

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BIENVENIDO DE LA CRUZ Y MAHUSAY, APPELLANT.

G.R. No. 140513. November 18, 2003

Ponente: CORONA, J.

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CORONA, J.:

On appeal is the decision,[1] dated August 23, 1999, of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Case No. 8381-97, convicting herein appellant Bienvenido de la Cruz y Mahusay of murder and sentencing him to reclusion perpetua and to indemnify the heirs of the victim in the sum of P50,000.

The information charging appellant of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659, read:

That on or about the 25[th] day of December, 1996, in the afternoon, at the road of sitio Narolang, barangay Laligan, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and evident premeditation, armed with a bolo, did then and there wilfully, unlawfully and criminally attack, assault and stab ALFREDO TIMGAS, hitting and inflicting upon his person the following wounds, to wit:

- stabbed (sic) wound

which caused the instantaneous death of ALFREDO TIMGAS to the damage and prejudice of the legal heirs of ALFREDO TIMGAS in such amount as may be allowed by law.[2]

Arraigned on April 22, 1997, appellant, assisted by counsel, pleaded not guilty. Thereafter, trial on the merits ensued.

The facts, as found by the trial court, follow.

A cockfight was held in the afternoon of December 25, 1996 in Sitio Narolang, Barangay Laligan, Valencia, Bukidnon. One of the gamecocks belonged to Alfredo Timgas and its gaff was installed by his brother-in-law, herein appellant Bienvenido de la Cruz.[3] Unknown to Alfredo, however, Bienvenido placed his bet on the gamecock of his opponent. When Alfredo's gamecock won, he was told to collect the bet from Bienvenido. Feeling betrayed, Alfredo confronted his double-dealing brother-in-law and a fistfight ensued between them. The timely intervention of cooler heads pacified and prevented them from inflicting serious injuries on each other.[4]

Alfredo later decided to play billiards near a basketball court. On the other hand, Bienvenido went home but returned shortly thereafter with a bolo and headed towards where Alfredo was. A friend warned Alfredo of danger as Bienvenido was by then only about ten meters away. Alfredo tried to run away but, to his misfortune, he tripped on grass called mani-mani. Bienvenido caught up with him and stabbed him near the right armpit, penetrating his stomach. Bienvenido then fled, leaving his bolo impaled in the victim's torso.[5]

In his defense, Bienvenido claimed that he was requested by the victim's brother, Agustin, to install the gaff on

the gamecock. After Alfredo won the cockfight, he invited Bienvenido to a drink but the latter refused. Alfredo got mad and started punching him. Alfredo stopped only after Bienvenido fell to the ground. At that instance, a certain Oning Dagayday approached him and advised him to leave immediately as Alfredo's brothers might get even with him.[6] He noticed that Oning was holding a bloodied bolo and saw Alfredo grasping his blood-soaked armpit. He then hurried to the house of barangay councilor Ignacio de la Cruz who accompanied him to the barangay captain to seek protection. From there, they proceeded to the police station to surrender.[7]

On August 23, 1999, the trial court rendered a decision, the dispositive portion of which read:

WHEREFORE, judgment is hereby rendered, finding accused Bienvenido de la Cruz GUILTY beyond reasonable doubt of the offense of murder as qualified by treachery punishable under Republic Act No. 7659. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim Alfredo Timgas the sum of P50,000.00

SO ORDERED.[8]

In this appeal, Bienvenido de la Cruz raises the following assignments of error:

I

THE TRIAL COURT ERRED IN NOT APPRECIATING THE ACCUSED- APPELLANT'S SINCERITY AND GOOD FAITH IN SURRENDERING HIMSELF TO KAGAWAD IGNACIO DE LA CRUZ AND THE POLICE AUTHORITIES WHICH ONLY SHOWS THAT HE IS REALLY INNOCENT OF THE CRIME CHARGED.

II

EVEN ASSUMING THAT HE IS INDEED GUILTY OF THE CRIME CHARGED, ACCUSED-APPELLANT'S ACT OF UNCONDITIONALLY SURRENDERING HIMSELF TO THE POLICE AUTHORITIES ENTITLES HIM TO THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER UNDER ARTICLE 13(7) OF THE REVISED PENAL CODE, AS AMENDED, WHICH THE COURT A QUO ERRONEOUSLY FAILED TO APPRECIATE.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE KILLING OF THE HEREIN VICTIM WAS ATTENDED WITH TREACHERY.[9]

Appellant contends that: (a) the trial court overlooked the fact that he surrendered voluntarily to the authorities, hence, this mitigating circumstance should have been appreciated in his favor; (b) the fact that he did not escape clearly indicated his innocence for, had it been otherwise, he would not have been confident enough to surrender and (c) assuming that he was guilty of killing the victim, treachery was erroneously appreciated by the trial court since prosecution witnesses Agustin Timgas and Ricky Aldion testified that the victim was forewarned of the impending attack and, in fact, had the chance to flee.

We affirm appellant's conviction for killing Alfredo Timgas. His bare denial cannot prevail over the positive identification and eyewitness account of the crime by Agustin Timgas, elder brother of the victim, during the trial.[10] Agustin testified on the subsequent events that transpired after Alfredo and Bienvenido had been pacified:

Q

You said Bienvenido de la Cruz got a bolo, did you see the bolo?

A

Yes, I saw.

Q

Now did he carry the bolo?

A

The bolo was inserted on its scabbard and which was tied around his waist.

Q

What did Bienvenido de la Cruz do next after having a bolo?

A

He ran towards the basketball court.

Q

And at the basketball court, what did he do?

A

He unsheathed his bolo and thrust (sic) the bolo towards Alfredo who ran away.

Q

When Alfredo ran away, what happened to him?

A

Bienvenido de la Cruz chased him and because Alfredo's feet was (sic) trapped in grass called "mani-mani" he fell down and when he was about to rise up Bienvenido thrust (sic) his bolo to the body of Alfredo.

Q Was Alfredo hit?

A Yes, Sir.

Q Where was he hit?

A Here. (witness pointing to his right armpit)

Q You said that it exited here, where?

A The point of the bolo exited here. (witness pointing to the left side of his stomach)

Q

Will you please demonstrate to the Honorable Court what was the actual position of Alfredo Timgas when he was stabbed by Bienvenido de la Cruz?

A When he was about to rise up on this position. (witness demonstrating this position by bending his body, being

supported by his two feet and his two hands, then his right foot was placed slightly behind his left foot)

Q After Bienvenido de la Cruz hit Alfredo Timgas hitting at (sic) his right armpit, the bolo penetrated at (sic) his left side, what did Bienvenido de la Cruz next do?

A He kicked Alfredo Timgas for three times and then ran towards Pagotpot.[11]

Agustin's clear and detailed testimony was fully corroborated by Ricky Aldion who testified that he was among the persons who separated Alfredo and Bienvenido during their initial scuffle. Thereafter, he accompanied Alfredo to the billiards table near a basketball court while the appellant went home. Subsequently, the appellant returned with a bolo. Ricky warned Alfredo that the armed appellant was approaching. Alfredo tried to run away but was pursued and killed by the appellant with his bolo.[12]

The presence of these two prosecution witnesses at the crime scene was never disputed by the defense. In fact, appellant disclosed that it was Agustin who requested him to tie the gaff on Alfredo's gamecock.[13] The fact that Agustin happened to be the brother of the victim did not diminish his credibility as an eyewitness. The defense failed to impute any improper motive that could have impelled Agustin to testify falsely against the appellant.[14] We thus agree with the trial court that:

The two prosecution witnesses rendered a trustworthy and a credible account of the criminal incident. The fact that witness Agustin Timgas is the older brother of the victim did not, in any way, make his testimony less worthy of belief. As a matter of fact, the spouse of the accused is his sister, too. Moreover, the second prosecution witness, Ricky Aldion, convincingly corroborated Agustin Timgas in all material points. Verily, with the clear and positive testimonies of the prosecution witnesses, the feeble disavowal of the accused scarcely merits consideration. To be sure, his version of the incident cannot inspire belief. Why, for instance, would his brother-in-law, the victim, pounce on him with hard blows simply because he refused to join an invitation for a few glasses of alcoholic drinks? And why would any brother of the victim want to seriously harm accused when he had done nothing wrong to anyone; in fact, it was him, the accused, who had been pummeled by the victim without any valid reason? The questions beg a creditable answer.[15]

Nevertheless, the appellant is liable only for homicide and not murder. The qualifying circumstance of treachery cannot be appreciated against appellant because Alfredo was forewarned of the impending attack and he could have in fact escaped had he not stumbled. The testimony of Ricky Aldion on this point was revealing:

Q: When Bienvenido came back, what happened next?

A: He was already carrying a bolo.

Q: What did he do next?

A: When he was already near I said, "Fred, you watched (sic) out because Ben is coming."

Q: How far was Bienvenido to (sic) you and Alfredo when you told "Fred, watched (sic) out Ben is coming?"

A: About ten meters, more or less.

Q: And when you told Alfredo Timgas by saying "Fred, watch out Ben is coming." What did Alfredo do next if any?

A: When Bienvenido was already near Alfredo ran.[16]

Likewise, the prosecution failed to prove the existence of evident premeditation. For this aggravating circumstance to be appreciated, the following must be shown: a) the time when the appellant decided to commit the crime; b) an overt act showing that the appellant clung to his determination to commit the crime and c) a

sufficient lapse of time that would allow the appellant to reflect upon the consequences of his act.[17] In this case, the crime was committed soon after the fisticuff between appellant and Alfredo. In fact, the two appeared to be in good terms prior to the "double-cross" by the appellant. Hence, it was evident that no appreciable time elapsed which afforded the appellant full opportunity to reflect and allow his conscience to overcome his deadly resolution.

On the other hand, the mitigating circumstance of voluntary surrender requires that: (a) the offender has not been actually arrested; (b) the offender surrenders himself to a person in authority or the latter's agent and (c) the surrender is voluntary.[18] The essence of voluntary surrender is spontaneity, the intent of the accused being to give himself up and submit unconditionally to the authorities, either because he acknowledges his guilt or he wants to save the state the trouble of having to effect his arrest.[19] In the case at bar, the appellant's alleged surrender to the barangay chairman was not voluntary. On the contrary, it was solely motivated by self-preservation from what he feared was an imminent retaliation from the immediate relatives of Alfredo. Consequently, the same cannot be appreciated in his favor.

The mother of the victim, Caridad Timgas, testified that actual damages incurred amounted to P18,000, consisting of their expenses for the wake and funeral. The trial court, however, correctly disregarded the same in the absence of competent evidence such as receipts to justify the award.[20] However, the award of P50,000 as civil indemnity must be sustained since the same can be awarded without need of evidence other than appellant's responsibility for the death of the victim.[21] Moral damages in the amount of P50,000 should also be awarded on account of the grief and suffering of the victim's heirs.

WHEREFORE, the appealed decision of the trial court is MODIFIED. The appellant is hereby convicted of the crime of homicide only and sentenced to suffer the indeterminate penalty of 10 years and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum. He is likewise ordered to pay the heirs of the victim P50,000 as civil indemnity and P50,000 as moral damages. Costs against appellant.

SO ORDERED.

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

[1] Penned by Judge Vivencio P. Estrada, Rollo, pp. 9-11.

[2] Rollo, p. 9.

[3] Alfredo's sister is married to Bienvenido.

[4] TSN, October 28, 1998, pp. 4-8; 26.

[5] Id., pp. 9-11; 27-28.

[6] TSN, May 26, 1998, pp. 5-8.

[7] Id., pp. 8-9.

[8] Rollo, p. 11.

[9] Rollo, pp. 33-34.

[10] See *People vs. Legaspi*, 331 SCRA 95, 113 [2000]; *People vs. Estorco*, 331 SCRA 38, 52-53 [2000]; *People vs. Narvasa*, 322 SCRA 675, 681 [2000].

[11] TSN, October 28, 1998, pp. 9-11.

[12] Id., p. 28.

[13] TSN, May 26, 1999, p. 5.

[14] See *People vs. Casingal*, 337 SCRA 100, 110 [2000]; *People vs. Solis*, 291 SCRA 529, 539 [1998].

[15] Rollo, pp. 10-11.

[16] Rollo, pp. 44-45.

[17] *People vs. Gaviola*, 327 SCRA 580, 586 [2000].

[18] *Rene vs. Ignacio*, 325 SCRA 375, 384 [2000].

[19] *People vs. Salas*, 327 SCRA 319, 332-333 [2000].

[20] *People vs. Ortega, Jr.*, 276 SCRA 166, 189-190 [1997].

[21] Ibid.

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