sentenced to suffer an indeterminate penalty after appreciating in his favor the generic mitigating circumstance of voluntary surrender and to pay an amount of indemnity according to current jurisprudence.

In the Appellee's Brief, the Office of the Solicitor General (OSG) prays for the affirmance in toto of the trial court's judgment. It confirms that there was enough evidence on record to support the finding of the trial court on treachery.

Our review of the evidence supports the conclusion of the trial court on the presence of treachery. For treachery to be appreciated, two elements must concur: (1) the means of execution employed gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[16]

Julita Cabañero testified that the assault was unprovoked. There was no exchange of words between the victim and the accused at any time before the actual attack. The accused, upon approaching and coming near his unarmed victim, immediately stabbed him. The three blows were delivered continuously that the victim was able to run only a few meters towards his house.[17] The attack was unexpected. ANTONIO, although bigger than the accused, had no chance to defend himself. He was simply overwhelmed by the swiftness of the attack, thus ensuring the execution of the offense without risk to JOEL. Clearly then, the requisites of treachery were proved.

In view of the foregoing, we agree with the trial court in holding JOEL guilty beyond reasonable doubt of the crime of murder as charged. Under Article 248 of the Revised Penal Code, as amended, the penalty for murder if committed with treachery is *reclusion perpetua* to death.

Contrary to JOEL's assertion, the mitigating circumstance of voluntary surrender was duly taken into account by the trial court. With the appreciation of such circumstance, the penalty imposed on JOEL was *reclusion perpetua*, which is in consonance with Article 63(3) of the Revised Penal Code, which provides:

ART. 63. Rules for the application of indivisible penalties....

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

...

- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. (Emphasis supplied)

Verily, the imposition by the trial court of the penalty of *reclusion perpetua*, the lesser penalty, is proper.

The award of Fifty Thousand Pesos (P50,000) as indemnity is likewise proper, since it conforms with current jurisprudence.[18]

WHEREFORE, in view of the foregoing, judgment is hereby rendered AFFIRMING in toto the challenged decision of 2 May 1997 of the Regional Trial Court, Branch 30, in Basey, Samar, finding accused-appellant JOEL SOLAYAO guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the amount of Fifty Thousand Pesos (P50,000) as death indemnity.

Costs de oficio.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Original Record (OR), 2; Rollo, 2.

[2] OR, 29.

[3] TSN, 13 March 1996, 3-18, 22, 25-26.

[4] TSN, 14 March 1996, 2-16.

[5] Id., 6-8, 13-15, 18-24, 30-32.

[6] Exhibit "B," OR, 13.

[7] TSN, 17 May 1996, 7-8.

[8] OR, 6.

[9] TSN, 17 May 1996, 10-12.

[10] TSN, 27 June 1996, 6-12, 23-24.

[11] TSN, 27 June 1996, 12-13, 26-27.

[12] Id., 13-18.

[13] TSN, 29 January 1997, 4-9, 13, 16.

[14] Id., 9-10, 16.

[15] OR, 112-129; Rollo, 14-30. Per Judge Godofredo P. Quimsing.

[16] *People v. Sualog*, G.R. 134310, 15 November 2000.

[17] TSN, 13 March 1996, 24-26.

[18] *People v. Bautista*, 331 SCRA 170, 189 [2000]; *People v. Taraya*, G.R. No. 135551, 27 October 2000; *People v. De los Santos*, G.R. 131588, 27 March 2001.

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