

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRYVIE GUMAYAO Y DAHAO @ BIVIE, APPELLANT.

G.R. No. 138933. October 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] dated March 31, 1999 of the Regional Trial Court, Branch 8, Malaybalay City, Bukidnon, convicting appellant Jerryvie Gumayao of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the heirs of his victim Concordio Sulogan in the sum of P50,000.

The appellant was charged in an Information, docketed as Criminal Case No. 8437-97 which reads:

That on or about the 28[th] day of December, 1996, in the evening at Purok 2, barangay Kalasungay, municipality of Malaybalay, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery, with the use of a sharp bladed instrument, did then and there willfully, unlawfully and criminally attack, assault and stab CONCORDIO SULOAN, inflicting upon the latter mortal wounds which caused the instantaneous death of CONCORDIO SULOAN; to the damage and prejudice of the legal heirs of CONCORDIO SULOAN in such amount as may be allowed by law.

Contrary to and in violation of Republic Act No. 7659.[2]

Upon his arraignment, the accused, assisted by counsel, pleaded not guilty to the charges. Trial thereafter ensued.

The Case for the Prosecution[3]

Concordio Sulogan and his wife Wilma resided at Zone 2, Kalasungay, Malaybalay City, Bukidnon. Concordio was a corn farmer by profession and tilled his own land, which was about 5.8 hectares. The couple had three children.[4]

At around 10:00 to 10:45 p.m. on December 28, 1996, Diocrly[5] Binayao was standing by the Syre Highway at Kalasungay, City of Malaybalay. He and Concordio Sulogan, were watching a disco party being held at the plaza of Kalasungay, which was about thirty meters[6] from where they were. The plaza was adorned with brightly colored blinking lights. There was a gate surrounding the area of the party place, and an area where the partygoers had to pay their entrance fees.[7]

Concordio and Diocrly sat down beside each other, cross-legged, by the side of the asphalt pavement and talked as they watched the ongoing party.[8] An electric light post, which was about ten meters away, illuminated the street. Also about ten meters from where Concordio and Diocrly were sitting was a nearby store, across the street and opposite to the plaza, which was likewise lighted.[9] The store was owned by SPO1 Ersie Paano.[10]

Jerryvie Gumayao approached the two and joined them. In a squatting position, he sat beside Concordio, to the latter's right.

Edmund Paano had known Concordio since he was seven years old.[11] They were first cousins[12] and lived near each other in Zone 2, Kalasungay. That fateful night, Edmund was with his other cousin Kenneth in their auntie's house, which was located near the plaza.[13] Edmund and Kenneth decided to go to the plaza to check out the ongoing disco party. On the way, they passed by the Syre highway and saw Diocrly, Concordio, and Jerryvie, who were sitting at the edge of the asphalt road.[14] Edmund walked towards them and shook Concordio's hand, and thereafter proceeded to the disco place.[15]

When Edmund and Kenneth left, Jerryvie suddenly took out a seven-and-a-half-inch-long knife[16] with his right hand and stabbed Concordio on the left side of the chest, and again on the abdomen, also on the left side.[17] Concordio fell, mortally wounded, on his back, the knife still embedded in his body. Jerryvie hurriedly left the scene, going towards the direction of their house in Zone 4.[18] Diocrly walked away, and sought help to aid the fallen Concordio, in the direction of the nearby store.[19]

Edmund and Kenneth did not enjoy the disco because there were no ladies there for them.[20] They stayed for only about fifteen minutes and headed back in the direction of the highway.[21] They saw Concordio lying on his back, bloodied all over.[22] Edmund ran towards the direction of his auntie's house and informed the victim's brother, Christopher, that Concordio was stabbed.[23] Edmund went back to the scene of the crime, and found that Concordio had already been brought to the hospital. He later learned that Concordio had succumbed to his injuries and had died in the hospital.

SPO1 Paano was fast asleep inside his house. He was suddenly awakened by one of his daughters and his wife, who informed him that a stabbing incident had occurred right in front of his residence.[24] He immediately proceeded to the area, and saw the victim lying prostrate on the ground, beside the road.[25] A crowd had by then already gathered around the crime scene. SPO1 Paano's brother Edmund revealed that the persons who were with the victim before the incident were Diocrly and Jerryvie.[26] Because he was more interested in apprehending the suspect and getting on with the investigation, SPO1 Paano instructed the persons present to bring the victim to the hospital.[27]

SPO1 Paano immediately went to Diocrly's house and inquired about the incident. Diocrly told him that the person responsible for the stabbing of Concordio was Jerryvie.[28] SPO1 Paano then proceeded to look for Jerryvie in Purok 4, Kalasungay, City of Malaybalay, where the latter's father lived. Jerryvie was not there, but his father accompanied SPO1 Paano to his residence, which was about fifty meters away.[29] Jerryvie was nowhere to be found.

At around 6:00 a.m. the next day, December 29, 1996, SPO1 Paano went to the Malaybalay Police Station to verify if the incident had already been recorded in the police blotter. At around 7:10 that same morning, SPO1 Boy Solito brought Jerryvie to the Malaybalay Police Station.[30]

Wilma Sulogan, the victim's widow, testified that her husband sustained two stab wounds on the chest, above his left nipple.[31] Her husband was buried on December 31, 1996. They spent P1,500 for the embalmment, and P30,000 for the wake. The coffin was a donation from the barangay.[32] She also suffered sleepless nights and mental anguish upon her husband's untimely death.

The Evidence for the Defense[33]

Jerryvie denied the charges against him. He testified that he was a long-time resident of Kalasungay, City of Malaybalay.[34] He was married to Josalyn Binayao, and they lived with his mother.

Jerryvie testified that he and a certain Popoy Helacio were enemies.[35] The misunderstanding apparently came about when Jerryvie's cousin drove without permission the motorcycle of Helacio's uncle, about two years

ago.[36] On December 24, 1996, Jerryvie had an "encounter" with Helacio.[37]

At 7:00 p.m. of December 28, 1996, Jerryvie was in his auntie's house, which was about 2 kilometers away from the plaza. He and three others were having a drinking spree.[38] At around 9:00 p.m., Jerryvie and his companions thereafter proceeded to the plaza to participate in the ongoing disco. Upon entering the area, Jerryvie came face to face with Helacio, who challenged him to a fight.[39] Jerryvie gamely asked where, and Helacio replied, "On the portion outside by (sic) this disco place." [40]

A fight ensued. Jerryvie punched Helacio, and the latter fell. When he got up, Jerryvie saw that he was armed with a knife and declared, "We will kill you now." [41] Jerryvie replied, "Wait for me" and ran towards his mother-in-law's house. When he returned, he saw that Helacio had summoned two more companions, Edmund and Concordio. The three men surrounded him. Sulogan was able to take hold of him, twist his head, and say, "We will kill him." [42] Jerryvie struggled to free himself, and was able to do so. He then took hold of Concordio and stabbed the latter with the knife, which he had tucked by his waist. Jerryvie testified that he could no longer remember how many times he stabbed Concordio. [43]

Jerryvie fled from the scene and went to his godfather, George. He told George that he had stabbed a person in the plaza whose identity he did not know. [44] Jerryvie's father thereafter arrived and told him to surrender to the authorities. Jerryvie decided to follow his father's advice and surrendered to Boy Solito, the husband of his mother's niece, who also happened to be a policeman. On Solito's advice, Jerryvie surrendered the following morning where he was brought to the CID to be investigated.

Jerryvie also testified that prosecution witness Diocly Binayao was his brother-in-law, and that the two of them had differences because the latter did not want him to marry her sister in the first place. [45] He insisted that he did not intend to kill anyone that fateful night, but when Concordio held him, he had no choice but to stab the latter. [46]

Lilency Liman-ay testified that Jerryvie was her nephew and that she had known him since he was a small boy. His misunderstanding with Helacio started during a drinking spree at the house of Lilency's niece. Lilency's son, along with Jerryvie, apparently used a motorcycle parked near the house. The motorcycle was owned by Helacio's relative, Arlene. Arlene got angry, and Helacio joined in the fray.

On December 29, 1996, Lilency woke up very early and found out that the authorities were looking for Jerryvie. She assisted the latter's mother in the search, and they found Jerryvie in Lumayagan, near the BFI Nursery at Kalasungay, about two kilometers away from the latter's residence.

The Verdict of the Trial Court

The trial court rendered a decision on March 31, 1999, finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion reads as follows:

WHEREFORE, the court finds accused Jerryvie Gumayao guilty of murder and penalized under Republic Act No. 7659. Considering the mitigating circumstance of voluntary surrender which is not offset by any generic aggravating circumstance, said accused is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim Concordio Sulogan in the sum of P50,000.00.

SO ORDERED. [47]

The Case on Appeal

The appellant assails the decision of the trial court contending that:

I

THE TRIAL COURT ERRED IN NOT APPRECIATING ACCUSED-APPELLANT'S CLAIM OF SELF-DEFENSE ANENT THE STABBING INCIDENT;

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE UNCONTROVERTED EVIDENCE ADDUCED BY ACCUSED-APPELLANT AND HIS WITNESS;

III

ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER AS THE CRIME COMMITTED WAS ONLY HOMICIDE.[48]

According to the appellant, his passive stance, when Helacio's group confronted him, proved the fact that he was not the unlawful aggressor as the prosecution's evidence tends to establish. He was surrounded by three men; Helacio was armed with a knife, and Concordio was backing up the latter. The use of a knife in inflicting the fatal blow on Concordio was justified, as it was reasonable under the circumstances then prevailing. The appellants also points out that he was clearly outnumbered and literally pushed to the limit, without any means to choose what kind of weapon with which to defend himself. Popoy Helacio, who was accompanied by the victim, was determined to attack the appellant, owing to the long-standing feud between them.

That the appellant acted in self-defense in stabbing the victim is clear and convincing, as the prosecution did not present rebuttal witnesses to assail the same. The claim of self-defense is further strengthened by the fact that the appellant voluntarily surrendered to the authorities after the stabbing incident. In fact, the trial court had no other recourse but to accept the fact of voluntary surrender when the prosecution admitted the same during the trial.

The appellant further insists that there was a fight between the appellant and Helacio prior to the stabbing incident. Thus, when the appellant returned to the scene, armed with a knife, the victim and his companions were forewarned of an impending danger. Thus, should the Court render a verdict of conviction, the crime committed by the appellant would only be homicide.

The Office of the Solicitor General, for its part, contends that the appellant's claim that he acted in self-defense when he stabbed the victim is belied by the location, nature and number of wounds inflicted. The appellant stabbed the victim on the chest and the abdomen, and the wounds proved to be fatal. Furthermore, the appellant's attack on the victim was sudden, without affording opportunity on the part of the victim to defend himself. As such, the appellant committed murder, not homicide.

The Court's Ruling

The appellant's contentions are devoid of merit.

The Court has consistently held that like alibi, self-defense is an inherently weak defense because it is easy to fabricate.[49] In a case where self-defense is invoked by the accused, the burden of evidence is shifted on him to prove, with clear and convincing evidence, the following essential requisites: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel or prevent it; and (c) lack of sufficient provocation on the part of the person defending himself. There can be no complete or incomplete self-defense unless the accused proves unlawful aggression on the part of the victim.[50] The accused must rely on the strength of his evidence and not on the weakness of the evidence of the prosecution. This is so because in

pleading self-defense, the accused thereby admits to the killing and can no longer be exonerated of the crime charged if he fails to prove the confluence of the essential requisites of self-defense.[51]

The appellant failed to discharge his burden.

First. After stabbing Concordio, the appellant fled from the situs criminis. Flight is a veritable badge of guilt and negates the plea of self-defense.

Second. Although the appellant surrendered to the police authorities early the next day, he failed to inform them that he acted in self-defense when he stabbed the victim. Moreover, the records show that the Municipal Circuit Trial Court of Malaybalay issued a subpoena on January 10, 1997, requiring the appellant to submit his counter-affidavit, but the latter failed to do so. It was only during the trial that the appellant, for the first time, invoked self-defense.

Third. The appellant stabbed the victim twice on the chest, and both wounds proved fatal. As correctly contended by the prosecution, the nature and the number of the wounds of the victim negate the appellant's claim that he acted in self-defense. On the contrary, they prove that the appellant was determined to kill the victim.[52]

Fourth. As found by the trial court, the appellant made inconsistent and conflicting statements. During the direct examination, the accused told the court that it was only with Popoy Helacio that he was to have a confrontation. It was only when he went back to the plaza with a knife that he found that Helacio had already summoned two companions.[53] However, when the court questioned the appellant how he and Helacio met that fateful night at the disco entrance, the appellant's version of the story changed, such that the victim was already a participant in the fray, even before the appellant went back to the plaza to get a knife.[54] Thus, the appellant's testimony is inconsistent on material points, and cannot be given credence.

Case law has it that the trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify.[55] Upon careful review of the records of the case, the Court finds no cogent reason to overrule the trial court's finding that the appellant stabbed the victim in cold blood.

An eyewitness account, coupled with the fact of the victim's death, are sufficient proof of the guilt of the appellant, beyond cavil of doubt, for the crime of murder.[56] In this case, the appellant failed to show any ill or improper motive on the part of Diocrlly to impute the crime of murder to the appellant, for which the latter could be sentenced to reclusion perpetua. As this Court had the occasion to state in *People v. Sibonga*: [57]

This Court has consistently ruled that the testimony of a single prosecution witness, as long as it is positive, clear and credible is sufficient on which to anchor a judgment of conviction. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused. Truth is established not by the number of witnesses but by the quality of their testimonies.[58]

The trial court found Diocrlly to be a credible witness. He testified that he was very sure that Jerryvie was Concordio's assailant, since the scene of the crime was adequately lighted:

Q

Now, considering that, that was 10:45 in the evening already of December 28, 1996, how were you able to really recognize Jerryvie to be the one who stabbed Concordio?

A

I saw him.

Q

That is why, why were you very sure that, that was he who stabbed?

A

The moon was bright.

Q

Other than the moon was bright what light [sic], if there was any?

A

The electric lights coming from the electric bulb of the store and the disco dance area.

Q:

Now you mentioned of [the] street lights a little while ago, what kind of light installed in that street light [sic]?

A:

A big lamp.

Q:

Have you seen a very big lamp along Fortich Street, is that a big lamp also at Kalasungay?

A:

Yes.[59]

The Crime Committed by the Appellant

The trial court correctly convicted the appellant of murder, qualified by treachery under Article 248 of the Revised Penal Code. There is treachery in the commission of the crime when (a) at the time of the attack, the victim was not in a position to defend himself; (b) the offender consciously and deliberately adopted the particular means, method and form of attack employed by him. Even a frontal attack may be considered treacherous when sudden and unexpected, and employed on an unarmed victim who would not be in a position to repel the attack or to avoid it.[60]

In this case, the victim was merely sitting on the pavement at the edge of the road, chatting with a friend as they watched an on-going disco party. The appellant joined them, without giving the victim any inkling as to the tragedy that was about to befall the latter. Suddenly, and without warning, the appellant pulled out the knife hidden in his waist, and stabbed the victim twice, on vital parts of the body, ensuring the latter's immediate death. Thus, the appellant killed the victim in a treacherous manner.

Reclusion perpetua is an indivisible penalty.[61] As such, the circumstance of voluntary surrender will not affect the penalty to be meted on the appellant, since under Article 63 of the Revised Penal Code, the penalty of reclusion perpetua must be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.

Civil Liabilities of the Appellant

The trial court correctly awarded to the heirs of the victim civil indemnity in the amount of P50,000, which needs no other proof than the death of the victim.[62] The trial court was, likewise, correct in not awarding actual damages to the said heirs, considering that there were no receipts to support them.[63] The heirs are, nevertheless, entitled to temperate damages in the amount of P25,000.[64]

Finally, the trial court was correct in not awarding damages for lost earnings. The prosecution merely relied on Wilma Sulogan's self-serving statement, that her husband was earning more or less P40,000 a year as a corn farmer. Compensation for lost income is in the nature of damages, and requires adequate proof thereof. For loss of income due to death, there must be unbiased proof of the deceased's average income as well as proof of average expenses. The award for lost income refers to the net income of the deceased; that is, the total income less average expenses. No proof of the victim's average expenses were adduced in evidence; as such, there can be no reliable estimate of lost earnings.[65]

WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 8, Malaybalay City, Bukidnon, in Criminal Case No. 8437-97 is AFFIRMED with MODIFICATION. Appellant Jerryvie Gumayao y Dahao is found GUILTY of murder, qualified by treachery, penalized under Republic Act No. 7659, and is sentenced to reclusion perpetua. The appellant is ordered to pay the heirs of the victim Concordio Sulogan P50,000 as civil indemnity; P50,000 as moral damages; and P25,000 as temperate damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Vivencio P. Estrada.

[2] Rollo, p. 5.

[3] The prosecution presented Diocrly A. Binayao, SPO1 Ersie Paano, Edmund Paano and Wilma Sulogan as witnesses.

[4] TSN, 22 September 1998, pp. 25-27.

[5] Also spelled as Diocrlyn and Deocrlyn.

[6] TSN, 8 September 1998, p. 19.

[7] Id. at 20.

[8] TSN, 8 September 1998, pp. 5-7.

[9] Id. at 7.

[10] TSN, 8 September 1998, p. 20.

[11] TSN, 22 September 1998, p. 16 (Edmund Paano).

[12] Id. at 20 and 24.

[13] Id. at 17.

[14] Id. at 18-19.

[15] Id. at 20.

- [16] Exhibit "B".
- [17] TSN, 8 September 1998, p. 10 (Binayao).
- [18] Id. at 11.
- [19] Id at 11-12.
- [20] TSN, 22 September 1998, p. 20 (Edmund Paano).
- [21] Id.
- [22] Id. at 20-21.
- [23] Id. at 21.
- [24] TSN, 22 September 1998, p. 4.
- [25] Id.
- [26] Id. at 5.
- [27] Id. at 10.
- [28] Id. at 6.
- [29] Id. at 8.
- [30] Id. at 8-9.
- [31] TSN, 22 September 1998, p. 26.
- [32] Id. at 26-27.
- [33] The defense presented Jerryvie Gumayao and Lilency Liman-ay as witnesses.
- [34] TSN, 7 October 1998, p. 3.
- [35] Id. at 4.
- [36] Id.
- [37] Id. at 5.
- [38] Id. at 6.
- [39] Id. at 7.
- [40] Id.
- [41] Id.
- [42] Id. at 8.
- [43] Id. at 9.
- [44] Id. at 17.
- [45] Id. at 12.
- [46] Id. at 16.

- [47] Rollo, p. 18.
- [48] Brief for Accused-Appellant, Rollo, p. 52.
- [49] *People v. Ocsimar*, 253 SCRA 689 (1996).
- [50] *People v. Castellano, Sr.*, G.R. No. 139412, April 2, 2003.
- [51] *Id.*, citing *People v. Hubilla, Jr.*, 252 SCRA 471 (1996).
- [52] *People v. Real*, 308 SCRA 244 (1999).
- [53] TSN, 7 October 1998, pp. 7-8.
- [54] *Id.* at 14-15.
- [55] *People v. Sibonga*, G.R. No. 95901, June 16, 2003.
- [56] *Id.*, citing *People v. Lotoc*, 307 SCRA 471 (1999).
- [57] *Supra*.
- [58] *Id.* at 18.
- [59] TSN, 8 September 1998, pp. 16-17.
- [60] *People v. Cual*, 327 SCRA 623 (2000).
- [61] *People v. Balmoria*, 287 SCRA 687 (1998)
- [62] *People v. Abadies*, G.R. No. 135975, August 14, 2002.
- [63] *People v. Esponilla*, G.R. No. 122766, June 20, 2003.
- [64] *People v. Orcula, Sr.*, 335 SCRA 129 (2000).
- [65] *Supra*, at note 62.

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