

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO DELMINDO, APPELLANT.

G.R. No. 146810. May 27, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision^[1] dated October 2, 2000, in Criminal Case No. C-4129, of Regional Trial Court of Roxas City, Branch 14, finding appellant Antonio Delmindo guilty of murder and sentencing him to reclusion perpetua. Before us, appellant now prays for acquittal on the ground of self-defense.

The case stemmed from the information which reads:

That at or about 2:00 o'clock in the afternoon on or about May 21, 1993, in Sitio Caningag,^[2] Brgy. Jolongajog,^[3] Municipality of Pontevedra, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a 12-gauge shotgun, with evident premeditation and treachery and with intent to kill, did then and there willfully, unlawfully and feloniously shot with the shotgun he was armed with one FELIX ALBALADEJO whom he roused from sleep moments before he shot him, thereby inflicting upon the said Felix Albaladejo mortal gunshot wounds on the body which injuries caused his death immediately thereafter.

That due to the untimely death of Felix Albaladejo, his heirs are entitled to death indemnity in the amount of P50,000.00 plus other damages in consonance with the provisions of the Civil Code.

ACTS CONTRARY TO LAW with the qualifying and generic aggravating circumstances of evident premeditation and treachery.^[4]

On arraignment, appellant with assistance of counsel de oficio, pleaded not guilty to the charge.^[5]

On October 5, 1998, during pre-trial conference, the parties stipulated that (1) the trial court had jurisdiction to hear and try the case; (2) the incident happened at around 2:00 p.m. of May 21, 1993 in Sitio Caningag, Brgy. Jolongajog, Pontevedra, Capiz; (3) prosecution witnesses Amelou Albaladejo, Armando Jolampong, and Benny Barcelona were investigated by the police 3 days after the incident; (4) a postmortem examination of the victim was conducted by Dr. Vivien B. Relano, rural health physician of Roxas City on May 26, 1993; (5) a death certificate was issued; and (6) the victim's widow suffered damages, the extent of which would have to be proven at trial.^[6] The prosecution also marked its exhibits with reservation to present and mark additional documentary evidence during the course of the trial.^[7]

Trial then ensued. The following facts were established by the prosecution at the trial:

At the time of the incident, appellant was one of the overseers of the fishponds of Atty. Eduardo Azarraga in Sitio Caningag, Barangay Jolongajog, Pontevedra, Capiz.^[8] The victim, Felix Albaladejo, was the administrator of said fishponds.^[9] Both appellant and the victim had their respective quarters at the site, some 300 meters apart.^[10]

In the morning of May 15, 1993, Atty. Azarraga invited his fishpond workers to his house in Pontevedra to attend the town fiesta.[11] In the afternoon of that day, the victim lent his banca to appellant and his companions to enable them to attend the fiesta.[12] Before they departed, the victim instructed the group to return immediately that same day to avoid the high tide, which might damage the bangus (milkfish) fingerlings that they had just released into the ponds.[13]

Appellant and his friends failed to return as the victim had instructed. The following day, the victim called the group to a meeting and scolded them for their failure to follow his instructions.[14] During the meeting, appellant was heard to grumble, “May adlaw ka gid sa akon.” (“You’ll have a day of reckoning with me.”)[15]

At around 2:00 p.m. of May 21, 1993, according to prosecution witness Armando Jolampong, he was with his fellow workers, Ramon Baril and Edgar Borce inside their quarters at the fishpond when appellant arrived. Once inside the room, appellant took a 12-gauge shotgun from Borce, telling them, “My problem is none of your business.”[16] Jolampong then saw appellant put the shotgun on his shoulder and walk towards the victim’s house.[17] Shortly afterwards, gunshots were heard coming from the house of Felix Albaladejo. Jolampong and his companions ran towards the victim’s house. They were about to reach the house, when they saw appellant with the shotgun run from the victim’s house and cross the bridge to Barangay Binantucan, Pontevedra.[18] They heard the victim’s wife, Amelou Albaladejo, shouting for help.[19]

According to Amelou’s testimony, at around 2:00 p.m. of May 21, 1993, she was nursing her two children to sleep inside the bedroom of their nipa hut. Her husband, Felix, was asleep in the sala.[20] Suddenly, she heard a man’s voice calling her husband’s name. She then heard her brother, Henry Barcelona, who was in the balcony, answer: “Ton, what is that for? Felix is sleeping.”[21] Appellant did not answer. Suddenly, appellant barged into their sala and shot her husband, who had just risen from his nap. On impulse, she ran to her husband. Appellant still carrying the shotgun, then dashed off towards Binantucan, Pontevedra. [22]

The last witness for the prosecution, Dr. Vivien Relano, testified that as the municipal health officer of Pontevedra, Capiz, she was requested by the town’s police chief to conduct a post-mortem examination of Felix Albaladejo’s cadaver. She found the cause of his death to be “cardiac arrest secondary to gunshot wound.”[23]

For the defense, appellant Antonio Delmindo himself took the witness stand. He readily admitted shooting the victim but claimed the killing was in self- defense. On the day of the incident, according to appellant, he reported to Felix Albaladejo, the fishpond’s administrator,[24] who had summoned him. Appellant said he saw Henry “Totong” Barcelona at the balcony of Felix’s house. He inquired regarding Felix’s whereabouts from Henry. Then, he heard Felix call out, “Tong, who is that?”[25] Appellant gave his name before entering the house. He had barely entered it when Felix confronted him for allegedly spreading stories about Felix’s being a thief.[26] Appellant denied the accusation. This only enraged Felix. An altercation broke out between them. Suddenly, according to appellant, Felix stood up and grabbed the shotgun by his side, cocked it and shouted, “If I lose my job, I would rather kill you.”[27] Appellant then yelled back, “What is this, Felix?” and grabbed the barrel of the shotgun. While they were grappling for possession of the firearm, appellant somehow squeezed the trigger and the gun went off, hitting Felix. [28] Appellant then left Felix’s house and went to his own sister’s place in Brgy. Esperanza, Pontevedra, where he stayed for four days. On hearing reports that Atty. Azarraga wanted him killed, appellant and his wife left for Mindanao.[29]

To corroborate the defense’s version of the incident, appellant presented Praxedes Porro, Jr., as its next witness. Porro declared that on the afternoon of May 21, 1993, he went to appellant’s house at Sitio Caningag, Brgy. Jolongajog, Pontevedra, Capiz to collect a debt from appellant. Appellant’s spouse, Anna Delmindo, told him that appellant was at the house of Felix Albaladejo. He asked her to accompany him there. They were about five

meters away from the Albaladejo house when they saw through the window appellant and another man grappling for possession of an object with a length of around 55 inches.[30] Shortly thereafter, they heard gunshots coming from within the Albaladejo residence.[31] Then he saw appellant jump out of the window.[32] Porro declared that out of fear, he immediately left the vicinity, leaving Anna Delmindo to go to the victim's house, alone.

Anna Delmindo, appellant's wife, also took the stand for the defense. She testified that at the time of the incident she accompanied Porro to the house of Felix Albaladejos. They were about five meters away from his residence, when she saw her husband struggling with Felix for the possession of what appeared to be a firearm.[33] Shortly afterwards, she heard a shot. Then, she saw her husband suddenly leave the house.[34] She went up the victim's house, to ask what happened, but she was met by an irate Amelou Albaladejo who pointed a gun at her, saying, "I-unong ko ikaw sa asawa ko" ("I'll make you follow my husband.") [35] She glanced around and saw the victim lying dead in the sala. Anna then left the Albaladejo residence. After four days, she joined her husband at his sister's place in Esperanza, Pontevedra, where he told her what happened. They then fled to Mindanao upon hearing that Atty. Azarraga wanted them killed.[36]

The trial court disbelieved the defense but found the prosecution's version credible. On October 2, 2000, it rendered its decision, decreeing as follows:

WHEREFORE, foregoing established facts considered, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Murder as charged. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim the amount of Seventy Five Thousand Pesos (P75,000.00) for the death of Felix Albaladejo, Fifty Two Thousand Pesos (P52,000.00) as actual damages, One Hundred Thousand Pesos (P100,000.00) as moral damages and to pay the costs.

Furnish copies of this Decision the accused, Atty. Noede Villareal and the Office of the Provincial Prosecutor.

SO ORDERED.[37]

Hence, this appeal before us, with appellant assigning only one error:

THE LOWER COURT ERRED IN NOT APPRECIATING THE ACCUSED- APPELLANT (sic) DEFENSE OF COMPLETE SELF-DEFENSE, A JUSTIFYING CIRCUMSTANCE UNDER THE REVISED PENAL CODE, DESPITE THE STRONG AND COMPELLING EVIDENCE PROVING THE INNOCENCE OF THE ACCUSED-APPELLANT.[38]

Appellant argues that all the elements of self-defense were present. According to appellant, the evidence for the defense clearly shows that the victim, Felix Albaladejo insulted, berated, and threatened him, then grabbed a shotgun with intent to kill him. Appellant points out that it was reasonable for him to defend his life by grappling for possession of the shotgun. When the victim tried to get the firearm back, appellant had no choice but to shoot him to avoid losing the gun and then being shot by the victim. Appellant insists that there was absolutely no provocation on his part. The provocation came from the victim when he got hold of a shotgun and, with intent to kill, pointed it at appellant. Appellant faults the prosecution for failing to present Henry Barcelona, the brother-in-law of the victim. The latter's sworn statement before the police investigators declared that there was a struggle between appellant and the victim prior to the shooting. Appellant points out that Barcelona's affidavit contradicts the testimony of his sister, Amelou Albaladejo, who testified that appellant shot the victim without any struggle.

For the appellee, the Office of the Solicitor General (OSG) counters that appellant's version of events was belied by prosecution witnesses, Armando Jolampong and Amelou Albaladejo, whom the trial court found to be credible witnesses. Jolampong testified that appellant got a shotgun from his fellow worker, Edgar Borce. Then, he proceeded to the hut of the Albaladejos. Amelou Albaladejo testified that appellant suddenly entered their house

and without any provocation, shot her husband, who was just rising from his nap. Jolampong, added he then saw appellant flee from the scene of the crime. The OSG stresses that the testimonies of these credible witnesses totally negated appellant's theory of self-defense.

Well established is the rule that once the justifying circumstance of self- defense is invoked, the onus probandi of proving its elements shifts to him who invokes it.[39] Thus, even if the prosecution evidence is weak, the charge cannot be readily dismissed, considering that the accused had openly admitted authorship of the killing. Having admitted killing the victim, in this case, appellant must prove by clear and convincing evidence that he acted in self-defense by establishing: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. [40]

The element of unlawful aggression is indispensable, a condition sine qua non, to the successful plea of self-defense. Otherwise stated, there can be no self-defense, unless the victim committed unlawful aggression against the person defending himself.[41] Was there unlawful aggression on the victim's part? That, in brief, is the crucial question upon which turns the issue of appellant's guilt or innocence.

There is unlawful aggression on the part of the victim when he puts in actual or imminent peril the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon by the victim himself.[42]

But in the present case, witness Amelou Albaladejo testified that the victim was getting up from the rattan sofa where he napped, when appellant shot him.[43] Her testimony finds support in the autopsy findings of Dr. Vivien Relano, who testified that the victim was shot at close range while he was in a standing but slanting or stooping position.[44] Common experience tells us that a person who has just been roused from his sleep and has not yet even fully stood up is not quite prepared to act aggressively. This is true, in our view, given appellant's insistence that he and the victim were on good terms before the incident.[45] It strains the credulity of this Court that a person who has yet to shake off from his mind and body the last vestiges of sleep, would suddenly berate and point a deadly weapon at another with whom he has no pre-existing grudge or quarrel.

The defense, however, insists that two witnesses, Anna Delmindo and Praxedes Porro, Jr., saw appellant grappling with the victim for possession of the shotgun in the balcony of the latter's house. Appellant contends that this circumstance establishes unlawful aggression on the victim's part. Appellant's argument is, to put it kindly, far from persuasive. There is adverse testimony on this score. The victim's widow, Amelou, testified that after her husband was first hit by a gunshot, he embraced appellant who was about to shoot him again. Appellant then dragged the dying victim towards the balcony.[46] In this light, we are inclined to agree that the struggle in the balcony seen from a distance by the defense witnesses was actually the appellant trying to fend off the desperate embrace of the victim after he was hit by appellant's bullet. The victim was trying to hold off appellant so that appellant could not shoot him again. This cannot, by any stretch of imagination, be construed as an unlawful aggression on the part of the victim. It was rather an act that was more instinctive on the victim's part to fend off further attack by an armed intruder. Appellant's interpretation of this vignette to show unlawful aggression on the victim's part is neither clear nor convincing, for the scene could in fact be turned around against appellant as a part of his continuing attack on the victim.

We likewise find no adequate physical evidence to support appellant's claim of self-defense. Dr. Relano testified that the single shot fired at the victim by appellant was fatal. Four (4) vital organs, the heart, lungs, stomach, and pancreas were struck by shotgun pellets.[47] The nature and location of the victim's gunshot injuries are eloquent physical evidence to show a determined effort on appellant's part to kill the victim, and not just to defend his own

self. In sum, appellant's uncorroborated plea of self-defense cannot be entertained, especially when it is, in itself, extremely doubtful.[48]

Appellant next assails the credibility of prosecution eyewitness, Amelou Albaladejo, the victim's widow. He contends that Amelou lied on the witness stand when she claimed that she witnessed the shooting. He stresses that in her sworn declaration to the police investigators, she only stated that she heard a gunshot. Appellant likewise points out that from her description of her position relative to the victim, it was humanly impossible for her to have witnessed the fatal shooting.

However, we are not unduly impressed by appellant's reliance on Amelou's affidavit before the police to discredit her testimony in court. As a rule, affidavits taken ex parte are considered to be incomplete and often inaccurate, sometimes from partial suggestions, or even lack of suggestions and inquiries, without the aid of which the witnesses may be unable to recall the connected circumstances necessary for their accurate recollection.[49] Hence, affidavits are generally subordinated in importance to declarations in open court.

Furthermore, we also note that when asked to confirm the contents of her affidavit in open court, Amelou made the following clarification:

CROSS-EXAMINATION BY ATTY. VILLAREAL

Q:

This sworn statement of yours marked as Exhs. "F," "F-1," "F-2" and "F-3," do you affirm and confirm again before this Honorable Court that all the contents here are true and correct?

A: I saw one error, sir.

Q: What particular error here?

A: They forgot to place here that I have seen with my two (2) eyes the slaying of my husband.[50]

As for appellant's insistence that Amelou could not have seen him shoot the victim as at the time she was putting her two children to sleep, we find appellant's assertion based on mere conjecture. Amelou declared in open court that the door to their bedroom opened to the sala of the house and that, though she was lying in bed with her children, she was facing the sala. [51] From her position, she could see the victim asleep on their sofa[52] some three (3) meters away.[53] Hence, we do not doubt that she had a vantage position to witness the fatal shooting of her husband.

The records show that Amelou unequivocally identified appellant as the malefactor. She described in detail how he shot her husband.[54] That Amelou is the victim's widow does not detract from the worth and weight of her testimony. Mere relationship of a witness to the victim does not automatically impair the credibility of said witness, where no improper motive can be ascribed to the latter for so testifying.[55] Here, we find the records bare of any motive or reason why Amelou should falsely testify against appellant. Amelou's testimony, in our view, deserves credence.

Finally, appellant's flight from the scene of the crime and his sojourn in Bukidnon for five (5) years indicate his guilt. As the trial court aptly observed:

The alleged rumor that Atty. Eduardo Azarraga would have them killed was not proven during the trial. On the contrary, Atty. Azarraga vehemently denied it. Atty. Azarraga testified that what he did after having been

informed over the radio about the death of Felix Albaladejo was to ask for police assistance for the apprehension of the suspect (now accused). The proverb “the wicked fleeth while the righteous is as bold as a lion” seems to find meaning and application in the instant case. An accused’s flight from the scene of the crime and his act of hiding himself until he was arrested are circumstances highly indicative of guilt.[56]

But was appellant properly convicted of murder? The information against appellant alleged both treachery and evident premeditation. The lower court’s decision, however, is silent as to the circumstances that qualified the killing. Thus, it behooves us to make the needed determination concerning these alleged circumstances.

The essence of treachery is the sudden and unexpected attack by the aggressor against the unsuspecting victim without the slightest provocation on the latter’s part, thus depriving the latter of any real chance of defending himself.[57] Otherwise stated, there is treachery when the following conditions concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted.[58]

In our view, treachery has been adequately proved in the present case. The records show that appellant obtained a firearm from his co-workers, proceeded to the victim’s house, roused him from his sleep by calling out his name, and without hesitation, barged into the sala of the newly awakened victim and shot him without warning or provocation. That the victim and his assailant come face to face at the time of the shooting would not negate treachery, in our view, where it appears that the attack was not preceded by a dispute and the offended party was unable to prepare for his defense.[59]

As to evident premeditation, however, we find that the evidence on record fails to bear out the following elements: (1) the time when the offender determined or conceived to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination and the execution, to allow the accused time to reflect upon the consequences of his act.[60] Stated differently, the prosecution failed to establish clearly that the victim’s killing was a preconceived plan. Hence, evident premeditation should be ruled out in the present case.

While the trial court considered dwelling as aggravating circumstance, the information is silent, however, on this matter. Under the 2000 Rules of Criminal Procedure,[61] the qualifying as well as aggravating circumstances must be expressly and specifically alleged in the complaint or information, otherwise the same will not be considered by the court even if proved during trial.[62] Since the procedural rule is favorable to appellant, it must apply to this case. Dwelling ought not be considered to aggravate his offense.

In sum, we hold that appellant is liable for murder, qualified only by treachery. Murder is punishable by reclusion perpetua to death. There being neither mitigating nor aggravating circumstances, the penalty imposed by the trial court, i.e., reclusion perpetua,[63] should be sustained.

Concerning the award of damages, however, modification is in order. The amount of P52,000.00 awarded by the trial court as actual damages must be reduced to P31,300.00, that being the amount substantiated by receipts.[64] For where actual damages may be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof. There must be a receipt or other document to support the claim for actual damages.[65] The civil indemnity awarded in the amount of P75,000.00 must be reduced to P50,000.00 to bring it in line with prevailing case law. [66] As to the award of moral damages, current jurisprudence fixes such award at P50,000.00 [67] and thus, the amount of P100,000.00 awarded by the trial court must be reduced accordingly.

WHEREFORE, the decision of the Regional Trial Court of Roxas City, Branch 14, in Criminal Case No. C-4129, finding appellant Antonio Delmindo GUILTY of murder and sentencing him to reclusion perpetua is hereby

AFFIRMED, with the MODIFICATION that appellant is hereby ORDERED to pay the heirs of the victim Felix Albaladejo the amount of P31,300.00 as actual damages, P50,000.00 as civil indemnity, and P50,000.00 as moral damages, together with the costs of suit.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur. Puno, J., (Chairman), on official leave.

- [1] Records, pp. 351-362.
- [2] Sometimes “Caninag” in the records.
- [3] Also spelled “Jolongahog” in some parts of the records.
- [4] Records, pp. 1-2.
- [5] Id. at 52.
- [6] Id. at 74-76.
- [7] Id. at 76.
- [8] TSN, 17 December 1998, p. 7.
- [9] TSN, 15 February 1999, p. 3.
- [10] Ibid.
- [11] Id. at 11.
- [12] Ibid.
- [13] Id. at 12.
- [14] Id. at 13.
- [15] Ibid.
- [16] TSN, 17 December 1998, pp. 11-12.
- [17] Id. at 13.
- [18] Id. at 14.
- [19] Id. at 16.
- [20] TSN, 15 February 1999, p. 7.
- [21] Id. at 8.
- [22] Id. at 10.
- [23] TSN, 16 November 1998, p. 18.
- [24] TSN, 16 August 1999, p. 7.
- [25] Id. at 8.

[26] Id. at 9.

[27] Id. at 11.

[28] Id. at 11-12.

[29] Id. at 13.

[30] TSN, 10 May 1999, pp. 9-10.

[31] Id. at 10.

[32] Id. at 12.

[33] TSN, 16 June 1999, p. 8.

[34] Ibid.

[35] Id. at 9.

[36] Id. at 13-14.

[37] Records, p. 362.

[38] Rollo, p. 58.

[39] People v. Enfectana, G.R. No. 132028, 19 April 2002, 381 SCRA 359, 369 citing People v. Flores, G.R. No. 138841, 4 April 2001, 356 SCRA 332.

[40] People v. Tejero, G.R. No. 135050, 19 April 2002, 381 SCRA 382, 391. See Revised Penal Code, Art. 11 (1).

[41] Supra, note 39.

[42] Angcaco v. People, G.R. No. 146664, 28 February 2002, 378 SCRA 297, 310.

[43] TSN, 15 February 1999, p. 9.

[44] TSN, 16 November 1998, pp. 16, 23-24.

[45] Rollo, p. 63.

[46] TSN, 10 March 1999, pp. 25-26.

[47] TSN, 16 November 1998, p. 20.

[48] People v. Callet, G.R. No. 135701, 9 May 2002, 382 SCRA 43, 53.

[49] People v. De Leon, G.R. No. 144052, 6 March 2002, 378 SCRA 495, 510.

[50] TSN, 10 March 1999, p. 12.

[51] TSN, 15 February 1999, pp. 6-7.

[52] Id. at 7.

[53] Id. at 9.

[54] Ibid. See also TSN, 10 March 1999, pp. 23-24

[55] People v. Cantuba, G.R. No. 126022, 12 March 2002, 379 SCRA 41, 49.

[56] Records, pp. 361-362.

[57] *People v. Obordo*, G.R. No. 139528, 9 May 2002, 382 SCRA 98, 117.

[58] *People v. Cabillan*, G.R. No. 131808, 6 February 2002, 376 SCRA 290, 301.

[59] *People v. Dela Cruz*, G.R. No. 139970, 6 June 2002, 383 SCRA 250, 261.

[60] *People v. Judavar*, G.R. No. 135521, 11 April 2002, 380 SCRA 548, 557.

[61] Rule 110, Sec. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[62] *People v. Obosa*, G.R. No. 129688, 2 April 2002, 380 SCRA 22, 35.

[63] Revised Penal Code, Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period....

[64] Exh. "H" and sub-markings, Records, p. 183.

[65] *People v. Jakosalem*, G.R. No. 130506, 28 February 2002, 378 SCRA 254, 264-265.

[66] *People v. San Pascual*, G.R. No. 137746, 15 October 2002, 391 SCRA 49, 65.

[67] *People v. Dorio*, G.R. No. 130660, 5 September 2002, 388 SCRA 398, 408.

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