

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GABRIEL ANNIBONG Y INGGAO, APPELLANT.

G.R. No. 139879. May 08, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision[1] of the Regional Trial Court of Apayao, Branch 26, in Criminal Case No. 9-98, convicting appellant Gabriel Annibong of murder and sentencing him to death.

The information[2] filed by the Provincial Prosecutor reads:

That on or about February 13, 1998 at around 2:00 o'clock P.M. at barangay Do×ja Loreta, Pudtol, Apayao, within the jurisdiction of this Honorable Court, the above-named accused armed with a long firearm, with intent to kill and with the attendance of treachery and evident premeditation did then and there willfully, unlawfully and feloniously (sic) attack, assault and shot one Cpl. Fidel Obngayan,[3] inflicting upon the latter gun shot wounds which caused death.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty to the charge. Although he admitted killing the victim, appellant invoked self-defense. Thus, the order of the trial was reversed, with the defense presenting its evidence first.

For the defense, appellant Gabriel Annibong and lone eyewitness Artemio Tallong, a CAFGU member assigned at the Army Camp Detachment at Do×ja Loreta, Pudtol, Apayao, testified. Tallong was also adopted as a prosecution witness.

Appellant, a kitchen aide serving at the camp, testified that on February 13, 1998, while he and Tallong were in their camp at Barangay Do×ja Loreta, Pudtol, Apayao, the victim arrived coming from Centro, Pudtol, Apayao. When Obngayan went to the kitchen to get a drink, he was irritated to discover the water container empty. Hopping mad, Obngayan rushed to appellant and boxed him three times in the stomach and uttered: "Vulva of your mother, it is better that I will kill you." Obngayan proceeded to his bunker, got his M-16 rifle and aimed it at appellant, prompting the latter to shoot the victim once. After the first shot, the victim managed to stand and aim his gun at appellant prompting the latter to fire his M-16. But since the M-16 malfunctioned, appellant grabbed the garand rifle of Artemio Tallong and shot the victim once more. Immediately after the shooting, appellant escaped with Tallong and proceeded to Suan, Pudtol, Apayao. Two days later, both surrendered to Governor Batara P. Laoat, who advised them to surrender to the police.

ARTEMIO TALLONG was presented by the defense to show unlawful aggression on the part of the victim.[4] As one of the CAFGU's on duty at the time of the incident, he said he witnessed the incident from the time Cpl. Obngayan arrived at the detachment until he was shot.

Tallong narrated that on February 13, 1998, around 2:00 P.M., Cpl. Obngayan arrived at the Philippine Army detachment in Brgy. Do×ja Loreta, Pudtol, Apayao where he was then the commanding officer.[5] Still perspiring

and thirsty from an operation in Centro, Pudtol, Apayao, Cpl. Obngayan hurriedly proceeded to the camp's kitchen for a drink. Incensed that all of the water containers were empty, Obngayan confronted appellant whose duty it was to maintain the camp's kitchen. He gave appellant a jab in the abdomen, then slowly walked away towards his bunker.

Infuriated, appellant without warning, picked up his M-14 armalite rifle and strafed the former on the back. Obngayan sprawled bloodied on the ground. Shortly after, appellant took the garand rifle of Artemio Tallong, and unleashed another barrage of gunshots. Obngayan died instantaneously with his brain splattered and an eye fallen on the ground.

The prosecutor adopted the testimony of defense witness Artemio Tallong for purposes of the prosecution. Other prosecution witnesses were Dr. Dan Redel Edroso, the Municipal Health Officer of Pudtol, Apayao, who conducted a post-mortem examination on the victim's body; Lt. Walfrido Felix Querubin of the Philippine Army; Cpl. Robert Salarzon, from the Philippine Army assigned at Nararragan, Ballesteros, Cagayan; Capt. Efren Paulino, from the Philippine Army assigned at the Headquarters Service Battalion, Camp Upi, Gamu, Isabela; and Mrs. Agnes Obngayan, the victim's widow.

DR. DAN REDEL EDROSO declared that on February 14, 1998, he conducted an autopsy[6] on the victim's remains which revealed nine gunshot wounds. From his examination of the wounds, Dr. Edroso opined that two were inflicted from the back of the victim while five were inflicted while the victim was already lying down with his face up.[7]He said, the multiple shots on the victim's head caused his immediate death.

LT. WALFRIDO FELIX QUERUBIN, the Platoon Leader of the Headquarters Company of the Philippine Army in Capagaypayan, Luna, Apayao, testified that he arrived at the scene of the crime after Obngayan was slain.[8] According to him, he found the victim lying up, his left eye fallen and brains scattered on the ground.[9] Shortly after his arrival, Lt. Querubin inventoried the firearms issued to the detachment and found the firearms all intact in the cabinet except an M-14 and a garand rifle[10]— the weapons used by appellant.

Cpl. Robert Salarzon and Capt. Efren Paulino from the Philippine Army corroborated the testimony of Lt. Querubin as to the position of the victim's body when they arrived at the scene of the crime for investigation.[11]

Mrs. AGNES Obngayan testified that her husband was the sole breadwinner of the family and was earning P9,000 monthly, more or less.[12]According to her, Cpl. Obngayan was 35 years old when he died, leaving her with their two children. As a result of Fidel's death, the Obngayans incurred expenses amounting to thirty thousand pesos more or less.[13]

On June 15, 1999, the trial court rendered its decision finding appellant guilty beyond reasonable doubt of the murder of his commander and sentencing him as follows:

WHEREFORE, foregoing all considered, and finding the accused GABRIEL ANNIBONG y INGAO (sic) guilty beyond reasonable doubt for the crime of Murder committed under Article 248 paragraph one (1) of the Revised Penal Code of the Philippines as charged in the information with the special aggravating circumstance of with insult or in disregard of the respect due the offended party on account of his rank under Article 14 paragraph 3 of the same Penal Code, this Court hereby sentences said accused Gabriel Annibong y Ingao to suffer the Supreme penalty of DEATH.

Accused is further ordered to indemnify the surviving spouse of the victim, Cpl. Fidel Obngayan, in the amount of FIFTY THOUSAND PESOS (P50,000.00), for such death, in addition to the payment of TWENTY THOUSAND PESOS (P20,000.00) for moral damages, TEN THOUSAND PESOS (P10,000.00) as and for exemplary damages, TWENTY FIVE THOUSAND PESOS (P25,000.00) for actual expenses and FIVE HUNDRED THOUSAND PESOS (P500,000.00) for the lost earnings of the victim and the costs of the suit.

The BJMP, Luna, Apayao is ordered to immediately shift the person of the accused to the Bureau of Prisons, Muntinlupa City for detention thereat to await the automatic review of this decision.

SO ORDERED.[14]

By reason of the death sentence imposed upon appellant, the decision is now before us for automatic review.

In his brief, appellant ascribes to the trial court the following errors:

- I. In finding and holding that there were no unlawful aggression on the part of the victim Corporal Fidel Obngayan against the accused.
- II. In finding that there was the qualifying circumstance of treachery which would qualify the crime to murder.
- III. In finding that the aggravating circumstance of insult or disregard to rank is present in the case at bar.
- IV. In finding the lone eyewitness Artemio Tallong as credible and trustworthy witness together with his oral testimony.
- V. In not finding that the accused acted in SELF-DEFENSE when he killed the victim.[15]

We shall now consider the following pertinent issues: (1) whether there was unlawful aggression on the part of Cpl. Obngayan; (2) whether the killing was attended by the qualifying circumstances of treachery and evident premeditation; and (3) whether the imposition of the death penalty on appellant is appropriate.

Appellant admits shooting Cpl. Obngayan. But he claims that he did so merely to repel the victim's unlawful aggression. He contends that since the victim was the actual aggressor, there can be no treachery. He adds that he had not intended to insult or disregard the rank of the victim. He insists that Artemio Tallong was a turncoat whose testimony should, therefore, be considered unworthy of credit.

In his Brief, appellant offers no substantial reason, however, why we should overturn the trial court's appreciation of the evidence presented against him. Instead, he merely reiterates in this appeal his claim of self-defense. In cases where the accused admits committing the crime but invokes self-defense, the basic rule that the burden of proving the guilt of the accused lies on the prosecution is reversed, and the burden of proof is shifted to the accused to prove the elements of his defense.[16] In our view, the defense has not discharged its burden successfully.

The elements of self-defense are (1) that the victim has committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) that there is reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) that there is lack of sufficient provocation on the part of the person claiming self-defense or, at least, that any provocation executed by the person claiming self-defense be not the proximate and immediate cause of the victim's aggression.[17]

Granting that the initial act of aggression came from the victim when he cursed and then punched appellant three times in the stomach, such aggression did not amount to actual or imminent threat to appellant's life as the victim already ceased and desisted thereafter. As defense witness Tallong testified, the victim was already walking slowly away towards his bunker[18] at the time appellant shot him incessantly. At that point, it was no longer necessary for appellant to shoot Obngayan in order to protect himself. As held in *People v. More*,[19] "In legitimate self-defense the aggression must still be existing or continuing when the person making the defense attacks or injures the aggressor. Thus when the unlawful aggression ceases to exist, the one making the defense has no more right to kill the former aggressor."

Appellant's act of shooting the unarmed victim first with an M-16 and a garand rifle, successively, belies his claim

that he acted in self-preservation and indicates nothing more than the desire to kill. Thus, Tallong testified:

Q: You said that Gabriel Annibong used the M-14 rifle in shooting Fidel Ubngayan, how come that the garand was also used by Gabriel Annibong in shooting Fidel Ubngayan?

A: He used first the M-14 rifle in shooting Fidel Ubngayan but when he was not satisfied he took the garand and used it again in shooting Ubngayan. [20]

Tallong's recital of the events, in our view, is more in accord with the natural course of things and ordinary human experience. Further, his testimony is validated by the evidence on record on all material points. The post-mortem examination of Dr. Edroso, while negating appellant's tale that he shot the victim only twice, confirmed Tallong's story that there were more shots fired. Tallong's narration, as to the position of the victim when shot, tallied with the doctor's findings that two of the gunshot wounds were inflicted while the assailant was behind the victim and that the other five were dealt while the victim was lying face up on the ground.[21] His account that the victim was unarmed matched with Lt. Querubin's testimony that all of the weapons issued to the detachment were found intact except the M-16 and the garand rifle used in perpetrating the crime.[22]

The credibility of prosecution witness Artemio Tallong is not in any way lessened, much less impaired, by the motives imputed to them by appellant. Appellant claims that Tallong was a defector who fled the scene with him immediately after the incident, and surfaced with appellant only two days after the shooting. Appellant's contention is nothing more than a desperate attempt to discredit said witness. Different people react differently to a given type of situation and there is no standard form of behavioral response when one is confronted with a startling, strange or frightful experience. Considering that appellant himself admitted that Tallong had no participation in the murder, the fact that he fled the scene with appellant should not by itself be taken against him. This Court recognizes that the initial reticence of witnesses to volunteer information about a criminal case and their aversion to be involved in criminal investigations due to fear of reprisal is not uncommon.[23]

The element of treachery attended the slaying of Obngayan because (1) the means of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[24] In this case, the victim was totally unprepared for the volley of gunshots by appellant. The victim was unarmed, while appellant was carrying a weapon.[25] When shot, the victim was already retiring, as he was then slowly turning away towards his bunker. As he was already walking away towards his bunker, he was clueless of appellant's sudden attack. Such unexpected and sudden attack under circumstances that render the victim unable and unprepared to defend himself constitutes alevosia.[26]

From the circumstances of this case, we are persuaded that appellant consciously and purposely adopted the means of attack to insure the execution of the crime without risk to himself. Thus, the trial court did not err when it ruled that treachery qualified the killing to murder.

As for evident premeditation, we agree that its elements were not clearly established by the prosecution. To prove this attendant circumstance, evidence must show: (1) the time the offender determined to commit the crime; (2) an act indicating that the offender had clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender to reflect upon the consequences of his act.[27] There is no clear proof as to when the accused hatched the murderous plan, and the interval of time therefrom to its commission.

But we differ from the trial court's finding and conclusion with regard to the aggravating circumstance of disregard of rank as well as respect due to the offended party. Although the victim was the immediate superior officer of the appellant, being his Detachment Commander at the time of the commission of the crime,[28] this fact was not alleged in the information. Hence, this circumstance cannot be appreciated to increase appellant's

liability following Section 8 of Rule 110.[29]

Appellant's surrender to police authorities after the shooting should be credited in his favor as a mitigating circumstance, pursuant to Article 13 (7) of the Revised Penal Code.[30] There is voluntary surrender if three conditions are satisfied: (1) the offender has not been arrested; (2) he surrendered himself to a person in authority or to an agent of a person in authority; and (3) his surrender was voluntary. There is no dispute that appellant voluntarily surrendered to the governor[31] a person in authority, then to the police, before he was arrested. In *People v. Antonio*,[32] the accused's surrender to the mayor was considered as a mitigating circumstance. In the same way, appellant's voluntary surrender to the governor should be considered in his favor. It is immaterial that appellant did not immediately surrender to the authorities, but did so only after the lapse of two days. In *People v. Bautista*,[33] the voluntary surrender of the accused to a police authority four (4) days after the commission of the crime was considered attenuating. Finally, even if not raised on appeal, since an appeal opens the whole case for review, we could take into account this mitigating circumstance favorable to appellant.

The penalty for murder is reclusion perpetua to death, both indivisible penalties. Conformably with Art. 63, par. 3, of the Revised Penal Code, when the commission of the act is attended by one mitigating and there is no aggravating circumstance, the lesser penalty shall be imposed. Considering that the crime was not attended by the alleged circumstance of evident premeditation, the undisputed presence of the mitigating circumstance of voluntary surrender entitles appellant to the imposition of the minimum penalty for murder. Thus, the proper imposable penalty is reclusion perpetua, being the lesser penalty.[34]

As to the award of damages, the trial court offered no explanation for the award of P500,000 as lost earnings. Cpl. Obngayan was 35 years old at the time of his death. His wife and superiors testified that he was earning P9,000 a month[35] during his lifetime or an annual income of P108,000. Using the accepted formula, we fix the indemnity for loss of earning capacity[36] of Cpl. Obngayan at P1,620,000, thus:

$$\begin{aligned} &\text{Net earning capacity} \\ &= \\ &2/3 \times (80-35) \times [P108,000 - \frac{1}{2} (P108,000)] \\ &= \\ &2/3 \times (45) \times P54,000 \\ &= \\ &35.33 \times P54,000 \\ &= \\ &P1,620,000 \end{aligned}$$

We delete the twenty five thousand peso-award for actual expenses in the absence of requisite proof,[37] but in lieu thereof, P10,000 is awarded as nominal damages.[38] As for moral damages, pursuant to current jurisprudence, the amount should be increased to P50,000.[39] The award of P50,000 as death indemnity to the heirs of the deceased is retained as well as the award of P20,000 as exemplary damages, which we find to be

sufficient and justified by the presence of the qualifying circumstance of treachery.

WHEREFORE, the decision of the Regional Trial Court, Apayao, Branch 26, in Criminal Case No. 9-98, is **AFFIRMED** with **MODIFICATION**. Appellant Gabriel Annibong y Inggao is declared guilty of murder, but his sentence is hereby reduced to reclusion perpetua. Further, he is ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity, P1,620,000.00 for lost earnings, P10,000.00 as nominal damages, P50,000.00 as moral damages, and P20,000 as exemplary damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Panganiban, J., on leave.

[1] Rollo, pp. 20-30.

[2] Id. at 20-21; Records, p. 32.

[3] Also spelled "Ugnayan" and "Ubngayan" in other parts of the records.

[4] TSN, 23 November 1998, p. 2.

[5] Id. at 2-3.

[6] Records, p. 114.

[7] TSN, 4 March 1999, p. 10.

[8] TSN, 15 March 1999, pp. 3-4.

[9] Id. at 5.

[10] Ibid.

[11] TSN, 27 April 1999, pp. 4-5 (Cpl. Robert Salarzon); TSN, 27 April 1999, pp. 6-7 (Capt. Efren Paulino).

[12] TSN, 15 March 1999, p. 31.

[13] Id. at 30.

[14] Rollo, pp. 29-30.

[15] Id. at 64.

[16] *People v. Vallador*, 327 Phil. 303, 312-313 (1996).

[17] *People v. Enfectana*, G.R. No. 132028, 19 April 2002, p. 10.

[18] TSN, 23 November 1998, p. 4.

[19] G.R. No. 128820, 23 December 1999, 321 SCRA 538, 545.

[20] TSN, 23 November 1998, p. 11.

[21] TSN, 4 March 1999, p. 10.

[22] TSN, 15 March 1999, p. 5.

[23] *People v. Antonio*, G.R. No. 128900, 14 July 2000, 335 SCRA 646, 661.

[24] *People v. Mabubay*, G.R. No. 87018, 24 May 1990, 185 SCRA 675, 680.

[25] *Supra*, note 18.

[26] *Supra*, note 17 at 11.

[27] *People v. Kinok*, G.R. No. 104629, 13 November 2001, 368 SCRA 510, 521.

[28] TSN, 23 November 1998, p. 3.

[29] *People v. Feliciano*, G.R. Nos. 127759-60, 24 September 2001, 365 SCRA 613, 630.

[30] ART. 13. Mitigating circumstances. — The following are mitigating circumstances:

x x x

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

x x x

[31] TSN, 12 January 1999, p. 14.

[32] G.R. No. 128900, 14 July 2000, 335 SCRA 646, 668.

[33] G.R. No. 109800, 12 March 1996, 254 SCRA 621, 629, citing *People v. Yecla*, 68 Phil. 740 (1939).

[34] *People v. Lopez*, G.R. No. 132168, 10 October 2000, 342 SCRA 431, 440.

[35] *Supra*, note 12.

[36] Loss of earning capacity = Life expectancy x (gross annual income - living expenses)

Life expectancy = $\frac{2}{3}$ (80 - age at time of death)

Living expenses = 50% of gross annual income (*People v. Gelin*, G.R. No. 135693, 1 April 2002, p. 9.)

[37] *People v. Nullan*, 365 Phil. 227, 256 (1999).

[38] *People v. Hate*, G.R. No. 145712, 24 September 2002, p. 8.

[39] *People v. Salva*, G.R. No. 132351, 10 January 2002, p. 12; *People v. Guzman*, G.R. No. 132750, 14 December 2001, p. 14; *People v. Herrera*, G.R. Nos. 140557-58, 5 December 2001, p. 23.

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