

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO DELIMA (ACQUITTED) AND OSCAR AREO, ACCUSED.

G.R. No. 138692. June 16, 2003

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the Decision[1] dated October 13, 1998, of the Regional Trial Court of Catbalogan, Samar, Branch 29, in Criminal Case No. 4426, finding herein appellant, Oscar Areo, guilty beyond reasonable doubt of the crime of murder for killing Roberto Pilapil.

The record shows that, on September 3, 1997, Provincial Prosecutor Juan C. Latorre, Jr. filed in the Regional Trial Court of Samar an Information[2] charging Oscar Areo and his co-accused, Danilo Delima, with murder, allegedly committed as follows:

That on or about the 8[th] day of August, 1997, at nighttime which was purposely sought, at Barangay Bachao, Municipality of Daram, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, with deliberate intent to kill, with treachery and evident premeditation, and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hold and hack one Roberto Pilapil with the use of a bolo (sundang) with which the said accused had conveniently provided themselves for the purpose, thereby hitting and inflicting upon said Roberto Pilapil "multiple hacking wounds" in the different parts of his body, which wounds directly caused the death of Roberto Pilapil.

Contrary to law.

Arraigned on September 25, 1997, appellant, Oscar Areo, and his co-accused, Danilo Delima, pleaded "not guilty" to the charge.[3]

The prosecution presented five witnesses, namely: Pedro Papiona,[4] an alleged eyewitness to the incident; Dra. Lucia L. Astorga,[5] Municipal Health Officer of Daram, Samar; SPO4 Juanito Batayen of Daram, Samar; Saludada Pilapil[6] and Vicenta Pilapil,[7] mother and wife of the victim, respectively.

The prosecution's evidence established the following:

On August 8, 1997, at around 6:00 p.m., the victim, Roberto Pilapil, together with his eight children, was inside their house in Barangay Bachao, Daram, Samar, watching over his wife, Vicenta Pilapil, who was about to give birth. Appellant Oscar Areo and his co-accused, Danilo Delima, arrived to ask Roberto if they could have a drinking session inside his house. Roberto agreed, so they drank beer and rum. During the drinking spree, Oscar reminded Roberto about the parcel of land in Sitio Naparikan which was being occupied by his (Roberto's) father. Oscar insisted that they (Areos) owned the same, claiming that his mother had previously bought it. Roberto replied that his father owned the land and that he knew nothing about the transaction being referred to by Oscar.

At around 11:00 p.m., Roberto's mother, Saludada Pilapil, arrived and advised them to stop drinking.

Consequently, Danilo and Oscar left and proceeded to the latter's house. A few minutes later, Danilo returned to fetch Roberto who was then already sleeping. Saludada advised her son not to leave but Roberto went with Danilo just the same.

On reaching Oscar's house, Roberto was suddenly hog-tied by Danilo. Thereupon, Oscar pulled out a bolo and started hacking Roberto while Danilo held both hands of the victim. At that instance, Saludada, who followed her son, shouted for help. Upon hearing the cries of Saludada, Pedro Papiona came out of his son's house. Oscar and Danilo ran away on seeing him.

On the other hand, the defense presented six witnesses: the appellant himself;^[8] his co-accused Danilo Delima;^[9] Manuel Cañete,^[10] a friend of Oscar and Danilo; Julita Leona Areo,^[11] wife of the appellant; Estelita Delima^[12] and Dorina Rosales Delima,^[13] wife and mother of Danilo, respectively.

According to the defense witnesses, at about 7:00 p.m. on August 8, 1997, the appellant and his kumpadre, Manuel Cañete, went to the house of Ronilo Lanzarete to watch a betamax movie. They drank liquor while watching the movie. Accused Danilo Delima also went to the house of Ronilo Lanzarete and joined Oscar and Manuel in the drinking session. The movie ended at past 9:00 p.m. Thereafter, Oscar went home and ate supper with his wife and children before retiring to bed. While asleep, Oscar was roused by a loud shout coming from outside urging him to come down. Oscar looked out the window and found that it was the victim, Roberto Pilapil. Roberto continued shouting, warning Oscar that if he did not come down, Roberto would go after him inside the house. While Roberto was opening the door of the kitchen, Oscar quickly got hold of the bamboo pole from their window and struck Roberto's hand that was holding a bolo. When the bolo fell, Oscar picked it up and hacked Roberto several times for fear that Roberto was still poised to attack him. After Roberto fell to the ground, he pleaded for mercy but appellant ignored his plea. Instead Oscar proceeded immediately to his father's house with his family for fear of reprisal from Roberto's relatives.

At around 6:30 a.m. the following day, Oscar was fetched for questioning by a barangay tanod from his father's house. Together they went to the barangay hall, bringing the bolo that he used in hacking the victim. There he met Danilo.

Oscar further testified that Roberto challenged him to a fight because the latter was harboring a grudge against him. He (Oscar) admitted cutting 15 minonga trees from the land, formerly owned by a certain Cayang, that was later on sold to Roberto's mother, Saludada Pilapil.

Appellant's co-accused, Danilo Delima, professed innocence of the crime. Danilo testified in court that, on August 8, 1997, he was in the mountain making charcoal. He went home at around 5:00 p.m. After eating supper, he and his family went to the house of Ronilo Lanzarete to watch a betamax movie. Danilo drank liquor with the appellant and Manuel Cañete until the movie was finished at about 9:00 p.m. He and his family then went home to sleep. As far as he was concerned, nothing unusual happened that whole evening.

The following day, Danilo learned that Roberto was killed. He was later arrested as one of the suspects in the killing.

The testimonies of the appellant and his co-accused, Danilo Delima, were corroborated by Manuel Cañete, Dorina Rosales Delima and Julita Leona Areo.

Julita Leona Areo, wife of the appellant, testified that, at around 11:30 p.m. on August 8, 1997, she was awakened by Roberto who was challenging her husband to a fight. She restrained her husband and told him not to go down. But when Roberto cut the rope which served as a door lock and he was about to enter their house, she released her husband who then struck Roberto in the hand that was holding a bolo. When the bolo fell, appellant picked it up

and hacked Roberto.

On October 13, 1998, the trial court rendered a decision finding appellant Oscar Areo guilty of murder and acquitting Danilo Delima for insufficiency of evidence. The judgment read:

WHEREFORE, the court finds the accused Oscar Areo guilty beyond reasonable doubt of the crime of murder as charged in the information and for this offense there being no aggravating circumstance proved by the prosecution he is hereby sentenced to reclusion perpetua, to indemnify the heirs of Roberto Pilapil, represented by Mrs. Vicenta Pilapil, in the amount of Fifty Thousand Pesos (P50,000.00) without subsidiary imprisonment in case of insolvency and to pay one-half of the costs.

The accused Oscar Areo has been detained since August 9, 1977.

For insufficiency of evidence, the accused Danilo Delima is hereby acquitted with costs de officio.

So ordered.

Hence, this appeal.

Appellant raises the following assignments of error:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER BASED ON THE VERY INCREDIBLE TESTIMONIES OF THE ALLEGED PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN NOT BELIEVING THE TESTIMONY OF THE ACCUSED-APPELLANT AS CORROBORATED BY HIS WITNESSES.

III

THE TRIAL COURT ERRED BY NOT APPRECIATING THE EVIDENCES ADDUCED BY THE ACCUSED DURING THE TRIAL IN FAVOR OF THE APPELLANT THAT THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE ATTENDED IN THE COMMISSION OF THE ACT COMPLAINED OF.

To escape criminal liability, appellant invokes the justifying circumstance of self-defense. He admits hacking Roberto but vigorously insists that he did so to defend himself and his family.

Appellant further contends that it was Roberto who started the aggression by acting in a manner that was threatening and dangerous to him and his family. When appellant saw that Roberto was already opening the door of their kitchen and sensing that Roberto had a bolo, Oscar took the bamboo pole from the window and struck Roberto's hand holding the bolo. When the bolo fell, Oscar picked it up and, afraid that Roberto was still going to attack him, he hacked Roberto several times. Oscar's declaration was corroborated by his wife who was present at the scene of the crime.

Despite this corroboration, however, we are not convinced by appellant's theory of self-defense.

Jurisprudence holds that, when the accused admits committing the crime but invokes self-defense to escape criminal liability, the burden of proof shifts to him. It necessarily follows that he must now rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if the latter's evidence is weak, it cannot be disbelieved after the accused has admitted the killing.[14] He must then prove the following elements of self-defense: unlawful aggression on the part of the victim; reasonable necessity of the means employed to prevent or repel it and lack of sufficient provocation on the part of the one resorting to self-defense.[15] Of these requisites, the most indispensable is unlawful aggression on the part of the victim. If there is no unlawful

aggression, there is nothing to prevent or repel. And for unlawful aggression to be appreciated, there must be a strong and positive act of real aggression, not merely a threat or an intimidating stance. Thus, the accused who claims self-defense must positively establish that there was an actual, sudden and unexpected attack, or imminent danger thereof, by the victim.[16]

Upon review of the evidence on record, we find that the appellant has failed to discharge this burden. There was no unlawful aggression on the part of the victim to speak of. Contrary to the claim of the defense, the prosecution established through its eyewitness that the victim was lured to the appellant's house and there hacked by the appellant. Appellant's effort to buttress his theory of self-defense can only be described as desperate. The trial court in its decision found that unlawful aggression was not proven, thus:

Defendant Oscar Areo's claim that he acted in self-defense is unfounded. In order that this defense may prosper, it is necessary that such plea be established by a clear and convincing evidence. He did not receive even a scratch or bruise in the alleged attack which the deceased Roberto Pilapil, armed with a bolo, made upon him. There can be no self-defense unless there was unlawful aggression. Such unlawful aggression was not found in this case.

To successfully invoke self-defense, appellant must prove, by satisfactory evidence, the concurrence of all the elements of self-defense, the most important of which is unlawful aggression by the victim. Without unlawful aggression, there can be no self-defense, complete or incomplete, and conviction of appellant must follow.[17]

Another factor that militates against the appellant's claim of self-defense is the physical evidence on record, that is, the number of wounds inflicted on the victim. As testified to by Dr. Lucia Astorga, the attending physician, the victim suffered eight wounds, most of them fatal. It is an oft-repeated rule that the presence of many wounds on the victim negates self-defense; it in fact indicates a determined effort to kill him. Even assuming for the sake of argument that it was the deceased who initiated the attack and the accused merely defended himself, clearly there was no need for him to stab the victim several times if the purpose was simply to disable the victim or make him desist from his unlawful assault.[18]

One thing more is the matter of flight. Appellant admitted that, immediately after the incident, he fled from the crime scene. Flight, in jurisprudence, is a strong indication of guilt, although the opposite does not necessarily imply innocence either.[19] Appellant's alleged fear of retaliation from the victim's relatives was a figment of his imagination. He failed to report the incident immediately to the barangay chairman and police authorities, negating his claim of self-defense. In sum, appellant failed to present clear and convincing evidence to prove self-defense.

Furthermore, what appellant tries to depict is that it was the accused who was the unlawful aggressor. We do not think so. It would have been totally against human nature for the victim to look for trouble at a time when he was with his family, awaiting the birth of his new baby. Under the circumstances, we cannot believe appellant that it was the victim who went to his house to commit violence there.

For all the foregoing reasons, we accept the testimony of Roberto's mother that her son was lured to the appellant's house and hog-tied before he was hacked to death. This constituted treachery which is committed when two conditions concur, namely, that the means, method and form of execution employed give the person attacked no opportunity to defend himself or to retaliate, and that such means, method and form of execution are deliberately and consciously adopted by the accused without danger to his person.[20] These two conditions were evidently present in the instant case.

We, therefore, find the accused guilty beyond reasonable doubt of the crime of murder with the qualifying circumstance of treachery. There being no mitigating nor aggravating circumstance, the trial court correctly

imposed the penalty of reclusion perpetua on the appellant under Article 63 of the Revised Penal Code.

The record shows that the trial court failed to award moral damages. The victim's widow testified that the death of her husband caused her sorrow and suffering, and left her eight children to support. Moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in the victim's death. Therefore, the Court awards the amount of P50,000 as moral damages.

WHEREFORE, the appealed decision dated October 13, 1998 of the Regional Trial Court of Catbalogan, Samar, Branch 29 in Criminal Case No. 4426 finding Oscar Areo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is hereby **AFFIRMED**, with the **MODIFICATION** that appellant is ordered to pay the heirs of Roberto Pilapil the amount of P50,000 as moral damages, in addition to the civil indemnity of P50,000. Costs against appellant.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Auxencio C. Dacuycuy; Rollo, pp. 24-36.

[2] Rollo, p. 10.

[3] Rollo, p. 18.

[4] TSN, October 10, 1997.

[5] TSN, November 13, 1997.

[6] TSN, December 3, 1997.

[7] TSN, December 22, 1997.

[8] TSN, May 18, 1998.

[9] TSN, January 9 and 28, 1998.

[10] TSN, February 26, 1998.

[11] TSN, July 8, 1998.

[12] TSN, February 26, 1998.

[13] TSN, March 25, 1998.

[14] *People vs. Mendoza*, 327 SCRA 695, 705 [2000].

[15] *Salcedo vs. People*, 347 SCRA 499, 507 [2000].

[16] *Macalino, Jr. vs. People*, 340 SCRA 11, 23 [2000].

[17] *People vs. Dano*, 339 SCRA 515, 531 [2000].

[18] *People vs. Deopante*, 263 SCRA 691, 707 [1996].

[19] *People vs. Acuno*, 313 SCRA 667, 682 [1999].

[20] *People vs. Enriquez*, 357 SCRA 269, 287 [2001].

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