

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLITO CABICAL @ LITO Y ESTEBAN, ACCUSED-APPELLANT.

G.R. No. 148519. May 29, 2003

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-148519/>

PUNO, J.:

Appellant Rolito Cabical was charged with the crime of Murder before Branch 27 of the Regional Trial Court of Bayombong, Nueva Vizcaya in an information which reads:

"That on or about 5:30 in the afternoon of December 3, 1996, at Barangay Pieza, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was then armed with a piece of wood, with intent to kill, with evident premeditation, taking advantage of superior strength, and by means of treachery, did then and there willfully, unlawfully and feloniously, hit and strike the head of Reynaldo Fernando y Ramos, thereby inflicting upon him mortal wounds and injuries on his head which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW."[1]

During arraignment, appellant Cabical entered a plea of not guilty and underwent trial.

The evidence shows that at about 5:30 in the afternoon of December 3, 1996, Joniper Pontino, riding on a carabao and heading south, was on his way home from the rice fields in Purok Namnama, Barangay Pieza, Villaverde, Nueva Vizcaya. He saw the victim, Reynaldo Fernando, going north and being closely followed by appellant Cabical. Cabical held a piece of wood and was walking faster than Fernando. When Pontino was around five (5) meters away from the two, he saw Cabical strike Fernando at the nape with a wood. Fernando slumped to the ground, snored, and blood came out from his nose and mouth. Pontino got afraid and rushed home.[2] He encountered his father, Rodolfo, drinking with a group of people. He told them about the incident.[3]

Rodolfo, in turn, reported the matter to Danilo Duro, the barangay captain of Pieza, Villaverde, Nueva Vizcaya. Duro, together with Kagawad Renato Martin, went to the scene of the crime and found Fernando lying in a prone position on the road outside the fence of the house owned by Cabical, and clenching a sapling or seedling in his right hand.[4] Duro lifted Fernando and placed him in the vehicle that would bring him to the hospital. When he lifted Fernando, he said he did not smell any alcohol on the victim. Instead, the victim had a fish-like smell ("malangsi").[5]

The testimony of Duro that he did not smell any alcohol on the victim was corroborated by Dr. Elpidio Quines who performed an autopsy on Fernando. Quines stated that he did not smell any alcoholic breath, although he admitted that he did not take any gastric content from Fernando so as to actually determine the presence of alcohol in the body.[6] He also declared that only one injury was inflicted on Fernando. The injury was located at the back of his head and could have been caused by any hard object, possibly a piece of wood.[7]

Esperanza, the widow of Fernando, declared that she was working in Malaysia when her husband was killed. As a

result of his death, she suffered endless sleepless nights and was not able to eat or think properly.[8] She demanded P52,500.00 as actual damages.[9] She also claimed that her husband earned a living from the buy and sell of pigs, cows and carabaos, and farming. He allegedly earned an annual income of P124,290.00.[10]

The defense presented appellant Cabical and his wife, Alice Cabical, as witnesses. They justified the killing as an act of self-defense. Alice Cabical narrated that in the afternoon of December 3, 1996, appellant was working in the nearby house of Joel Calimlim. She was at their house cooking and watching over their kid when she heard Fernando, who was drunk, shouting "vulva of your mother" at the same time mentioning the name of her husband. She did not mind him until she heard him at their door, looking for Cabical and allegedly holding a stone in his back. She shouted for the appellant and beckoned with her hand for him to come to their house. Appellant came and told Fernando to go home because he was drunk. Instead, Fernando told him, "vulva of your mother I am always helping you but you are not helping me." With his husband calm, Alice went inside their house to continue cooking. When she went out again, she saw the bloodied body of Fernando.[11]

Appellant testified that Fernando was drunk and passed by the place where he was working. Fernando shouted at him, "vulva of your mother you have a fault against me." He did not mind Fernando until his wife called for him to come home. When he arrived at their house, Fernando continued insulting him. He placed a hand on Fernando's shoulder but the latter suddenly faced him and struck him with his right hand which was holding a stone. He bent and evaded the blow. While bent, he was able to pick up a wood with which he struck Fernando. Fernando fell to the ground. After verifying that Fernando was still alive, appellant left him and looked for a vehicle to bring him to the hospital. When he returned, however, he saw that there was already a vehicle that would bring Fernando to the hospital. He no longer approached them and merely watched from a distance.[12] In the morning of December 4, 1996, he surrendered to Barangay Captain Duro.[13]

The trial court convicted appellant of murder. Thus:

"WHEREFORE, finding Rolito Cabical y Esteban GUILTY beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of reclusion perpetua, or 20 years and one day to 40 years; to pay the sums of P50,000.00 as civil indemnity; P20,000.00 as moral damages; P44,000.00 as actual damages, and to pay the costs of the suit.

SO ORDERED."[14]

Appellant interposed this appeal, raising the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF JONEFER (sic) PONTINO INSTEAD OF THAT (sic) SELF-DEFENSE INTERPOSED BY THE APPELLANT.

II.

ASSUMING THAT ACCUSED-APPELLANT IS NOT ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, THE TRIAL COURT ERRED IN NOT CONSIDERING IN FAVOR OF THE ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCE OF SUFFICIENT PROVOCATION ON THE PART OF THE OFFENDED PARTY WHICH IMMEDIATELY PRECEDED THE ACT.

III.

THE TRIAL COURT ALSO ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY.

IV.

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED-APPELLANT IS GUILTY FOR THE DEATH OF REYNALDO FERNANDO AND TREACHERY WAS PRESENT, HE SHOULD NOW ONLY BE HELD LIABLE FOR THE CRIME OF HOMICIDE CONSIDERING THAT TREACHERY WAS NOT ALLEGED IN THE INFORMATION AS QUALIFYING AGGRAVATING CIRCUMSTANCE.[15]

Murder, as defined in Article 248 of the Revised Penal Code, is committed by "(a)ny person who, not falling within the provisions of Article 246 (parricide) shall kill another, x x x with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x x x x x."

The justifying circumstance of self-defense is provided for in Article 11 of the Revised Penal Code, viz:

"Article 11. Justifying circumstances. — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x."

Appellant justifies the killing of Fernando as necessary to save himself. He claims that while he was working in the house of Calimlim, Fernando passed by and shouted insulting words at him. Thereafter, Fernando proceeded to his house, continued to insult him and then tried to strike him with his right hand which was holding a stone. He found a piece of wood, picked it up and used it to strike Fernando in the nape in self-defense.

In self-defense, the accused admits the killing of the victim. The burden to justify the killing shifts to him.[16] The rule is that where the claim of self-defense is not corroborated by independent and competent evidence, and is extremely doubtful, it cannot prosper.[17]

We cannot sustain appellant's claim of unlawful aggression. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent.[18] In this case, it is clear from the testimony of appellant that the danger to his life was not actual or imminent when he faced Fernando, viz:

Q: As a matter of fact, are you in effect telling the Court that you did not have any reaction whatsoever when Reynaldo Fernando shouted those words to (sic) you during that time, is that correct?

A: No sir, he usually did (sic) that whenever he passed (sic) by our house and shouting (sic) those words, sir.

x x x x x x x x

Q: In other words, you simply took for granted this untoward act of Reynaldo Fernando, is that correct?

A: Yes sir, I knew that he was drunk.[19]

x x x x x x x x

Q: And at that moment when Reynaldo Fernando faced you, the appearance of his face (sic) did not appear angry at that time?

A: He looked angry, sir.

Q: Are you telling the Court that when Reynaldo Fernando saw you at that distance of about 2 meters, did he already flare up or become very angry (sic)?

A: When we saw each other eye to eye, I could observe that his face was angry, sir.

Q: Actually, he looked very, very angry at that time, is that correct?

A: I could not state that he was very angry but I could observe that he was angry, sir.

Q: And your observation that he was angry was not based on the appearance of his face at that time but was gauged merely by your internal feeling, is that correct?

A: Because I observed that his physical appearance was angry, I calmed myself and went near him, sir.

Q: In fine, when you approached Reynaldo Fernando, you were not actually sure whether he was very angry at you, is that correct?

A: Yes, sir.

Q: Because according to you, it did not appear in his face, is that correct?

A: Yes, sir.

Q: And so since his face did not appear to be angry at you during that time, you immediately approached

Reynaldo Fernando and placed one of your hands on his shoulder, is that correct?

x x x x x x x x

A: Yes, sir."[20]

Assuming arguendo that there was unlawful aggression, the aggression already ceased at the time appellant struck him with a stone. In his testimony, appellant admits that when he struck Fernando at the back, the latter was no longer in possession of the stone. Thus:

"Q: Am I correct in saying that when you were actually in the process of picking (up) the piece of wood that Reynaldo Fernando had actually hit you with a piece of stone or I reform the question, your Honor. When you were actually in the process of reaching out for the piece of wood, did Reynaldo Fernando hit you with a piece of stone or was it during the moment when you have already picked up the piece of wood that Reynaldo Fernando hit you with a piece of stone?

A: Before I picked up the piece of wood, he tried to hit me but I evaded the blow, sir.

Q: Now, in hitting you with a piece of stone, did Reynaldo Fernando actually throw the piece of stone at you?

A: He did not throw the stone(.) (H)e was holding it and swung it towards my body from the back to the front, sir.

Q: At the moment when according to you, you subsequently struck Reynaldo Fernando with a piece of wood, was Reynaldo Fernando still holding the piece of stone or was there no more stone in his hand?

A: No more, sir.

Q: In fine, at the very moment when you struck Reynaldo Fernando with a piece of wood, Reynaldo Fernando was not at all holding any piece of stone, is that correct?

A: Yes, sir.

COURT:

Q: Where did the stone go, if you noticed?

A: When he tried to hit me and I evaded his blow, he hit my shoulder that is why the stone was thrown away to the ground. (Witness pointing to his right shoulder.)"[21]

As was also ratiocinated by the trial court:

"In her testimony, Alice (Cabical) initially did not mention the stone until defense counsel cunningly intercalated the stone by a question (See TSN, January 26, 1999, p.7). A scrutiny of Exh. "1" reveals no stone mentioned. This is significant because the defense of the accused was that he killed the victim who attacked him with a stone. Without the stone, the plea of self-defense would collapse. And the inability of Alice to mention the stone in Exhibit "1" while she had a lot to say about it in her subsequent direct testimony and cross-examination, was intended to buttress the self-serving claim of Rolito that the victim attacked him with a stone."[22]

Moreover, the claim of appellant that Fernando struck him first with a stone cannot be given credence over the testimony of eyewitness Pontino that he saw the appellant strike Fernando from the back without any aggression on the part of the latter (Fernando). There is no showing that Pontino had any ill-motive to testify against the appellant.

The claim of self-defense is also not corroborated by any other witness except the wife of appellant. As was noted by the Solicitor General, no other impartial or disinterested persons were presented to corroborate the testimony of appellant although there were other people working at the neighboring house of Calimlim.

It will further be noted that when the policemen went to the house of appellant on the night of the accident, he merely stayed in the kitchen. It was only his wife and sister-in-law who faced Duro. Thus, the trial court correctly stressed that such act was not consonant with his innocence. "Although he invoked safety for not talking to the police, this is not a good reason for him to hide from them if it was really true that he acted in self-defense. That he surrendered on the following day to the Barangay Captain was too late as by then he would have been able to think of a good story to tell the authorities albeit it was not true. For self-defense to be worthy of credence, admission of the same should be spontaneous."[23]

We likewise agree with the trial court's finding of treachery. Treachery is committed when the offender commits any of the crimes against persons, 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.[24] In the instant case, the prosecution was able to prove the sudden and unexpected attack on Francisco by appellant. Pontino narrated how appellant practically stalked Francisco in silence before he delivered the blow from the back which cracked the victim's skull and instantly rendered him unconscious. Being a credible witness, there is no further need for Pontino's testimony to be corroborated.

The mitigating circumstance of voluntary surrender should be appreciated in favor of the appellant. First, he had not been actually arrested at the time he surrendered; second, he surrendered to a person in authority; and third, his surrender was voluntary.[25] Although he did not surrender to the policemen on the same night that the incident occurred, he did surrender himself to the barangay captain early the next day. Besides, when the policemen came that night, they were not looking for a specific person but were merely inquiring about the incident that happened in front of the house of appellant. There is no dispute that early the very next day, appellant surrendered himself to a person in authority and admitted the killing, before a warrant for his arrest was issued. In *People v. Bautista*,[26] we considered as a mitigating circumstance the voluntary surrender of the accused to a police authority four (4) days after the commission of the crime.

With regard the civil liability of the appellant, the award by the trial court of P50,000.00 as civil indemnity is in accord with recent jurisprudence. The widow of the victim is also entitled to P50,000.00 as moral damages for the

anguish she suffered for the sudden death of her husband. As to the actual damages, it has been consistently ruled that the party must produce competent proof or the best evidence obtainable to justify such award. In *People v. Judy Matore y Guevara*,^[27] we held that a list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions. Thus, in the case at bar, the transportation and hospitalization expenses which were not supported by receipts cannot be included in the computation. Moreover, the expenses relating to the 40th day and first year death anniversary of Fernando cannot be considered as actual expenses because of the lapse of a considerable time from his death.^[28] The award of P44,000.00 granted by the trial court is therefore reduced to P27,040.00.

The widow, Esperanza, also testified that she lost a source of income for her family due to the death of her husband, who she claimed had an annual income of P124,290.00 from farming and from the business of buying and selling of cows, carabaos, and pigs. Of the P124,290.00, P81,600 or P6,800.00 per month comes from the business of buying and selling of animals, while P42,690.00 comes from farming. In *People v. Panabang*,^[29] we laid down the rule that "for lost income to be recovered, there must be an unbiased proof of the deceased's average, not just gross, income." Although in general, testimonial evidence is insufficient to substantiate a claim for damages for loss of earning capacity, testimonies of the relatives on the income of the deceased have been allowed to prosper when documentary evidence is unavailable, such as when the deceased is self-employed and the amount claimed is reasonable.^[30] Esperanza stated that her late husband used to sell 3 cows, 2 carabaos and 10 pigs per month. However, it is of judicial notice that the buy and sell of animals is a seasonal business. There are certain months of the year when business is good, such as during the fiesta and Christmas seasons. In the same manner, there are times when business is bad. In the exercise of our discretion, we reduce the claim of Esperanza to a reasonable amount. We compute the award for the loss of income of Fernando, as follows:

Net annual income = (Annual income) - (necessary and incidental expenses computed at 50% of the annual income)

Net annual income = P100,000.00 - 50,000.00

Net annual income = P 50,000.00

Life expectancy = $\frac{2}{3} \times (80 - \text{age during the time of death})$

Life expectancy = $\frac{2}{3} \times (80 - 45)$

Life expectancy = 23.33

Loss of earning capacity = (net annual income) x (life expectancy)

Loss of earning capacity = P50,000.00 x 23

Loss of earning capacity = P1,150,000.00^[31]

IN VIEW WHEREOF, we modify the appealed decision of the Regional Trial Court and find the accused-appellant Cabical GUILTY beyond reasonable doubt of the crime of MURDER, punishable under Article 248 of the Revised Penal Code. The mitigating circumstance of voluntary surrender is credited in his favor, thus he is sentenced to a penalty of reclusion perpetua. He is further ordered to pay the heirs of Fernando civil indemnity of P50,000.00, moral damages of P50,000.00, actual damages of P27,040.00 and P1,150,000.00 for loss of earning capacity.

SO ORDERED.

Panganiban, and Carpio-Morales, JJ., concur.

Sandoval-Gutierrez, and Corona, JJ., on leave.

[1] Rollo, p. 6.

[2] TSN, Joniper Pontino, March 24, 1998, pp. 4-17 and TSN, Joniper Pontino, April 1, 1998, pp. 2-17.

[3] TSN, Joniper Pontino, March 25, 1998, pp. 5-8.

[4] TSN, Danilo Duro, May 14, 1998, pp. 5-8.

[5] TSN, Danilo Duro, May 20, 1998, pp. 2-4.

[6] TSN, Dr. Elpidio Quines, July 7, 1998, p. 2.

[7] TSN, Dr. Elpidio Quines, June 16, 1998, pp. 5 and 11-12.

[8] TSN, Esperanza Fernando, September 17, 1998, pp. 6-9.

[9] TSN, Esperanza Fernando, July 7, 1998, pp. 11-13; TSN, Esperanza Fernando, July 23, 1998, pp. 2-12; TSN, Esperanza Fernando, August 18, 1998, pp. 2-5; and TSN, Esperanza Fernando, August 19, 1998, pp. 2-7.

[10] TSN, Esperanza Fernando, August 19, 1998, pp. 7-10; and TSN, Esperanza Fernando, September 17, 1998, pp. 2-5.

[11] TSN, Alice Cabical, January 26, 1999, pp. 3-8; and TSN, Alice Cabical, January 27, 1999, pp. 2-6.

[12] TSN, Rolito Cabical, August 25, 1999, pp. 2-6.

[13] TSN, Rolito Cabical, September 7, 1999, pp. 8-9.

[14] Rollo, p. 86.

[15] Id. at 108-109.

[16] People of the Philippines vs. Bonifacio, G.R. No. 133719, February 5, 2002.

[17] Paddayuman vs. People of the Philippines, G.R. No. 120344, January 23, 2002.

[18] People vs. Crisostomo, 108 SCRA 288 (1981).

[19] TSN, Rolito Cabical, November 16, 1999, pp. 5-6.

[20] Id. at 6-8.

[21] TSN, Rolito Cabical, March 8, 2000, pp. 3-4.

[22] Rollo, p. 82.

[23] Id. at 84.

[24] Art. 14, par. 16, Revised Penal Code; People vs. Lacao, Sr., 201 SCRA 317 (1991).

[25] People of the Philippines vs. Antonio, et al., G.R. No. 128900, July 14, 2000.

[26] 254 SCRA 621 (1996).

[27] G.R. No. 131874, August 22, 2002.

[28] *People vs. Mangahas*, 311 SCRA 384 (1999).

[29] G.R. Nos. 137514-15, January 16, 2002, cited in *People vs. Cuenca*, G.R. No. 143819, January 29, 2002; *People vs. Dadivo*, G.R. No. 143765, July 30, 2002; *People vs. Rabanal*, G.R. No. 146687, August 22, 2002.

[30] *People vs. Villarba*, 344 SCRA 464 (2000).

[31] *People vs. Jimmy Rubiso*, G.R. No. 128871, March 18, 2003.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.