

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY SE, APPELLANT.

G.R. No. 152966. March 17, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Jerry Se appeals from the decision[1] of the Regional Trial Court of Ligao City, Branch 13, in Criminal Case No. 4129, convicting him of the crime of Murder; sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay damages to the heirs of the deceased Andres Seda.

The Information filed against appellant states:

That on or about 7:45 o'clock in the morning of April 24, 2000 at Barangay Del Rosario, Zone 7, Municipality of Libon, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused with evident premeditation, treachery, abuse of superior strength, and with intent to kill, did then and there willfully, unlawfully and feloniously hack one ANDRES SEDA, hitting the latter on the head and continuously hacked [the] victim even when prostrate on the ground, resulting as it thus (sic) in the infliction of mortal wounds which caused his death, to the damage and prejudice of his legal heirs.

ACTS CONTRARY TO LAW.[2]

Upon arraignment on October 9, 2000,[3] appellant pleaded not guilty. Trial thereafter ensued.

The facts established by the prosecution are as follows: The family of the victim, Andres Seda and appellant, Jerry Se, had a long standing dispute over a rice land located at Barangay Del Rosario, Libon, Albay. Andres Se, the father of appellant claimed to be the legitimate tenant-tiller of the said rice land owned by the victim but the latter refused to recognize the tenancy relationship.

On April 24, 2000, at around 7:45 in the morning, appellant and his sister Asuncion Se Reynancia were overseeing the work of their hired laborers at the disputed land. Among them was prosecution eyewitness Daniel Satuito. After sometime, the victim arrived and ordered the laborers to leave but Asuncion commanded them to continue working. This infuriated the victim, resulting in an argument between him and Asuncion. Daniel, who was about 5 meters away from the two, noticed that the victim had a bolo in a scabbard tucked under his left armpit with a sling over his shoulder.[4]

Appellant unsheathed his 1 ½ feet long bolo[5] and stood one meter behind the victim. Asuncion left to call a policeman.[6] The victim turned to face appellant, but the latter moved towards his back. The two circled each other several times while having a heated argument. Finally, the victim said, "It's up to you if you do not leave the place but I am telling you to leave the place." [7] At this point, appellant hacked him on the nape.[8] The victim fell on his knees while his bolo remained tucked under his left armpit.[9] Appellant repeatedly hacked the victim as he lay prostrate on the ground.[10]

The defense, on the other hand, invoked self-defense. Appellant's version of the events runs thus: Since the 1950's,[11] Andres Se, the father of appellant, had been the tenant of a rice land owned by Demetrio Seda, Sr.

and Loreto San Andres Seda. The victim bought the said rice land in 1992,[12] but he refused to recognize the tenant status of Andres Se. Thus, the latter filed an action for recovery of possession with the Office of the Provincial Adjudicator of the Department Reform. The case was decided on January 15, 1997 in favor of Andres Se, who was declared a bona fide tenant-tiller of the land.[13] The victim, however, repeatedly defied the decision and vehemently refused to reinstate Andres Se and his daughter Asuncion as tenants. Accordingly, the Office of the Provincial Adjudicator issued a warrant ordering the Philippine National Police of Libon, Albay to arrest the victim.[14] Meanwhile, Andres Se, through Asuncion, entered the rice land.

On April 24, 2000, at about 7:45 a.m., while Asuncion, appellant and several laborers were working on the rice field, the victim arrived and ordered them to stop tilling his land. When Asuncion told the laborers not to obey the victim, the latter hit her on the left shoulder.[15] Asuncion left to call a policeman. The victim then drew the scabbard slung on his shoulder but before he could completely unsheathe his knife, appellant drew the bolo from his waist and hacked him. At that point, appellant's mind went blank and he could no longer recall where and how many times he hit the victim.[16] Thereafter, he went to the Municipal Police Station of Libon to surrender himself and his weapon.[17] Appellant's voluntary surrender was entered in the Police Blotter at 8:00 a.m. of April 24, 2000.[18]

On January 14, 2002, the trial court rendered the assailed judgment, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused Jerry Se guilty beyond reasonable doubt of the offense of Murder as defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 and accordingly sentences said accused Jerry Se there being present the mitigating circumstance of voluntary surrender to Reclusion Perpetua together with the accessory penalties provided for by law.

Accused is ordered to pay the heirs of Andres Seda the amount of P50,000.00 for death indemnity, P21,500.00 for funeral expenses and another P50,000.00 by way of moral damages and P20,000.00 for attorney's fees and expenses of litigation and to pay the costs.

SO ORDERED.

Hence, the instant appeal where appellant contends that:

- I. THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACCUSED DID NOT ACT IN SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE.
- II. THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF THE DECEASED WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.
- III. THE TRIAL COURT ERRED IN AWARDING DAMAGES TO THE HEIRS OF THE DECEASED.[19]

The fact that appellant killed the victim is not disputed. However, since he invoked the justifying circumstance of self-defense, it becomes his duty to discharge the burden to prove by clear and convincing evidence the following elements of self-defense, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[20] Unlawful aggression is a condition sine qua non for upholding the justifying circumstance of self-defense. Unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[21] Unlawful aggression contemplates an actual, sudden and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon.[22]

In the case at bar, appellant miserably failed to prove the indispensable element of unlawful aggression. The testimony of Daniel Satuito that appellant was the unlawful aggressor and that the victim, although he was intensely arguing with the latter, did not or was not able to draw his bolo, is entitled to full faith and credit because he was not shown to have been impelled by any ill motive to testify falsely against appellant.[23]

Moreover, even if it were true that the victim unsuccessfully tried to unsheathe his bolo immediately before he was hacked, this did not qualify as unlawful aggression that would justify a finding of self-defense. Indeed, the act of trying to draw a bolo is merely a threatening or intimidating attitude and not an actual application of physical force. Thus, it has been held that the mere thrusting of one's hand into his pocket as if to draw a weapon, or even the cocking of a rifle without aiming the firearm at any particular target,[24] or approaching somebody with a knife,[25] does not constitute unlawful aggression. A threat even if made with a weapon, or the belief that a person was about to attack, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression by some external acts showing the commencement of actual and material unlawful aggression.[26]

Hence, the trial court was correct in finding that there was no unlawful aggression on the part of the victim.

The court a quo, however, erred in appreciating the qualifying circumstance of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make. The elements of treachery are: (i) the means of execution employed gives the victim no opportunity to defend himself or retaliate; and (ii) the methods of execution were deliberately or consciously adopted.[27]

In the instant case, nothing from the successive events leading to the actual assault show that the victim was deprived of a real chance to defend himself because — (1) he was also carrying a bolo slung on his shoulder which he could have used to repel the attack of appellant; and (2) the prior heated argument with appellant gave him a chance to put up a defense against an impending aggression. So also, the fact alone that the first hacking blow landed on the nape of the victim does not mean that the execution was consciously adopted, for settled is the rule that treachery cannot be presumed, it must be proved by clear and convincing evidence.[28]

Furthermore, the essence of treachery, which is the sudden, unexpected, and unforeseen attack on the person of the victim, without the slightest provocation on the part of the latter,[29] is lacking in the case at bar. The victim was obviously forewarned of the danger to his life when appellant advanced with a bolo and thereafter engaged him in a heated argument.

Similarly, in *People v. Chua*,[30] the Court disregarded the qualifying circumstance of treachery because the accused and the victim were circling each other and were in a fighting stance immediately before the accused stabbed the victim. It was held therein that the victim could thus be said to have been forewarned of the aggression from appellant and his companions, giving him a chance to put up a defense. While the killing itself appears to have occurred on sudden impulse, it was preceded by acts of the accused showing hostility and a heated temper that indicated an imminent attack that should have put the deceased on guard. Then, too, in *People v. Peralta*,[31] treachery was ruled out because the victim saw the accused approach holding a firearm.

Treachery cannot be appreciated here inasmuch as the obvious danger faced by the victim cannot be considered as sudden, unexpected, and unforeseen. Indeed, there is no treachery where the victim was aware of the danger to his life; when he chose to be courageous instead of cautious.[32] In light of the foregoing, appellant should only be convicted of homicide.

On the other hand, the mitigating circumstance of voluntary surrender was correctly appreciated in favor of

appellant. For surrender to be voluntary, it must be spontaneous and must show the intent of the accused to submit himself unconditionally to the authorities, either: (1) because he acknowledges his guilt; or (2) because he wishes to save the authorities the trouble and expense incidental to his search and capture.[33] Minutes after the incident, appellant surrendered himself as well as the weapon he used to SPO4 Joseph Sangero at the Municipal Police Station of Libon, Albay. He admitted the killing of the victim, although he claimed that he acted in self-defense. His testimony was corroborated by the Police Blotter[34] and by the testimony of SPO4 Sangero.[35]

Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. With the attendance of the mitigating circumstance of voluntary surrender, the penalty should be imposed in its minimum period, which has a range of from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, appellant is entitled to a minimum term which shall be within the range of the penalty next lower than that prescribed for the offense, i.e., prision mayor, or from six (6) years and one (1) day to twelve (12) years.[36]

Anent the civil liability of appellant, the trial court correctly ordered the payment of P50,000.00 as indemnity ex delicto, which needs no further proof other than the commission of the crime of homicide.[37] The award of moral damages in the amount of P50,000.00[38] is also proper for the pains and sufferings of the victim's widow which were sufficiently established by evidence.[39] Likewise, the order to pay attorney's fees and litigation expenses[40] in the amount of P20,000.00 is proper it appearing that the heirs of the victim engaged the services of a private prosecutor to litigate their cause.[41]

As regards actual damages, the amount of P75,381.00[42] cannot be granted for failure of the prosecution to present competent proof for the full amount thereof. However, as the heirs of the victim actually incurred funeral and burial expenses, P21,500.00 of which was substantiated by receipts,[43] they are entitled to temperate damages which current jurisprudence set at P25,000.00. The said amount is awarded where there is no sufficient proof of actual damages, or if the actual damages proven, as in the present case, is less than P25,000.00.[44]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Ligao City in Criminal Case No. 4129 is MODIFIED. Appellant Jerry Se is convicted 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 minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. He is ordered to pay the heirs of the victim, Andres Seda, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P20,000.00 as attorney's fees and litigation expenses, and P25,000.00 as temperate damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Carpio, and Azcuna, JJ., concur.

Panganiban, J., on official leave.

[1] Penned by Judge Jose S. Sañez; Rollo, p. 24.

[2] Rollo, p. 11.

[3] Records, p. 52.

[4] TSN, 19 December 2000, pp. 62-65.

[5] Id., p. 58.

- [6] Id., pp. 45-46.
- [7] Id., p. 68.
- [8] Id., 47-52.
- [9] Id., 71-72.
- [10] Id., 51-52.
- [11] TSN, 25 June 2001, p. 8.
- [12] Deed of Extrajudicial Settlement and Sale, Exhibit "L", Records, p. 372.
- [13] Decision, Records, p. 375.
- [14] Order dated 6 May 1999, p. 389.
- [15] TSN, 25 June 2001, pp. 29-30.
- [16] TSN, 21 August 2001, pp. 10-13.
- [17] TSN, 29 October 2001, pp. 6-8.
- [18] Exhibit "2", Records, p. 239.
- [19] Rollo, p. 47.
- [20] People v. Hugo, G.R. No. 134604, 28 August 2003.
- [21] People v. Escarlos, G.R. No. 148912, 10 September 2003, citing People v. Camacho, 411 Phil. 715 (2001); People v. Flores, G.R. No. 138841, 4 April 2001, 356 SCRA 332; People v. Court of Appeals, G.R. No. 103613, 23 February 2001, 352 SCRA 599; Calim v. Court of Appeals, G.R. No. 140065, 13 February 2001, 351 SCRA 599.
- [22] People v. Rubiso, G.R. No. 128871, 18 March 2003.
- [23] People v. Garillo, G.R. No. 146189, 24 February 2003, 398 SCRA 119, 130.
- [24] People v. Rubiso, supra.
- [25] People v. Villamor, 354 Phil. 396, 408 (1998).
- [26] People v. Rubiso, supra.
- [27] People v. Mantes, 420 Phil. 751, 760 (2001), citing People v. Cirilo, G.R. No. 134245, 1 December 2000, 346 SCRA 648.
- [28] People v. Mantes, supra.
- [29] Supra.
- [30] 357 Phil. 907, 920-921 (1998).
- [31] G.R. No. 128116, 24 January 2001, 350 SCRA 198, 210-211.
- [32] People v. Mantes, supra, p. 761, citing People v. Lopez, 319 Phil. 734 (1995).
- [33] People v. Quening, G.R. No. 132167, 8 January 2002, 373 SCRA 42, 53, citing People v. Sion, 342 Phil. 806

(1997).

[34] Exhibit “2”, Records, p. 239.

[35] TSN, 29 October 2001, pp. 6-8.

[36] *People v. Emperador*, G.R. No. 132669, 25 September 2002, 390 SCRA 1, 14-15.

[37] *People v. Bangcado*, 346 Phil. 189, 210 (2000).

[38] *People v. Emperador*, *supra*.

[39] TSN, 2 April 2001, p. 11.

[40] *People v. Balamban*, 332 Phil. 680, 700 (1996); *People v. De Guzman*, 333 Phil. 50, 62 and 71 (1996); *People v. Mindanao*, 390 Phil. 510 (2000).

[41] TSN, 2 April 2001, pp. 15-16; Entry of Appearance, Records, p. 39.

[42] Exhibits “K”-“K-11”, Records, pp. 247-255.

[43] Exhibits “K”-“K-3”, Records, pp. 247-248.

[44] *People v. Delos Santos*, G.R. No. 135919, 9 May 2003, citing *People v. Abrazaldo*, G.R. No. 124396, 7 February 2003, 397 SCRA 137, 149-150.

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