

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIXTO BAYOCOT Y SAGUING, DEFENDANT-APPELLANT.

G.R. No. 55285. June 28, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On April 28, 1980, the Circuit Criminal Court in Tagbilaran City, Bohol, rendered a decision,[1] the dispositive portion of which follows:

WHEREFORE, the Court finds the accused Sixto Bayocot y Saguing guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, described in the aforequoted information. Appreciating in favor of the accused the mitigating circumstance of voluntary surrender, which circumstance is offset by the aggravating circumstance of disregard of age and sex, the accused should be as he is, hereby sentenced to the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of the deceased Gracia Cabrera Dumont by way of actual and compensatory damages in the sum of P15,000.00 and byway of moral and exemplary damages in the sum of P60,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The long bolo, Exhibit "B", the instrument of the crime, is confiscated in favor of the Government.

SO ORDERED.[2]

The facts as gathered by the trial court are as follows:

xxx at 9:00 o'clock in the morning of June 25, 1979, Gracia Cabrera Dumont, Ananias Aro and Maximo Daro, Jr. went to the Municipal Court of Sierra Bullones, Bohol, in order to attend the hearing of two cases which Mrs. Dumont filed, or caused to be filed against Donato Bayocot, father of the accused. One case involved an accusation for Grave Threats, it having transpired that, when cows of Mrs. Dumont ate and destroyed cassava plants of Donato Bayocot which were planted by the latter in the pasture land of Mrs. Dumont, Donato Bayocot went forthwith to the place of Mrs. Dumont and threatened Ananias Aro and Mrs. Dumont with serious bodily harm. The other case was that of contempt of court filed by Mrs. Dumont against Donato Bayocot upon the ground that, while a judgment of ejectment had been rendered by the Municipal Court against Donato Bayocot, the latter after having vacated the land of Mrs. Dumont, returned to occupy the same in violation of law.

The proceedings in both cases having been terminated at 3:00 o'clock in the afternoon, Gracia Cabrera

Dumont, Ananias Aro and Maximino Daro, Jr., went home to Barangay San Juan on board the car of Atty. Paulino Clarin, their lawyer. Atty. Paulino Clarin, however, drove them only as far as the junction of the Provincial Road and the Private road leading to the farmhouse of Mrs. Dumont, the road leading to the farmhouse not having been passable by car because of the heavy rain. Atty. Paulino Clarin proceeded towards Tagbilaran City while Mrs. Dumont, together with her protégés, rode on a sled which was pulled by a carabao. While Mrs. Dumont was some 200 meters from her farmhouse, a person who was wearing boots and a red raincoat with a hood over his head, appeared leaving the farmhouse and coming towards the sled. The person stopped by the roadside and allowed Mrs. Dumont's sled to pass slightly by him. Mrs. Dumont, bothered by the fact that the person was trespassing inside her property without her authority and permission, asked the person the reason for his presence and what he wanted from her. Mrs. Dumont further told him that, if there was anything that he wanted to take up with her, he should follow her to the farmhouse. Ananias Aro, suddenly recognizing the person and realizing that the person had a bolo hidden inside the left sleeve of his raincoat, the handle having become visible, shouted to Mrs. Dumont to watch out because the person is a Bayocot and is armed with a bolo. Ananias Aro jumped off the sled and held the carabao in order to stop the sled and allow Mrs. Dumont to step out of it. Maximino Daro, Jr. jumped off the sled and ran to a canal. Mrs. Dumont could all but step down from the sled and negotiate a distance of around two or three meters from the sled, seeming to stumble, when Sixto Bayocot stabbed her with a long bolo, Exhibit "B", at the back, just above the left hip. Pulling her to him by the arm and, thus, causing her to turn around and face him, Sixto Bayocot stabbed Mrs. Dumont on the chest and caused the bolo to penetrate the body up to the back. Seeing that the worst had happened and he could not do anything about it, Ananias Aro fled from the scene, appalled by the ghastly sight. He also feared for his own life. As can be seen from the findings of Dr. Paulina A. Amila, the accused Sixto Bayocot fatally wounded Mrs. Dumont twice notwithstanding the fact that she was an old woman twice older than he. The atrocious crime having been committed by him, and, leaving Mrs. Dumont for dead, Sixto Bayocot fled from the place.

Sub-station Commander Abraham Adlaon declared that, at 4:30 p.m. of June 25, 1979, the accused Sixto Bayocot surrendered to his police station and, admitting that he killed Mrs. Dumont, delivered the long bolo, Exhibit "B", the instrument of the crime. He voluntarily told Sgt. Adlaon that he killed Mrs. Dumont out of desperation. His mother had become sickly because of anxiety and worry caused by the criminal and civil cases of Mrs. Dumont filed or caused to be filed against his parents.[3]

The appellant presented his own version of the incident claiming that he entered the land of Mrs. Dumont in order to look for his carabao which had wandered away from its usual place of pasture. This was corroborated by Lucio Biscocho who testified that he indeed met the appellant in the Dumont area and that the latter asked him if he saw Bayocot's lost carabao.

When the appellant met Mrs. Dumont who was riding on a sled pulled by a carabao, Mrs. Dumont allegedly scolded him. She asked him what he wanted inside her land and, when he answered that he was in search of his carabao, she remarked, "That is only an excuse to enter my land. You had better be shot." Mrs. Dumont purportedly acted as though she were drawing something from her bag. So, in order to make sure that he would not be shot, the appellant stabbed her with a long bolo on the left chest and on the side.

The appellant claims that the deceased had shot him in the evening of May 7, 1978 when he passed by her house. It was shown, however, that the appellant and his companions were believed to be intruders and it was not Mrs. Dumont who fired the three shots but her security guard. Furthermore, the shots were fired overhead as warning.

The appellant admitted having stabbed the victim two times. But he denied hiding his weapon, claiming he had tied his bolo to his waist for everyone to see.

Finally, the appellant maintains that while he had been conversant and aware of the several civil and criminal cases filed by Mrs. Dumont against his parents, he bore no grudge or ill will against the deceased; he denies having killed Mrs. Dumont on this account. He defends that he boloed Mrs. Dumont when he did because at that time she acted as though she was pulling her bag so he had to protect himself from being shot and killed.

Before the Court on appeal, the appellant raises the following issues:

1. Did the court a quo err in not entertaining the invocation of self-defense by the appellant?
2. Did the court a quo err in appreciating the qualifying circumstance of treachery?
3. Did the court a quo err in appreciating the aggravating circumstance of disregard of age and sex?
4. Did the court a quo err in convicting the appellant of murder?[4]

The appellant admitted killing Mrs. Dumont. There is no question about that. However, the killer seeks acquittal invoking the justifying circumstance of self-defense.

We have held in *Ortega vs. Sandiganbayan*[5] that:

Well settled is the rule that where the accused had admitted that he is the author of the death of the victim and his defense anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, for the accused himself had admitted the killing. The burden is upon the accused to prove clearly and sufficiently the elements of self-defense, being an affirmative allegation, otherwise the conviction of the accused is inescapable.

In order for the court to appreciate the justifying circumstance of self-defense, the following requisites must concur: 1) unlawful aggression; 2) reasonable necessity of the means employed to prevent or repel it; and 3) lack of sufficient provocation on the part of the person defending himself.[6]

The presence of the first requisite, that is, unlawful aggression, is a condition sine qua non. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself. Obviously, when there is no unlawful aggression, there is nothing to defend against.[7] Therefore, the killing of the victim would constitute homicide or murder, as the case may be.

The law on self-defense is founded on necessity. Unless the person attacked is so placed that either he has to forfeit his life or take the life of the assailant, he cannot be completely justified in killing him. The right to kill depends upon the right to live to which all other rights are subordinated.[8] The rationale is "that which anyone should do for the safety of his own person is to be adjudged as having been done justly in his own favor." [9]

After a review of the evidence presented by the defense, the burden of proof having been shifted, we hold that the element of unlawful aggression had not been established. Consequently, the appellant could not have acted in self-defense and should therefor be held accountable for the death of Mrs. Dumont.

The trial court found and we agree that far from acting in defense of self, the appellant was the aggressor possessed with the desire for vengeance. His family had coveted the land of Mrs. Dumont, trying to take physical possession of it. Apparently, they had no better right to it than that of squatters, and so the courts sustained Mrs. Dumont. When the day of reckoning came and the Bayocots had to answer civilly and criminally for their transgression of the property and other rights of Mrs. Dumont, the appellant decided to resort to violence against Mrs. Dumont in order to avert the Court judgments against them. When asked by Sub-Station Chief Abraham

Adlaon as to why he killed Mrs. Dumont, the appellant replied that he killed her out of desperation; his mother became sick as a result of the numerous cases filed against them by Mrs. Dumont. As a matter of fact, Mrs. Dumont and her companions just came from the hearing of the cases filed by her against the Bayocots when the incident happened indicating the congruence of circumstances pointing unerringly to revenge as the motivating force in the commission of the crime.

But even if the appellant's account of the incident is truthful, we still hold that no unlawful aggression was committed by Mrs. Dumont. Even the testimony of the appellant that upon meeting Mrs. Dumont and her companions, he was scolded by her and the latter "acted as if she was getting something from her bag," falls far short of the unlawful aggression compelled by law as the starting point of self-defense. The mere thought, or apprehension by the appellant that Mrs. Dumont had a hidden firearm which she was about to draw out from her bag is a flimsy justification for what he did and is totally unacceptable. Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.[10] The act of Mrs. Dumont is far from the unlawful aggression contemplated by the law. Indeed, an inspection of the contents of the bag of Mrs. Dumont revealed that there was no firearm, nor was Mrs. Dumont known to have ever carried one.

It is quite clear, considering all these circumstances, that the alleged threat to the appellant's life was a mere figment of his imagination and cannot legally justify the killing of the victim.

Now, having found the appellant liable for the death of Mrs. Dumont, we come to the next issue: Did the appellant commit homicide or, as the trial court found, murder qualified by treachery?

After a careful study of the records, not having any reason to disturb the well-established factual findings of the trial court, we hold that the killing was attended by treachery, raising it to the category of murder.

"There is treachery when the offender commits any of the crimes against the person, 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." [11]

In the case at bar, the appellant contends that the trial court erred in appreciating the qualifying circumstance of treachery.

We can not sustain the appellant's contention. The trial court found that:

"x x x the accused in the case at bar, waited patiently and deliberately at the farmhouse of the deceased, met her on the road when he saw her coming riding on a sled, waited by the roadside until the victim passed by and then, without warning and without giving the victim a chance to escape, made a sudden and unexpected attack, under the circumstances rendering the victim unable to defend herself by reason of its severity and suddenness, constitutes treachery. The accused craftily concealed his long combat bolo in the sleeve of his raincoat. His victim had no premonition that the accused was armed or that he would attack so suddenly." [12]

We concur with the trial court that treachery attended the commission of the crime. The attack by the appellant was deliberate, sudden, and unexpected. The unarmed, fifty-six year old woman was absolutely helpless and unable to defend herself from the overpowering strength of the appellant when the latter stabbed her twice with a combat bolo. The victim had no opportunity to defend herself or repel the initial assault.

However, we disagree with the finding of the trial court that the aggravating circumstance of disregard of age and sex attended the commission of the crime. It has not been proven that in committing the crime the appellant

deliberately intended to offend or insult the age or sex of the deceased lady.[13]

Based on the foregoing, the crime committed by the appellant constitutes murder qualified by treachery. Due to the mitigating circumstance of voluntary surrender, the appellant should suffer the penalty of reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the penalty next lower in degree would be prision mayor in its maximum period of reclusion temporal in its medium period or from 10 years and 1 day to 17 years and 4 months. In the exercise of our discretion, considering the gravity of the offense, we set the minimum of the indeterminate penalty at 17 years and 4 months.

WHEREFORE, we find the appellant Sixto Bayocot y Saguing GUILTY beyond reasonable doubt of the crime of Murder and appreciating the mitigating circumstance of voluntary surrender in his favor, with no aggravating circumstance to offset the same, he is hereby sentenced to suffer an indeterminate penalty of from 17 years and 4 months to 20 years. The indemnity to the heirs of the deceased Gracia Cabrera Dumont by way of actual and compensatory damages should be, as it is hereby, increased from P15,000.00 to P30,000.00.

In all other respects, the decision is AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and Regalado, JJ., concur.

[1] Penned by Judge Regino Hermosisima, Jr.; Rollo, 5-14.

[2] Decision, 10; Rollo, 14.

[3] Decision, 3-4; Rollo, 7-8.

[4] Appellant's Brief, 1-3; Rollo, 54.

[5] No. 57664, February 8, 1989.

[6] Paragraph 1, Article 11 of the Revised Penal Code.

[7] Ortega vs. Sandiganbayan, supra; Andres vs. CA, No. L-48957, June 23, 1987, 151 SCRA 268; People vs. Picardal, No. 72936, June 18, 1987, 151 SCRA 170.

[8] Decision 6; Rollo, 10.

[9] People vs. Cuadra, No. L-27973, October 23, 1978, 85 SCRA 576.

[10] People vs. Pasco, Jr., No. L-45715, June 24, 1985, 137 SCRA 137.

[11] Article 14, No. 16, Revised Penal Code.

[12] Decision 9; Roth, 13.

[13] People vs. Mangsant, 65 Phil. 548 (1938).

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