

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO MARCELO Y DELA CRUZ, APPELLANT.

G.R. No. 140385. April 14, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is an appeal from the Decision[1] of the Regional Trial Court of Macabebe, Pampanga, Branch 55, in Criminal Case No. 98-2107-M, finding appellant Mario Marcelo guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim Rodelio Manalang, the amount of P50,000 and to pay P80,000 as actual damages and the costs of suit.[2]

On August 11, 1998, an Information charging Mario Marcelo with murder was filed with the Regional Trial Court. The accusatory portion of the Information reads:

That on or about the 11th day of June 1998, in Barangay Sua, Municipality of Masantol, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MARIO MARCELO Y DELA CRUZ, with intent to kill, armed with a bladed weapon, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously assault, attack and stab Rodel (sic) Manalang, thereby inflicting upon the latter stab wounds on the different parts of his body which were the direct and immediate cause of his death shortly thereafter.

Contrary to law.[3]

On his arraignment, Mario Marcelo, assisted by counsel, entered a plea of not guilty.

The Case for the Prosecution[4]

At about 6:00 p.m. on June 11, 1998, Christopher Sunga and his friends Rodel Bautista, Rodelio Manalang, Arsenio Madriga, and Ednor Cabrera were in the house of Dominador Sunga, Christopher's father, located at Barrio Sua, Masantol, Pampanga. They were having a drinking spree in celebration of Christopher's birthday. At about 8:00 to 9:00 p.m., Dominador arrived with the appellant. The latter joined Christopher and his friends in their drinking and merrymaking. After sometime, a commotion ensued when the appellant created trouble and challenged Ednor Cabrera to a duel. Christopher's mother tried to calm the protagonists. When she failed, Dominador intervened and succeeded in bringing the appellant home.

At about 11:00 p.m., Christopher and his friends agreed to call it a night. Christopher told his parents that he, along with Madriga and Bautista would accompany Manalang to their house. As they were passing by the house of the appellant, the latter sneaked from behind Manalang and stabbed him at the back. Bautista tried to restrain the appellant, but the latter stabbed him on the right arm. Afraid for his life, Bautista ran to their house and passed out. When he regained consciousness, Bautista was already at the Jose B. Lingad Hospital in San Fernando, Pampanga, being treated for his wounds.

Meanwhile, the appellant continued stabbing Manalang. Christopher and Madrigo ran to the Bantay Bayan Office for help. When they met Dominador on the way, they informed him of the stabbing incident. Dominador, together with some barangay tanods, proceeded to the place of the incident to conduct an investigation. On their way, Dominador saw Bautista who was then fleeing to their house and noticed the wound on the latter's right arm. Bautista told Dominador that he and Manalang were stabbed by the appellant. Dominador then rushed to the house of the appellant, and saw the bloodied body of Manalang lying by the roadside.[5]

The appellant was nearby, armed with a .22 air rifle. Dominador ordered the barangay tanods to bring Manalang to the hospital. He then talked to the appellant, but the latter threatened to shoot him if he came closer. Dominador managed to calm the appellant and bring him to his house.

While he was on his way home, Dominador saw SPO2 Nicolas Yabut and SPO3 Francisco V. Cortez, police officers of Masantol, Pampanga, who were on their way to arrest the appellant. Dominador accompanied them to the appellant's house.[6] SPO1 Renato Layug and SPO2 Nicolas Yabut brought the appellant to the police station.[7]

Dr. Eduardo T. Vargas, Medico-Legal Officer of the National Bureau of Investigation, performed an autopsy on the cadaver of Manalang and signed his Autopsy Report No. CNO-98-5-11[8] which contained the following findings:

POSTMORTEM FINDINGS

Pallor, integument and conjunctivae.

Abrasions, 6.0 x 1.5 cms., anterior chest wall, left side; 4.0 x 1.5 cms. dorsal aspect, right hand.

Incised stab wound, 2.0 cms., posterior chest wall, left side.

Stab wounds, all edges clean cut, with one sharp and the other blunt extremities.

(1) 2.0 cms., located on the chest wall along mid-axillary line, left side, 24.5 cms. from the anterior median line, directed forward, upward, medially, involving the skin and underlying soft tissues into the left thoracic cavity, penetrating lower lobe of the left lung with an approximate depth of 7.0 cms.

(2) 3.0 cms., located on the chest wall along posterior axillary line, left side, 24.5 cms. from the posterior median line, directed forward, the left thoracic cavity, penetrating upper lobe of left lung with an approximate depth of 8.0 cms.

(3) 3.0 cms., located on the posterior abdominal wall, left side 18.0 cms. from the posterior medial line, directed backward, upward, upward medially, involving the skin and underlying soft tissues, communicating with another wound, 2.5 cms. in length, located on the posterior abdominal wall, left side, 7.5 cms. from the posterior median line.

(4) 3.0 cms. located on the anterior aspect, left leg, 29.0 cms. above the left heel, directed backward, upward, laterally, involving the skin and underlying soft tissues, communicating with another wound 2.0 cms. in length, located on the posterolateral aspect, left 32.0 cms. above the left heel.[9]

Bautista and Christopher executed their Sinumpaang Salaysay[10] on June 16, 1998 and June 13, 1998, respectively, in which they identified the appellant as the assailant of Manalang.

During the trial, the prosecution adduced receipts evidencing the expenses of the heirs during the wake and the funeral services for the victim.[11]

The Case for the Appellant[12]

The appellant invoked self-defense. He testified that he was engaged in the sale of puto kutsinta which he himself prepared. He was also a barangay tanod.[13] At about 8:00 p.m. on June 11, 1998, he was fetched from his house by chief barangay tanod Dominador Sunga and barangay tanod Romeo Usi. He was told that they were to settle a dispute in the barrio. After settling the dispute, Usi went home. Dominador invited the appellant to his house where his son, Christopher, was celebrating his birthday. When they reached Dominador's house, the appellant saw that Christopher and his friends were having a drinking spree. Christopher offered him a drink which he took. After finishing it, he bid Christopher and his friends good bye and went home.[14]

At about 11:00 p.m., he and his wife were cooking puto kutsinta in their house. Their four children were already asleep. Manalang, Christopher and two others whose identity he did not know but whom he later learned were Bautista and Madriga, suddenly barged inside his house and took turns in mauling him.[15] Bautista held back his hands while Madriga and Christopher punched and kicked him. Manalang hit him with a bamboo club. He fought back and struggled to free himself from Bautista's hold. As he was struggling to extricate himself, Christopher and his cohorts continued to maul him. The appellant managed to get out of his house, and Christopher and his cohorts followed him. They continued mauling him, causing him to fall to the ground. Manalang continued to beat him using a bamboo club and even threatened to kill him and the members of his family.[16] Because of fist blows from Christopher and his cohorts, the appellant's eyes were swollen and he could hardly see. Although weakened from the beatings, he managed to stand up, pulled out his knife, and stabbed Manalang. He also stabbed Bautista on the right arm. He was so dizzy that he lost consciousness.[17]

When he came to his senses, Christopher and his cohorts were nowhere to be found. His wife, Teresita, was wiping his bloodied and bruised face with a cloth.[18] He asked his wife to fetch the parents of Manalang and when they arrived, he told them what happened. Manalang's parents apologized to him and even inquired where Manalang was.[19] He replied that he did not know.

Because of the incident, the appellant's house was in disarray. The puto kutsinta he and his wife prepared were scattered. Momentarily, barangay tanod Romeo Usi arrived with some police officers.[20] The tanods and the policemen told him that Manalang was already dead.[21] He explained to the police officers that Manalang and three others forcibly entered his house, mauled him and threatened to kill him and his family. Thereafter, he voluntarily surrendered to the police officers, and went with them to the police station. He executed a Sinumpaang Kontra Salaysay.[22] His wife, Teresita Marcelo also executed a Salaysay.[23] Both alleged that at 11:00 a.m. on June 11, 1998, while they were cooking puto kutsinta, Manalang, Bautista, Christopher and Madriga arrived at their house and mauled the appellant without any provocation on his part. To defend himself and his family, the appellant fought back and stabbed Bautista and Manalang. He adduced in evidence a Medico-Legal Certificate showing that he sustained the following injuries, to wit:

- Lacerated wound mucosa cheek appr. 0.5 cm. (L)
- Subconjunctival hemorrhage cu
- Contusion hematoma lower lip
- Contusion frontal area (R)
- Abrasion confluent deltoid area (R)
- Linear abrasion appr. 5 cms. (R)[24]

The appellant was also subjected to a chest x-ray. His injuries required medical attention for a period of less than nine days.[25]

The appellant filed a complaint[26] for frustrated murder against Bautista, Madriga and Christopher Sunga with the Office of the Public Prosecutor, docketed as I.S. No. 98-F-1569. The complaint was dismissed by the Provincial Prosecutor on September 15, 1998.[27] Bautista also filed a criminal complaint against the appellant

for attempted homicide.

On July 27, 1999, the appellant filed a Motion to Re-Open the defense's case on account of Ednor Cabrera's willingness to testify for him.[28] The court denied his motion.

On August 2, 1999,[29] the trial court rendered judgment convicting the appellant of the crime charged, the decretal portion of which reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of murder defined under Art. 248 of the Revised Penal Code and as a consequence of which Mario Marcelo y Dela Cruz is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to indemnify the family of the victim the amount of P50,000.00 plus P80,000.00 actual damages and to pay the cost of the proceedings.[30]

On August 16, 1999, the appellant filed a Motion for New Trial[31] alleging that Ednor Cabrera, the witness sought to be presented, was discovered sometime in July 1999, after the trial. He alleged that Cabrera had been in hiding for fear of his life, and nearly died at the hands of Dominador Sunga because of his refusal to testify against the appellant before the Municipal Circuit Trial Court of Macabebe, Pampanga for attempted homicide, filed by Rodel Bautista.[32]

On August 30, 1999, the court issued an Order denying the motion of the appellant.[33] He filed a motion for reconsideration[34] but the same was also denied in an Order dated September 10, 1999.[35]

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

I

THE COURT A-QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A-QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S PLEA OF SELF-DEFENSE.

III

THE COURT A-QUO GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME CHARGED.[36]

The appellant asserts that the trial court erred in not giving credence and probative weight to his testimony which was corroborated by the physical evidence, i.e., that he acted in complete self-defense when he stabbed Manalang. He posits that Manalang, Christopher Sunga, Madrigo and Bautista, suddenly barged in his house and mauled him while he was cooking puto kutsinta. Manalang threatened to kill him and his family. Because his life and those of his family were in real peril, he stabbed Bautista and Manalang. The latter died because of his stab wounds.

The appellant contends that assuming without admitting that he was guilty, he could only be held liable for simple homicide and not for murder as the prosecution failed to establish the qualifying circumstance of treachery or evident premeditation.

For its part, the Office of the Solicitor General asserts that the appellant's self-defense theory is unbelievable and unsubstantiated. The appellant is guilty of murder, the prosecution having proved the qualifying circumstance of treachery.

The Court's Ruling

The appellant's plea of self-defense is without merit.

The question of whether or not the appellant acted in self-defense is one of fact.[37] The trial court ruled, after calibrating the evidence on record, that the appellant's plea of self-defense had no factual basis, and that, in fact, he was the unlawful aggressor. The settled rule is that the trial court's findings are accorded finality, unless there appears on the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which if properly considered, would alter the result of the case.[38] This is because of the unique advantage of the trial court of observing at close range the conduct, demeanor, and deportment of the witnesses as they regale the trial court with their testimonies. The trial court gave credence and probative weight to the collective testimonies of the prosecution witnesses. We have carefully reviewed the records and find no justification to deviate from the findings of the trial court.

This Court consistently held that like alibi, self-defense is inherently weak.[39] When the accused invokes self-defense as an affirmative defense, the burden of evidence is shifted on him to prove his defense with clear and convincing evidence. By interposing self-defense, the accused thereby admits having deliberately killed or inflicted injuries on the victim. The accused must rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution.[40] If he fails to prove his defense, the evidence of the prosecution can no longer be disbelieved and the accused can no longer be exonerated of the crime charged.[41]

To sustain his affirmative defense of self-defense, the appellant was burdened to prove the confluence of the following essential elements, viz:

(1)

there must be unlawful aggression by the victim;

(2)

that the means employed to prevent or repel such aggression were reasonable; and

(3)

that there was lack of sufficient provocation on the part of the person defending himself.[42]

There can be no self-defense, complete or incomplete, unless the accused proves unlawful aggression on the part of the victim.[43] Unlawful aggression is a sudden and unexpected attack or an imminent danger thereof, and not merely a threatening or an intimidating attitude.[44]

The appellant failed to discharge his burden.

First. The appellant failed to surrender himself to the police officers who arrived at his house to arrest him, as well as the knife he used in stabbing Manalang and Bautista and the piece of bamboo Manalang allegedly used to hit him. Although Teresita Marcelo testified that she gave the bamboo pole to SPO3 Francisco V. Cortez, the latter denied having seen the bamboo pole. Teresita did not identify the name of the policeman with whom she left the knife at the police station. The appellant did not allege in his counter-affidavit[45] that his wife surrendered the knife and the bamboo pole to the policemen at the police station. Neither did Teresita allege the matter in her affidavit.[46] One who acted in self-defense is expected to surrender, not only himself, but also the weapon he used to kill or inflict physical injuries on the victim, as well as the weapon used by the victim.[47]

Second. The appellant's claim that because of the fist blows from his attackers, namely, Manalang, Madrigal,

Bautista and Sunga, his eyes became swollen and closed, such that he could hardly see. He felt so dizzy and so weak that he could barely stand up. However, the medical certificate^[48] he adduced in evidence belies this claim. There is no showing therein that the appellant suffered any injury on his eyes despite the fist blows from his said attackers. The appellant sustained only two contusions, one on the lip and the other on the frontal area, a lacerated wound on the cheek and two abrasions, which injuries would heal in nine days.

Third. Incredibly, despite his weak physical condition having been completely overpowered by his attackers, and with his eyes almost completely closed, the appellant was still able to stab the victim no less than four (4) times: twice on the chest; once on the abdomen and on the left leg, aside from stabbing Bautista on the right arm. The location, number and nature of the injuries sustained by the victim belie the appellant's claim of self-defense.^[49]

Fourth. The criminal complaint of the appellant against Bautista, Manalang and Sunga for frustrated murder in I.S. No. 98-7-1569 was dismissed by the Office of the Provincial Prosecutor of Pampanga on September 15, 1998 for lack of factual basis.^[50] The appellant, likewise, failed to appeal the resolution to the Department of Justice.

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.^[51]

In the present case, after a drinking spree, the victim and his friends were walking towards home when suddenly, the appellant came out from nowhere, armed with a knife. Without any warning, the appellant stabbed the victim on the vital parts of his body, ensuring the latter's immediate death. Thus, the appellant killed the victim in a treacherous manner.

We note that the offense was committed at nighttime. However, in order for the aggravating circumstance of nighttime to be appreciated, it must be shown that it facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity.^[52] However, it was not shown that the same was specifically employed to facilitate the commission of the crime.

The appellant, likewise, alleged that he voluntarily surrendered to the police authorities. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The surrender must be spontaneous, made in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or he wishes to save them the trouble and expenses that would necessarily be incurred in the search and capture.^[53] In the case at bar, SPO4 Cortez testified that the appellant did not voluntarily surrender but was brought by the police officers to the police station.

Under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, murder is punishable by reclusion perpetua to death. Without any generic or special aggravating circumstances, the penalty imposable on the appellant, should be the lower penalty, which is reclusion perpetua.

Civil Liabilities of the Appellant

Conformably to recent jurisprudence, the award of indemnity to the heirs of the victim in the amount of P50,000 is sustained, it being awarded without need of proof other than the fact that a crime was committed resulting in the

death of the victim and that the accused was responsible therefor.[54] In view of the attendance of treachery, qualifying the killing to murder, an award of exemplary damages in the amount of P25,000 is in order.[55]

We reduce the award of actual damages in the amount of P80,000 to P18,500[56] which is the amount duly supported by receipts.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Macabebe, Pampanga, Branch 55, in Criminal Case No. 98-2107-M, finding appellant Mario Marcelo y dela Cruz guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua is **AFFIRMED WITH MODIFICATIONS**. Considering that the prosecution was able to prove actual damages only in the amount of P18,500, the heirs are awarded P25,000 as temperate damages in lieu of actual damages conformably to current jurisprudence.[57] In addition, the said appellant is **ORDERED** to pay to said heirs P25,000 as exemplary damages.[58]

SO ORDERED.

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

[1] Penned by Judge Reynaldo V. Roura.

[2] Records, pp. 208-211.

[3] Id. at 2.

[4] The prosecution presented the following witnesses: SPO3 Francisco V. Cortez, Rolando J. Manalang, Dominador Sunga, Arsenio Madrigo and Rodel Bautista.

[5] TSN, 19 October 1998, pp. 8-9.

[6] Id. at 9.

[7] Id. at 3.

[8] Exhibit "G," Record, p. 111.

[9] Exhibit "8," Records, p. 154.

[10] Records, pp. 105-106; 6-7.

[11] Exhibit "K" to "K-2;" Id. at 118-120.

[12] Mario Marcelo testified for and in his behalf; the following were also presented by the appellant: Teresita Marcelo and Dr. Eduardo T. Vargas.

[13] TSN, 21 April 1999, p. 4.

[14] Id. at 5-8.

[15] Id. at 9-11.

[16] Id. at 11-13.

[17] Id. at 13-14.

[18] Id. at 14.

- [19] Id. at 15-16.
- [20] Id. at 16.
- [21] Id.
- [22] Exhibit “1,” Records, pp. 149-150, executed on June 25, 1998.
- [23] Exhibit “2,” Id. at 151-152.
- [24] Exhibit “4,” Id. at 153.
- [25] Supra.
- [26] See Exhibit “I,” Records, p. 113.
- [27] Supra.
- [28] Records, p. 173.
- [29] Id. at 175.
- [30] Id. at 208-211.
- [31] Id. at 180.
- [32] Id. at 181.
- [33] Records, pp. 229-230.
- [34] Id. at 231-232.
- [35] Id. at 233.
- [36] Rollo, p. 48.
- [37] People v. Belaje, 345 SCRA 604 (2000).
- [38] People v. Rollon, G.R. No. 131915, September 3, 2003.
- [39] Ibid.
- [40] People v. Dala, G.R. No. 134563, October 28, 2003.
- [41] Ibid.
- [42] People v. Bajar, G.R. No. 143817, October 27, 2003.
- [43] People v. Gumayao, G.R. 138933, October 28, 2003.
- [44] People v. Dala, supra.
- [45] See note 22.
- [46] See note 23.
- [47] People v. Camacho, 359 SCRA 200 (2001).
- [48] See note 24.
- [49] People v. Villarmosa, 368 SCRA 63 (2001).

[50] See note 26.

[51] *People v. Gialolo*, G.R. No. 152135, October 23, 2003.

[52] *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003.

[53] *Ibid.*

[54] *People v. Duban*, G.R. No. 141217, September 26, 2003.

[55] *Supra.*

[56] Exhibit “K,” official receipt from Funeraria Angeles for P15,000 and Exhibit “K-1” receipt from Punzalan Memorial Homes and Chapel for P3,500.

[57] *People v. Mataro*, 354 SCRA 27 (2001).

[58] *People v. Duban*, *supra*.

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