

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PEPE BAUTISTA Y SABADO, APPELLANT.

G.R. No. 139530. February 27, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the January 26, 1999 Decision[1] of the Regional Trial Court of Nueva Vizcaya, Branch 30, finding appellant Pepe Bautista y Sabado guilty of murder in Criminal Case No. 613 and sentencing him to suffer the penalty of reclusion perpetua.

The Information[2] filed on April 13, 1993 charged appellant as follows:

That on or about February 3, 1993, at Barangay Balance, Municipality of Dupax del Norte, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and qualified by treachery and evident premeditation, did then and there wil[l]fully, unlawfully and feloniously, assault, attack and wound, with the use of a bolo, one Rodolfo Bacoling, causing injuries to said Rodolfo Bacoling which resulted to his death, and all to the damage and prejudice of the heirs of the said victim.

Contrary to law with the aggravating circumstance of nighttime sought by the accused to afford impunity in the commission of the offense.

From the testimonial evidence of the prosecution, the following have been established:

On the night of February 3, 1993 at the Dupax del Norte, Nueva Vizcaya house of one Fausto Polon, appellant, Rodolfo Bacoling (the deceased), James Buyagan, Felix Pallay, Lino Menzie and Renato Hilario had a drinking spree.[3]

Of the six, Pallay, Menzie and Hilario went home ahead, followed by Buyagan, leaving behind the deceased, who was armed with a bolo,[4] conversing with appellant.

Around 9 p.m., Polon's neighbor, Lorenzo Dumase, who was in his house, heard neighbors' dogs barking. Apprehensive that somebody might be stealing his carabao, he opened the window of his house upon which he saw, about 10 meters away, appellant running after the deceased.

Around midnight, Hilario, who lived near Polon's house, was awakened as appellant and his brother Danilo knocked at his door. On letting the brothers in, he was told by appellant, who showed his blood-stained shirt, that he killed the deceased. Danilo even brought out the blood-stained bolo. He (Hilario) thus advised the two to go home, but they requested to be allowed to sleep at his house to which he acceded.

At 5 a.m. of the following day, February 4, 1993, appellant and Danilo left Hilario's house, leaving the bolo behind.[5] Hilario thus wrapped the bolo and turned it over to the police authorities.[6]

At about 6 a.m. also on February 4, 1993, while Buyagan was cooking breakfast in his house, appellant arrived

and confessed to him that he killed the deceased, drawing Buyagan to report the matter to the police.[7]

On February 5, 1993, an autopsy was performed on the deceased by Dr. Mary Ruth C. Reyes, Municipal Health Officer of Dupax del Norte, Nueva Vizcaya. The autopsy report[8] dated February 9, 1993 indicated the cause of death of the deceased to be hemorrhagic shock due to head and neck injuries secondary to multiple hacking wounds -incised wounds in the head, face, neck and fingers, and abrasion at the back.

As the sole witness on his behalf, appellant interposed self-defense. He gave the following tale:

During their drinking spree, the deceased “narrated many things about [appellant’s] cousin” Lito Vicente, including the hacking by the latter of the deceased’s uncle.[9] Appellant reacted by saying that he did not think that he had the “same attitude” as that of his cousin.

After their four companions had left ahead, appellant started to head for home too, but the deceased followed him and badmouthed him, telling him not to run. As he looked back, he saw the deceased unsheathe his bolo from its scabbard and raise it. He thus embraced him, grabbed the bolo, and asked why he wanted to hack him. The deceased, however, picked up a stone and hurled it at him, albeit he was not hit. He then ran, and as he again looked back, the deceased told him not to run as he was going to kill him. The deceased eventually caught up with him, so he confronted him and struck him with his (the deceased’s) own bolo.[10]

Finding for the prosecution, the trial court rendered the decision[11] subject of the present appeal convicting appellant of murder and disposing as follows:

WHEREFORE, premises considered, finding the accused, Pepe Bautista y Sabado, GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

He is likewise ordered to pay the heirs of the victim the amounts of Thirty Two Thousand, Three Hundred Ninety Seven Pesos (P 32,397.00) as actual expenses and Fifty Thousand Pesos (P 50,000.00) as mandatory death indemnity.

In his Brief,[12] appellant assigns to the trial court the following errors:

I.

THE HONORABLE COURT A QUO ERRED IN FINDING THE CRIME COMMITTED AS MURDER AND NOT SIMPLE HOMICIDE.

II.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE COMMISSION OF THE CRIME WAS ATTENDED WITH THE MITIGATING CIRCUMSTANCES OF: A) DRUNKENNESS; B) PROVOCATION; C) THERE WAS UNLAWFUL AGGRESSION ON THE PART OF THE DECEASED; D) AND IN NOT APPLYING THE INDETERMINATE SENTENCE LAW IN IMPOSING THE PENALTY.

III.

THE HONORABLE COURT A QUO ERRED IN NOT FINDING THAT THE CRIME COMMITTED IS ONE OF SIMPLY HOMICIDE AND NOT MURDER. (Underscoring supplied)

In finding that appellant was guilty as charged, the trial court found that treachery qualified the killing.

The circumstance of treachery attended the commission of the offense by the accused thereby qualifying the killing of Rodolfo Bacoling to Murder for how else could the Court understand the chase instituted by the accused on the victim fleeing or running away from him and the wounds struck by him from behind the victim.

The helpless position of the victim when he was killed because he was then being chased from behind by the accused was not accidental but intentionally taken advantaged of by the accused as is evident from his resolution to really kill the victim when he determinedly bridged the distance between him and the victim and in that position of the victim with his back fronting the accused, the latter hacked the victim.[13]

Circumstances qualifying a killing to murder, such as treachery, must be proven as indubitably as the crime itself.[14]

For treachery to be appreciated, two essential elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate or conscious adoption of the means of execution. What is decisive is that the execution of the attack makes it impossible for the victim to defend himself or retaliate.[15]

The records indicate that the deceased was aware of the impending danger. By the account of Dumase, he saw appellant running after and chasing the deceased. Appellant caught up with him, however.

People v. Flores,[16] the facts of which are similar to those of the case at bar, teaches that:

x x x The mere fact that the victim was shot at the back while attempting to run away from his assailant would not per se qualify the crime to murder. In the case at bench, the evidence established that accused-appellant, apparently drunk, emerged from the factory and fired upon the victim and his companion who were just innocently passing by. Sensing an imminent danger to their lives, the two started to run. However, the next gunshot hit the victim at the back and caused his death. Clearly then, with the first gunshot, the victim has been placed on guard and has, in fact attempted to flee. There could thus be no treachery since, prior to the attack, the victim has been forewarned of the danger to his life and has even attempted, albeit unsuccessfully, to escape. Moreover, there was absolutely no evidence to show that accused-appellant consciously and deliberately employed a specific form of attack which would specially and directly and ensure its commission without impunity. (Italics in the original; emphasis supplied).

This Court does not thus find treachery to have attended the stabbing of the deceased.

As for appellant's appeal for the appreciation of the mitigating circumstances of drunkenness, sufficient provocation, and unlawful aggression arising from the deceased's alleged utterance of provocative and insulting words about appellant's cousin's hacking of the deceased's uncle and the deceased's following him and wanting to hack him, this Court denies the same.

For drunkenness to be mitigating, the state of intoxication should be proved or established by sufficient evidence. It should be such that it would diminish or impair the exercise of willpower or the capacity to know the injustice of the act.[17] In the case at bar, what was merely established was that appellant and his companions had a drinking spree. There was no showing that if appellant was intoxicated, his willpower was diminished or impaired.

Neither was there a showing of sufficient provocation. Appellant's claim that the deceased uttered insulting and provocative words against appellant in the course of the drinking spree[18] was not, however, corroborated by any of their companions.[19] In any event, it would appear that the alleged utterance was made at the time or immediately before the commission of the crime.

Nor was there unlawful aggression on the part of the deceased, given the following testimony of appellant himself, quoted verbatim:

ATTY. GUILBERT:

Q: What transpired next when he said those words?

A: When I looked back, I heard a sound of a bolo while it was being unsheathed from its scabbard?

Q: What happened when he unsheathed the bolo?

A: When I looked back and about to face him, I saw him raising his bolo and so, what I did, I embraced him.

Q: After you embraced him what transpired?

A: I was able to grab the bolo from him.

Q: After you were able to grab the bolo from Mr. Bacoling, what did you do next, if any?

A: I asked him, “why are you going to hack me” but what he did, he grope for a stone.

Q: Was Mr. Bacoling able to hold a stone?

A: He was able to pick up a stone and hurled up me but I was not able to hit by that stone.

Q: How far was Mr. Bacoling when he threw the stone at you?

A: Witness pointing a distance which is around 7 meters).

Q: After Mr. Bacoling hurled the stone at you, what did you do next?

A: I ran directly upward, sir.

Q: While you were running, what happened next?

A: I thought all the while that he was not following me. When I looked back, he said: “Do not run because I am going to kill you” and when I looked back, he was already near me.

Q: What happened when you saw that he was about to catch up with you?

A: I confronted him, and I struck him with his own bolo.

x x x[20] (Emphasis and underscoring supplied)

For, even if appellant believed that the deceased did try to kill him when he saw him raise his bolo, such aggression ceased when appellant succeeded in grabbing the bolo, and appellant was not hit by the stone hurled at him. For at that juncture, appellant no longer faced any danger to his life and limb.

When an unlawful aggression which has begun no longer exists, one making a defense has no right to kill or even injure the former aggressor.[21]

The commission of the crime not having been attended by any qualifying circumstance, appellant is liable only for homicide, and absent any aggravating or mitigating circumstance, the penalty therefor is reclusion temporal in its medium period, subject to the application of the Indeterminate Sentence Law.

As to the civil aspect of the case, this Court affirms the award by the trial court of P50,000.00 civil indemnity in accordance with prevailing jurisprudence,[22] as it does the award of P32,397.00 representing funeral expenses,[23] the incurrence of which was admitted by the defense.[24]

WHEREFORE, the appealed decision is hereby **AFFIRMED** with **MODIFICATION**.

Appellant, Pepe Bautista y Sabado, is hereby found guilty beyond reasonable doubt of **HOMICIDE** and is sentenced to suffer an indeterminate penalty of Twelve (12) Years of prision mayor as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal as maximum, with the accessory penalties provided by law; and to pay the heirs of Rodolfo Bacoling P50,000.00 as civil indemnity and P32,397.00 as actual damages.

SO ORDERED.

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

[1] Penned by Executive Judge Vincent Eden C. Panay.

[2] Rollo at 3.

[3] Transcript of Stenographic Notes (TSN), April 27, 1994 at 2-3; TSN, June 21, 1994 at 2-3.

[4] TSN, June 21, 1994 at 3-4.

[5] TSN, April 27, 1994 at 2-6.

[6] TSN, February 20, 1996 at 5.

[7] TSN, June 21, 1994 at 4-5.

[8] Records at 10.

[9] TSN, February 4, 1998 at 5.

[10] Id. at 6-8.

[11] Rollo at 19-42.

[12] Id. at 62-78.

[13] Id. at 41.

[14] *People v. Aquino*, 342 SCRA 141 (2000).

[15] *People v. Hilot*, 342 SCRA 128 (2000) citing *People v. Marcelino, et al*, 316 SCRA 104 (1999).

[16] 237 SCRA 653 (1994) cited in *People v. Jariolne*, 331 SCRA 674 (2000) and *People v. Germina*, 290 SCRA 146 (1998).

[17] People v. Rabanillo, 307 SCRA 613(1999).

[18] People v. Antonio, 335 SCRA 646 (2000).

[19] TSN, February 4, 1998 at 5-6.

[20] Id. at 7-8

[21] People v. Real, 308 SCRA 244 (1999).

[22] People v. Delim, G.R. No. 142773, January 28, 2003.

[23] People v. Bolinget, et al., G.R. No. 137949-52, December 11, 2003; People v. Arellano, 334 SCRA 775 (2000).

[24] TSN, February 21, 1996 at 3.

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