

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOMER CABANSAY Y PALERMO ALIAS "OMI",
ACCUSED-APPELLANT.**

G.R. No. 138646. March 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the Decision[1] dated March 02, 1999 of the Regional Trial Court of Cebu City, Branch XXIV, in Criminal Case No. CBU-43218, finding accused Jomer Cabansay y Palermo, alias "Omi", guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of Reclusion Perpetua.

On January 24, 1997, accused was charged with the crime of Murder in an Information that reads, thus:

That on 22 January 1997, at about 9:35 o'clock in the morning, in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who was armed with a bolo (pinuti), with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there attack, assault and stab one Gilbert Castillo y Jesem, with the said bolo, thereby causing upon the latter severe physical injuries which ultimately caused his death immediately upon arrival at the hospital.

CONTRARY TO LAW.[2]

On February 7, 1997, the accused was arraigned and pleaded not guilty to the charges against him.[3] Trial ensued. The prosecution presented the following witnesses: (1) Michael Cellan, an eyewitness to the killing; (2) Bienvenida Castillo, the wife of the victim; (3) Dr. Jesus Cerna, the medico-legal officer who examined the corpse of the victim; (4) SPO1 Alvin Montebon, the police officer who investigated the killing; and (5) Patrocinio Abesia[4], the police officer to whom the accused surrendered.

The facts, according to prosecution witness Michael Cellan, are as follows:

At about 9:20 in the morning of January 22, 1997, he [Michael Cellan] was in the house of Eduardo Palermo in Ermita Beach, Cebu City together with Gilbert Castillo, Romeo Palermo and a certain Jun. They were sorting out xxx "bulang" for fighting cocks and also were having a conversation. While they were conversing, he [Cellan] noticed that the accused Jomer Cabansay, with a pinuti (bolo) was walking to and fro in the sala, passing by them. Without warning, the accused thrust (stabbed) the bolo upon Gilbert Castillo, who was hit on the left side of his body. Castillo turned to his side before falling. Then the accused made a follow up thrust with the bolo hitting Castillo on the right side of the body.

After stabbing Castillo twice, fatally hitting him on the left and right side of the body, accused turned to him [Cellan] and stabbed him three (3) times hitting him on the right and left chest and on his palm as evidenced by the scars of the stab wounds. Moments later, after accused stabbed him [Cellan] and Castillo, Eduardo Palermo, uncle of the accused arrived and wrestled the bolo. Then, when Palermo fell, accused attempted to stab the former, however, Helen, daughter of Palermo, who was at the crime scene, parried the thrust.

As a result, Helen Palermo was herself injured. After the stabbing spree, the accused Jomer Cabansay went down bringing with him the bolo he used in stabbing the victims.

Gilbert Castillo was brought to Cebu City Medical Center where he was declared dead on arrival. On the other hand, he [Cellan] was brought to Cebu Community Hospital for treatment. xxx[5]

On cross-examination, Michael Cellan pointed out that the accused had no previous quarrel with, or personal grudge against him or the victim Gilbert Castillo.[6]

The wife of Gilbert, Bienvenida Castillo, recounted that in the morning of January 22, 1997, she was inside her house in Ermita Beach, Cebu City, breastfeeding her baby when she heard her neighbors shouting "Budok [Gilbert Castillo] was stabbed by Jomer Cabansay".[7] She went outside and saw her husband sprawled on the ground, bathing in his own blood.[8] She rushed her husband to the Cebu City Medical Center where he was declared dead on arrival.[9] For the funeral expenses of her husband, Bienvenida testified on having spent more than P10,000.00.[10]

Dr. Jesus Cerna, a medico legal officer of the PNP, Cebu Police Command, testified that he conducted a postmortem examination on the cadaver of Gilbert Castillo, and found one stab wound located at the left side of the lumbar area (back) of the victim.[11] The stab wound which incised the left kidney and perforated the small intestine resulted in the death of Castillo.[12]

Prosecution witness SPO1 Alvin Montebon testified that he received a "stabbing alarm" through a phone call from the Cebu City Medical Center on January 22, 1997.[13] Together with one SPO3 Baguton, SPO1 Montebon went to the medical center where they saw the dead body of Gilbert Castillo. The two police officers proceeded to the crime scene in Ermita Beach to investigate. They learned from Helen Palermo and the neighbors of the victim that it was Jomer Cabansay who stabbed Gilbert Castillo and Michael Cellan.[14] Further investigation revealed that Castillo, Cellan and some other persons were conversing inside the room of Eduardo Palermo when Castillo saw the wife of the accused in the extension room, feeding her baby with water.[15] Castillo gave the wife of the accused money to buy something to feed the baby with,[16] an act apparently resented by the accused.[17] Not long thereafter, the accused stabbed Castillo. At the Cebu Community Hospital, the police officers were told by Michael Cellan that the accused got angry upon seeing Castillo give money to his (accused's) wife.[18]

The defense presented the accused, Jomer Cabansay, and his wife, Roda Cabansay, as witnesses.

Jomer Cabansay claimed self-defense, and proffered his own version of what transpired, to wit:

xxx On January 22, 1997 he [accused] was in the house of his uncle Eduardo Palermo. Early in the morning of that date at about 7:40 A.M., there was an altercation between Bodoc (Gilbert Castillo) and Michael Cellan upstairs. At the door of the room he [accused] saw Gilbert Castillo bringing with him a long bolo. When he tried to enter the room, Castillo, without any word, struck him with the bolo. He was not however hit as he was able to hold Castillo's hand. At the same time, Michael Cellan got inside, went around and boxed him at the back. He and Castillo wrestled for [the] possession of the bolo. Even if he was successful in getting possession of the bolo; Castillo continued to attack him. He stepped backward, such that he was pressed against the wall but Castillo still continued his attack. He hit back at Castillo with the bolo, hitting the latter on his chest. Castillo stepped back but again came back to continue the fight. Each time Castillo gave him [a] fistic blow, he would retaliate by stabbing him. Castillo was hit a second time but he could not remember what part of the body was hit. He also remembered hitting Michael [Cellan] although he could not remember what part of Michael's body was hit.

The fight continued, fist blows against a bolo, he [accused] did not run as his wife, children, cousins and in-laws were in the house. The fight finally stopped when his uncle arrived at the scene, saying "Hoy, what is

that?" but did not intervene at all. Castillo and Cellan jumped out of the window, from the second floor of the house. After the scuffle, he was shocked that he left to go to his mother in Pasil. The latter advised him to surrender and sensing it was good, he then decided to surrender.[19]

On cross-examination the accused admitted that in a previous incident, he had stabbed other persons, but the case was settled with the victims by his mother.[20]

The wife of the accused, Roda Cabansay, corroborated the testimony of the accused on material points.

A rebuttal witness was presented by the prosecution in the person of SPO4 Patrocinio Fernandez Abesia who testified that the mother of accused came to him and interceded for the latter's surrender.[21] He was not given by the accused any reason for the killing.[22] Neither did SPO4 Abesia notice any injury or bruise on the accused's body.[23]

The accused, as a surrebuttal witness, admitted that he was accompanied by his mother when he surrendered to SPO4 Abesia, but denied having been examined by the police officer for injuries.[24] The accused maintained that he sustained bruises but did not show them to SPO4 Abesia; neither did he go to a doctor for examination.[25]

After trial, the court a quo rendered a judgment dated March 02, 1999, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused JOMER CABANSAY GUILTY beyond reasonable doubt for the crime of MURDER. After considering in his favor the mitigating circumstance of surrender, the accused is sentenced to suffer the penalty of Reclusion Perpetua. He is credited during the period of his preventive imprisonment.

He is civilly liable to pay the heirs of Gilbert Castillo the sum of P50,000.00 for the death of Castillo, P10,000.00 for funeral expenses.

SO ORDERED.[26]

Hence, this appeal where the accused raises the following assignment of errors:

I.

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY IS ATTENDANT IN THE CASE AT BAR.

The basic argument of the accused is that he has amply established the existence of all the elements of self-defense, and thus, cannot be held liable for the death of Gilbert Castillo. He argues that if it were true that the accused, holding a bolo, kept going back and forth inside the house where the victim and his companions were, then the latter would have already been forewarned of his impending attack; hence, treachery cannot be appreciated.

The Office of the Solicitor General, on the other hand, contends that the prosecution failed to prove the elements

of self-defense, and that treachery was attendant when the accused suddenly and unexpectedly attacked the unarmed victim, without even the slightest provocation on the latter's part.

The appeal is unmeritorious.

The accused admits the killing of the victim but denies any liability by invoking self-defense. Self-defense, as a justifying circumstance, shifts the prosecutorial burden of proving the guilt of the accused to the accused who must prove the elements of such defense, to wit: (1) unlawful aggression on the part of the victim; (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.[27] It is incumbent upon the accused to rely on the strength of his own evidence which must be clear, sufficient and convincing, and not on the weakness of the evidence of the prosecution.[28]

The prosecution and the defense gave different accounts of the incident, but it is the version of the prosecution that was given credence by the court a quo. The court found the version of the defense simply not worthy of belief. The altercation, according to the accused, was between Gilbert Castillo and Michael Cellan, but when the accused entered the room, he was the one attacked by Castillo and Cellan, with the former striking him with a bolo and the latter boxing him from behind. No reason was given for the attack. There had been no previous quarrel between the accused and his alleged attackers. Despite Cellan's giving the accused fist blows on the back, the latter was still able to wrestle the bolo from Castillo. Armed with the bolo, the accused did little to intimidate his attackers who relentlessly gave him fist blows. The accused was then forced to retaliate by making a thrust of the bolo he was holding, hitting Castillo on the back. Despite the stab wound which later proved to be fatal,[29] Castillo allegedly persisted on attacking the accused with fist blows, prompting the accused to make a second thrust of the bolo.[30] Still, Castillo repeatedly advanced toward the accused, attempting to further assault the latter.[31] Cellan, on the other hand, also continued delivering fist blows upon the accused, alternating with Castillo. In the process, Cellan was also hit by the accused with the bolo. Already severely wounded,[32] the two aggressors allegedly still continued to alternately attack the accused who, in return, made a thrust of the bolo for every fist blow he received.[33] The assault upon the accused ceased only upon the arrival of his uncle, Eduardo Palermo, when the two aggressors jumped out of the window. Seeing that the accused was wielding a bolo, Eduardo allegedly grabbed the bolo and wrestled with the accused for its possession.[34] As a consequence, Eduardo was hit by the bolo. Helen, the daughter of Eduardo and niece of the accused was also hit when she tried to parry the thrust intended for her father.

We agree with the finding of the court a quo. It is well-settled that where the credibility of the witnesses is in issue, the findings of the trial court are generally left undisturbed by this Court.[35] We have always accorded a trial court's evaluation of the testimonies of witnesses the highest respect, owing to the court's unique opportunity to observe the conduct and demeanor of witnesses under grueling examination. Hence, absent any cogent reason to disturb the findings of the trial court, we are doctrinally bound to refuse to do so.

Moreover, continuous fistic attacks by an unarmed person upon another who is armed with a bolo, especially after the attacker has already been wounded, is inconsistent with the human tendency towards self-preservation. Between a testimony inconsistent with common human behavior, and one consistent therewith, the latter is generally given more weight and credence.[36]

Taking into account the version of the prosecution, the theory of self-defense is not tenable. At the outset, we mentioned that for self-defense to prosper, all the essential elements thereof must be adequately proven by the accused. Unlawful aggression, the first of these three essential elements, presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of the person defending himself.[37] Without this element, there can be no successful invocation of self-defense.[38] When the accused stabbed Gilbert Castillo, the

latter and his companions were conversing and sorting "bulang". They posed no threat or danger to the accused. Certainly, the benevolent act of Gilbert Castillo of giving money to the wife of the accused to buy milk for her child cannot be considered as unlawful aggression. If there is any aggression present in this case, it would be that authored by the accused which resulted in the death of Castillo.

Absent the element of unlawful aggression, the theory of self-defense of the accused collapses. Inevitably, the result would be the conviction of the accused springing from his own admission that he killed the victim.[39]

Anent the qualifying circumstance of treachery, we find the same to have been duly proven by the prosecution.

Treachery is present where the offender commits any of the crimes against persons employing means or methods which directly and specially insure its execution without risk to himself arising from the defense the offended party might make.[40] There are two conditions for the existence of this qualifying circumstance, viz: (1) the employment of the means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate and conscious adoption of the means of execution.[41]

In this case, the qualifying circumstance of treachery was established by the prosecution witness Michael Cellan who testified that he and the victim, together with two other companions, were conversing and sorting "bulang" when the accused suddenly and without provocation stabbed the victim. The location of the wound indicates that the victim was stabbed by the accused from the back.[42] After the victim fell to his side, the accused-appellant made a follow-up thrust.[43] Witness Cellan, who was shocked by the suddenness of the attack,[44] was likewise stabbed by the accused three times.[45]

The accused contends that treachery is negated by the finding of the trial court that the accused was seen by the victim and his companions walking back and forth inside the house carrying a "pinuti" or bolo; that if this were true, the victim should have already been forewarned of an impending attack. We are not convinced. Although the accused was seen walking to and fro while holding a bolo, the victim and his companions remained unsuspecting and unaware of any danger. In their mind, they had not done the accused any wrong, and hence, there was no reason for the latter to attack them. During the cross-examination, witness Michael Cellan stated:

Q:

When he [referring to accused Jomer Cabansay] was going to and fro he was already carrying with him the "pinote"?

A:

Yes Sir, he got that "pinote" from the aparador.

Q:

Are you sure of that?

A:

Yes.

Q:

While noticing he was already bringing with him a weapon, what occurred into your mind?

A:

We never expected him to do that to us because we never offended him.[46]

The mode of attack adopted by the accused did not afford the victim Gilbert Castillo any opportunity to defend himself or repel the assault. And the swift and unexpected attack on the unarmed victim, without the slightest provocation on the part of the latter, gives attendance to the qualifying circumstance of treachery.[47]

As regards evident premeditation, there is no necessity in discussing this circumstance at length for the prosecution presented no evidence to prove the same, and the trial court itself declined to consider it in its decision. Evident premeditation may be appreciated when there exists adequate proof of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between determination and execution to allow himself to reflect upon the consequences of his act.[48] None of these elements are present.

The mitigating circumstance of voluntary surrender was properly appreciated by the trial court. Prosecution witness SPO4 Patrocinio Abesia himself testified that the mother of the accused interceded for the latter's surrender, and subsequently, the accused voluntarily surrendered to him.

We, therefore, find the accused guilty beyond reasonable doubt of the crime of murder with the qualifying circumstance of treachery. The penalty for this crime under Article 248 of the Revised Penal Code is reclusion perpetua to death. Considering the mitigating circumstance of voluntary surrender, and the fact that there is no aggravating circumstance, the imposable penalty would be reclusion perpetua.

Finally, the records show that the award of P10,000.00 for funeral expenses is based on the mere allegation of witness Bienvenida Castillo, the wife of the victim. Not a single tangible evidence was offered to support such allegation. Jurisprudence dictates that we delete such award, as only expenses supported by documents such as receipts, and which appear to have been genuinely expended in connection with the death of the victim are allowed to be recovered.[49]

WHEREFORE, the questioned Decision convicting the accused-appellant Jomer Cabansay y Palermo of the crime of Murder and sentencing him to suffer the penalty of Reclusion Perpetua and to indemnify the private complainant is hereby **AFFIRMED** with the **MODIFICATION** that the award of P10,000.00 for funeral expenses is deleted.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Priscila S. Agana.

[2] Rollo, p. 6.

[3] RTC Records, p. 12.

[4] A rebuttal witness.

[5] RTC Decision, pp. 1 to 2; Rollo, pp. 77 to 78.

[6] Ibid.

[7] TSN dated April 16, 1997, p. 3.

[8] Ibid.

[9] Id., p. 4.

[10] *Id.*, p. 5.

[11] TSN dated April 18, 1997, p. 5.

[12] *Ibid.*

[13] TSN dated April 28, 1997, p. 2.

[14] *Ibid.*, p. 3.

[15] *Id.*, p. 4.

[16] *Id.*

[17] During the investigation, the police officers gathered that the act of Castillo might have been taken as an insult by the accused.

[18] *Id.*

[19] RTC Decision, pp. 3 to 4; Rollo, pp. 79 to 80.

[20] TSN dated December 8, 1997, p. 7.

[21] RTC Decision, p. 4; Rollo, p. 80.

[22] *Ibid.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*, p. 6; Rollo, p. 82.

[27] Article 11 of the Revised Penal Code. *People vs. Arizala*, 317 SCRA 244 (1999), at p. 251, citing *People vs. Navarro*, G.R. No. 125538, September 3, 1998, 295 SCRA 139; and *People vs. Villamor*, 292 SCRA 384 (1998).

[28] *People vs. Vallador*, 257 SCRA 515 (1996), at p. 524, citing *People vs. Quino*, G.R. No. 105580, May 17, 1994, 232 SCRA 400; and *People vs. Aliviado*, G.R. Nos. 113792-94, August 14, 1995, 247 SCRA 300.

[29] The Necropsy Report shows that this stab wound which incised the kidney and perforated the intestine of Gilbert Castillo caused the latter's death. [Exhibit "B"; RTC Records, p. 31.]

[30] According to prosecution witness Michael Cellan, Gilbert Castillo was stabbed twice by the accused. This was admitted by the accused during his direct examination. [*Ibid.*, p. 8.] However, the Necropsy Report shows that only one (1) stab wound was sustained by Castillo.

[31] TSN dated November 19, 1997, pp. 8 to 9.

[32] The Necropsy Report indicates that Castillo sustained one (1) fatal stab wound. [Exhibit "B", *supra*.] Cellan, on the other hand, sustained three (3) stab wounds--two on his chest and one on the palm of his hand. [TSN dated April 14, 1997, pp. 5 to 6.]

[33] TSN dated November 19, 1997, p. 7.

[34] TSN dated May 5, 1998, p. 15.

[35] *People vs. Dorado*, 303 SCRA 61 (1999), at p. 70.

[36] *Artajos vs. Court of Appeals*, 306 SCRA 317 (1999), at p. 323.

[37] *People vs. Tomolin*, 311 SCRA 498 (1999), at p. 505, citing *People vs. De Gracia*, 264 SCRA 200 (1996).

[38] *People vs. Balamban*, 264 SCRA 619, at p. 631, citing *People vs. Boniao*, 217 SCRA 653 (1993).

[39] *People vs. Real*, 308 SCRA 244, at p. 253.

[40] *People vs. Realin*, 301 SCRA 495 (1999), at p. 513, citing *People vs. Buka*, 205 SCRA 567, 587 (1992); *People vs. Villegas*, 262 SCRA 314, 323 (1996); and *People vs. Tabag*, 268 SCRA 115, 131-132 (1997).

[41] *Ibid.*, citations omitted.

[42] The Necropsy Report shows that the stab wound is located at the left lumbar area (back) of Gilbert Castillo. [Exhibit "B", *supra.*] The medico-legal officer, Dr. Jesus Cerna, pointed out during cross-examination that it was not possible for the attacker to have inflicted the stab wound while positioned in front of the victim "because the exit was at the front and the entrance was at the back. As a matter of fact, the length of the entrance was four cms. and the exit is one cm. because the top exit is small. xxx" [TSN dated April 18, 1997, p. 9.]

[43] See Note No. 31.

[44] TSN dated April 14, 1997, p. 13

[45] *Supra.*, Note No. 31.

[46] TSN dated April 14, 1997, p. 10.

[47] *People vs. Ombrog*, 268 SCRA 93 (1997), at p. 103, citing *People vs. Ponayo*, 235 SCRA 226, August 10, 1994, further citations omitted.

[48] *People vs. Academia*, 307 SCRA 229 (1999), at p. 235, citing *People vs. Baydo*, 273 SCRA 526 (1997).

[49] *David vs. Court of Appeals*, 290 SCRA 727 (1998), at pp. 746 to 747, citing *Fuentes vs. Court of Appeals*, 253 SCRA 430 (1996).

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