

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELO BATES, ACCUSED-APPELLANT. MARCELO BATES, JR. (AT-LARGE), ACCUSED.

G.R. No. 139907. March 28, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is an appeal taken by accused Marcelo Bates from the Judgment of the Regional Trial Court of Ormoc City (Branch 35) finding him guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer imprisonment of “forty years of reclusion perpetua”.

The Information states:

That on or about the 28[th] day of November 1995, at around 5:30 o’clock in the afternoon, in Brgy. Esperanza, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused MARCELO BATES and MARCELO BATES, JR., conspiring together and confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, being then armed with long bolos, did then and there willfully, unlawfully and feloniously stab and hack to death the person of the victim herein, JOSE BOHOLST without giving the latter sufficient time to defend himself, thereby inflicting upon him multiple wounds which caused his instantaneous death. Death Certificate and Autopsy Report are hereto attached. In violation of Article 248, Revised Penal Code.[1]

Upon arraignment, Marcelo Bates entered a plea of not guilty.

The version of the prosecution:

Around 2:00 in the afternoon of November 28, 1995, Edgar Fuentes, Simon Fuentes and Jose Boholst left Barangay Esperanza, Ormoc City to deliver copra to a certain Fely Rodado at Barangay Green Valley, Ormoc City. After delivering copra around 5:00 in the afternoon, the three men headed back to Barangay Esperanza. While they were along a trail leading to the house of Carlito Bates, the latter suddenly emerged from the thick banana plantation surrounding the trail, aiming his firearm at Jose Boholst who was then walking ahead of his companions. Jose grabbed Carlito’s right hand and elbow and tried to wrest possession of the firearm. While the two were grappling for possession, the gun fired, hitting Carlito who immediately fell to the ground. At that instant, Marcelo Bates and his son Marcelo Bates, Jr., brother and nephew of Carlito, respectively, emerged from the banana plantation, each brandishing a bolo. They immediately attacked Jose hacking him several times. Jose fell to the ground and rolled but Marcelo and his son kept on hacking him. Marcelo, then, turned to Simon and Edgar and shouted “huwes de kutsilyo”. Upon hearing the same, Simon and Edgar ran.[2]

Around 5:30 of the same afternoon, Concepcion Boholst, wife of Jose, was at their home preparing dinner. Upon being informed by a certain Violeta Fuentes that Jose was waylaid, she immediately went to the place where the incident reportedly happened which is less than a hundred meters from their house. There, she saw Marcelo Bates and his son Marcelo, Jr. hacking Jose who was lying face up. She pleaded for them to stop but they did not listen.

She did not see Carlito. She went home fearing for her life, thinking that Marcelo and his son might turn their ire on her.[3]

The version of the defense:

Around 5:00 in the afternoon of November 28, 1995, Ponciano Sano went to the house of Marcelo Bates. Ponciano was sent by Barangay Captain Feliseo Sano to get a chicken from Marcelo. While they were trying to catch a chicken, they noticed Jose Boholst, Edgar Fuentes, and Simon Fuentes approach the house of Carlito Bates which is about twenty meters away from Marcelo's house. Thereafter, they saw Jose drag Carlito out of the latter's house while both were arguing and grappling. Marcelo immediately ran towards Jose and Carlito but when Marcelo was about to approach them, Jose shot Carlito with a gun. Edgar and Simon ran away. Upon seeing Carlito fall to the ground, Marcelo attacked Jose but the latter also fired a shot at him. However, Marcelo was able to duck and avoid being shot. Jose was about to shoot Marcelo a second time but the latter retaliated by hacking Jose with a bolo hitting him on his neck and causing him to fall to the ground. Marcelo then went to the aid of his brother Carlito but upon seeing that he was already dead, he went back to where Jose was lying and again hacked him. Thereafter, Ponciano picked up the gun used by Jose and surrendered it to Barangay Captain Sano. Marcelo also surrendered himself to the said barangay captain. During the whole incident Marcelo Bates, Jr. was not present.[4]

Upholding the prosecution evidence, the trial court rendered its Judgment, dated June 4, 1999, the dispositive portion of which reads as follows:

Wherefore, all the foregoing considered, the Court finds the accused Marcelo Bates GUILTY beyond reasonable doubt of the crime of murder as charged and hereby sentences him to suffer imprisonment of forty (40) years reclusion perpetua after appreciating the mitigating circumstance of voluntary surrender, and to pay the offended party the sum of P50,000.00 as indemnity and another sum of P50,000.00 as moral damages.

If the accused is a detainee, the period of his imprisonment shall be credited to him in full provided he abides in writing by the terms and conditions for convicted prisoners, otherwise, for only four-fifths (4/5) thereof.

SO ORDERED.

Aggrieved, Marcelo Bates brought the present appeal. He raises the following:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE DEFENSE INTERPOSED BY ACCUSED APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS ATTENDANCE IN THE COMMISSION OF THE CRIME CHARGED ON THE ASSUMPTION THAT ACCUSED-APPELLANT DID NOT ACT IN SELF-DEFENSE.

IV

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING PASSION AND OBFUSCATION AS A MITIGATING CIRCUMSTANCE IN FAVOR OF ACCUSED-APPELLANT ON ASSUMPTION THAT THE LATTER DID NOT ACT IN SELF-DEFENSE.[5]

Appellant claims self-defense. Under Article 11 of the Revised Penal Code, anyone who acts in defense of his person or rights do not incur any criminal liability provided that the following circumstances concur: First, unlawful aggression on the part of the victim; second, reasonable necessity of the means employed to prevent or repel it; and third, lack of sufficient provocation on the part of the person defending himself.[6] It is a settled rule that when an accused admits killing the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he acted in self-defense; and as the burden of the evidence is thus shifted to him, he must rely on the strength of his own evidence and not on the weakness of the prosecution.[7]

After scrutiny of the evidence presented, we agree with the trial court that self-defense was not established by appellant. He testified that he initially inflicted only a single hack wound on the neck of Jose causing the latter to fall to the ground. He then went to the aid of his brother Carlito but upon finding that he was already dead, he went back to where Jose fell. Appellant admitted that at that time, Jose was in a lying position still alive but hardly moving.[8] Under such a situation, Jose could have hardly put up any defense, much less, make an aggressive move against appellant. Despite Jose's condition, appellant repeatedly hacked Jose. Granting that Jose was the one who first committed unlawful aggression, appellant was no longer justified in further inflicting wounds upon Jose because at that time, the latter was already lying helpless on the ground. At that moment, unlawful aggression on the part of Jose had ceased. It is a settled rule that when unlawful aggression ceases, the defender has no longer any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed.[9] Hence, the fact that unlawful aggression on the part of Jose already ceased when Marcelo repeatedly hacked him rules out the possibility of self-defense, whether complete or incomplete.[10] Thus, the first assigned error is without merit.

In his second assigned error, appellant questions the credibility of the prosecution witnesses. We have time and again, held that the issue of credibility is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts; and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have affected the outcome of the case.[11] In the present case, the trial court found the testimonies of the prosecution witnesses to be more credible than those of the defense witnesses.

We find no cogent reason to depart from the findings of the trial court.

Prosecution witness Edgar Fuentes testified that Jose and Carlito grappled for possession of the gun. Appellant insists that this is belied by the absence of gunpowder burns on the wound of Carlito. Appellant cites the medical findings and the testimony of Dr. Rogelio Mercado who conducted the autopsy on the bodies of Jose and Carlito, to the effect that the absence of gunpowder burns on the wound of Carlito would indicate that he and Jose did not fight for the possession of the gun. We are not convinced.

The finding of the physician is not certain and conclusive as it is contradicted by no less than appellant himself when he testified, as follows:

Q.

After you noticed Jose Boholst with two companions went to your house of your elder brother, what did you

notice if there was any?

A.

This Jose Boholst dragged my elder brother from the door to the yard.

Q.

And how far were you at that time when you noticed that Jose Boholst drag your brother?

A.

At the same distance of about 20 meters from our house.

Q.

While you said that Jose Boholst dragged your brother Carlito Bates, were they arguing with each other?

A.

Yes, sir and they were grabbing(sic).

Q.

Do you know what they were arguing about?

A.

I've heard that they were arguing about the palm of the coconut tree.

Q.

What else did you know if you notice that Carlito Bates was arguing as a matter of fact they were grabbing(sic) each other, what did you do?

A.

Jose Boholst shot my elder brother.

Q.

My question is, after you noticed that Jose Boholst and Carlito Bates were arguing, what if any did you do?

A.

I approached them.

Q.

Why?

A.

I was about to settle them down, but when I arrived and my brother already fell down.

Q.

What happened to your brother, why did he fell down?

A.

Because he was shot by Jose Boholst.[12]

Further, appellant claims that the testimony of Concepcion Boholst should not be given credence. He argues that if Concepcion really witnessed the killing of her husband, she should have seen the body of Carlito Bates who was then lying dead on the ground at the place where her husband was allegedly being hacked and stabbed. We are not persuaded.

We agree with the Office of the Solicitor General that it was natural for Concepcion to fail to notice the body of Carlito when she was faced with the shocking scene of her husband being hacked and stabbed to death by appellant and his son. The Supreme Court has long recognized that 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 strange, startling or frightful experience.[13] In the present case, it is perfectly normal for Concepcion to be oblivious of the persons who were present at the crime scene at that time because of the frightening sight that confronted her.

Appellant points out inconsistencies in the testimonies of prosecution witnesses Edgar and Concepcion. However, it is more apparent than real. Edgar and Concepcion witnessed the crime at different stages of its execution. The failure of Edgar and Concepcion to see each other at the crime scene can be gathered from their testimonies that at the time Concepcion arrived at the scene of the crime, Edgar, together with his brother Simon, already left. Granting that there was indeed an inconsistency in the testimonies of Edgar and Concepcion such is only a minor flaw that does not affect their credibility. Both did not detract from the main fact at issue and were consistent in positively identifying appellant and his son as the ones who killed Jose. Discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility.[14]

As to the failure of the prosecution to present other witnesses, the rule is settled that the prosecution is imbued with the discretion to choose whom to present as witnesses.[15] The prosecution need not present each and every witness but only as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with for being merely corroborative in nature. This Court has ruled that the non-presentation of corroborative witnesses would not constitute suppression of evidence and would not be fatal to the prosecution's cause.[16] Hence, the non-presentation of Violeta Fuentes, Simon Fuentes and Junior Comesyon as witnesses for the prosecution is not fatal to its cause nor may it be considered suppression of evidence, as their testimonies would merely corroborate the earlier testimonies of Edgar and Concepcion.

However, we agree with the contention of the appellant that the trial court erred in appreciating the qualifying circumstance of treachery.

The pertinent provision of Article 14 of the Revised Penal Code reads:

Art. 14. Aggravating circumstances. – The following are aggravating circumstances:

... ..

16. That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

Under established jurisprudence, two conditions must concur to establish treachery: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (2) the means of execution was deliberately or consciously adopted.[17] We have held in a line of cases that:

[c]ircumstances which qualify criminal responsibility, such as treachery, cannot rest on mere conjecture, no matter how reasonable or probable such conjecture may be. They must be based on facts of unquestionable existence. Such circumstances must be proved as indubitably as the crime itself. Treachery as a qualifying circumstance should be established by proof beyond reasonable doubt.[18]

In the present case, the only evidence presented by the prosecution to prove that there was treachery was the testimony of Edgar Fuentes that while Jose and Carlito were grappling, he saw appellant and his son emerge from the thick banana plantation and attack Jose with the bolos they were carrying. This, alone, does not prove treachery. In *People vs. Albao*,[19] we held that:

As a rule a sudden attack by the assailant, whether frontally or from behind, is treachery, if such mode of attack was coolly and deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply, however, where the sudden attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim, or where their meeting was purely accidental.

In *People vs. Magaro*,[20] we held that:

The circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself.

There is nothing to indicate from the testimony of Edgar that appellant and his son employed means and methods to insure that they will be able to attack Jose without risk to themselves arising from any defense that Jose might make. There is no evidence to show that they purposely remained hidden in the thick banana plantation awaiting for the opportune time to attack Jose with impunity.

Hence, for failure of the prosecution to prove treachery or any other circumstance which would qualify the killing of Jose to murder, appellant should only be held liable for the crime of homicide punishable under Article 249 of the Revised Penal Code.

Appellant was able to prove the mitigating circumstance of voluntary surrender, as shown by the testimony of Barangay Captain Feliseo Sano.[21]

Passion and obfuscation may not be properly appreciated in favor of appellant. To be considered as a mitigating circumstance, passion or obfuscation must arise from lawful sentiments and not from a spirit of lawlessness or revenge or from anger and resentment.[22] In the present case, clearly, Marcelo was infuriated upon seeing his brother, Carlito, shot by Jose. However, a distinction must be made between the first time that Marcelo hacked Jose and the second time that the former hacked the latter. When Marcelo hacked Jose right after seeing the latter shoot at Carlito, and if appellant refrained from doing anything else after that, he could have validly invoked the mitigating circumstance of passion and obfuscation. But when, upon seeing his brother Carlito dead, Marcelo went back to Jose, who by then was already prostrate on the ground and hardly moving, hacking Jose again was a clear case of someone acting out of anger in the spirit of revenge.

Concepcion Boholst testified that the death of her husband, Jose, caused her deep anguish and sleepless nights.[23] The award of moral damages in the amount of P50,000.00 is therefore justified. And pursuant to existing jurisprudence, the heirs of the deceased are entitled to civil indemnity in the amount of P50,000.00 as correctly awarded by the trial court plus P25,000.00 for temperate damages, representing the expenses they

incurred for the wake and burial of the deceased.[24]

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. Applying the Indeterminate Sentence Law and appreciating the mitigating circumstance of voluntary surrender which is not offset by any aggravating circumstance, the maximum period of the penalty to be imposed shall be taken from the minimum of reclusion temporal which is 12 years and 1 day to 14 years and 8 months; while the minimum period shall be taken from the penalty next lower in degree which is prision mayor or 6 years and 1 day to 12 years.

For the guidance of both the bench and bar, it must be mentioned that the trial court committed an error in imposing the penalty of “forty (40) years of reclusion perpetua”. We reiterate our earlier pronouncements in a number of cases that while Section 21 of RA No. 7659 amended Article 27 of the Revised Penal Code by fixing the duration of reclusion perpetua from 20 years and 1 day to 40 years, reclusion perpetua remains to be an indivisible penalty in the absence of a clear legislative intent to alter its original classification as an indivisible penalty.[25] Hence, in applicable cases such as the present case, “reclusion perpetua” should simply be imposed without specifying its duration.

WHEREFORE, the decision of the Regional Trial Court of Ormoc City, Branch 35, is MODIFIED. Appellant Marcelo Bates is hereby found guilty beyond reasonable doubt of the crime of Homicide and is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor as the minimum to twelve (12) years and one (1) day of reclusion temporal as the maximum; and is ordered to pay the Heirs of Jose Boholst the amounts of P50,000.00 as civil indemnity for the latter’s death, P50,000.00 for moral damages and P25,000.00 as temperate damages.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] Original Records, p. 2.

[2] Testimony of Edgar Fuentes, TSN, November 18, 1997.

[3] Testimony of Concepcion Boholst, TSN, January 14, 1998.

[4] Testimony of Ponciano Jose, TSN, June 11, 1998, pp. 7-23; Testimony of Marcelo Bates, TSN, September 3, 1998, pp. 9, 16-23.

[5] Rollo, pp. 40-41.

[6] *People vs. Aglipa*, 327 SCRA 181 [2000].

[7] *People vs. Belaje*, 345 SCRA 604 [2000].

[8] See Testimony of Marcelo Bates, *supra*, p. 46.

[9] *People vs. Cotas*, G.R. No. 132043, May 31, 2000 [332 SCRA 627, 638].

[10] *People vs. Sambulan*, G.R. No. 112972, April 24, 1998 [289 SCRA 500, 513].

[11] *People vs. Glabo*, G.R. No. 129248, December 7, 2001; *People vs. Santos*, G.R. Nos. 135454-56, November 13, 2001; *People vs. Padilla*, G.R. No. 122736, November 14, 2001; *People vs. Virrey* G.R. No. 133910, November 14, 2001.

[12] TSN, September 3, 1998, pp. 10-13; 31-32.

- [13] People vs. Mamac, G.R. No. 130332, May 31, 2000.
- [14] People vs. Uy, G.R. No. 129019, August 16, 2000 [338 SCRA 232, 245].
- [15] People vs. Gomez, G.R. No. 132171, May 31, 2000 [332 SCRA 661, 669].
- [16] People vs. Bulfango, G.R. No. 138647, Sept. 27, 2002.
- [17] People vs. Reapor, G.R. No. 130962, October 5, 2001; People vs. Iglesia, G.R. No. 132354, September 13, 2001.
- [18] People vs. Camacho, 411 Phil. 715 (2001); People vs. Torejas, 150 Phil. 179 (1972); People vs. Flores and Ringor, 150 Phil. 400 (1972).
- [19] G.R. No. 125332, March 3, 2000. (327 SCRA 123, 130).
- [20] G.R. No. 113021, July 2, 1998. (291 SCRA 681, 690).
- [21] TSN, July 28, 1998.
- [22] People vs. Pampanga, G.R. No. L-66046 (139 SCRA 339, 441), October 17, 1985; People vs. Caliso, 58 Phil. 283; People vs. Gravino, 207 Phil. 107 (1983); People vs. Caber, Sr., G.R. No. 129252, Nov. 28, 2000 [346 SCRA 166, 175]; People vs. Rabanillo, G.R. No. 130010, May 26, 1999 [307 SCRA 613, 624].
- [23] TSN, January 14, 1998, p. 17.
- [24] Testimony of Concepcion Boholst, TSN, January 14, 1998, p. 16.
- [25] People vs. Lucas, G.R. Nos. 108172-73, May 25, 1994; People vs. Gatward, 335 Phil. 440 (1979); People vs. Quitlong, 354 Phil. 372 (1998); People vs. Bensig, G.R. No. 138989, September 17, 2002.

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