

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BANASEN, DEFENDANT-APPELLANT.

G.R. No. 55487. December 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the Decision of the then Court of First Instance of Pangasinan, Branch XI, in Criminal Case No. L-2081, convicting the accused, Domingo Banasen, of Murder and sentencing him to suffer the penalty of reclusion perpetua.

The People's evidence was summed up by the Trial Court as follows:

"The evidence for the prosecution tends to establish that at about 2:00 o'clock in the early morning of December 2, 1979, Leonardo Malong fetched Nemesio Gonzales, his brother-in-law. They were bound for Loob, Uyong, Labrador, Pangasinan to buy 'boho'. On their way, Nemesio Gonzales stopped to answer a call of nature. As Leonardo Malong walked ahead, Domingo Banasen suddenly appeared. Domingo Banasen, then and there, hacked away at Leonardo Malong with a bolo. (Exhibits 'B' and 'B-1').

Nemesia Gonzales got scared. He ran to Barangay Captain, Buenaventura Arenas of Uyong, Labrador, Pangasinan. He told the Barangay Captain about the incident. Later, Martha, Domingo Banasen's wife, arrived. She revealed that Leonardo Malong and her husband, Domingo, were fighting. Thereafter, Buenaventura Arenas and Nemesio Gonzales returned to the place of the incident. They came upon Leonardo Malong in a yard soaked in blood and lifeless. About thirty (30) to forty (40) meters away was Domingo Banasen's house.

Buenaventura Arenas returned home. He proceeded to report the matter to the police authorities at Labrador, Pangasinan. Nemesio Gonzales, on the other hand, proceeded to inform Leonardo Malong's wife of the incident.

Responding to Buenaventura Arenas' report, Patrolmen Camalao, Castillo and Isora of the Labrador, Pangasinan INP were ordered to conduct a spot investigation. At the scene of the crime, the investigators saw Leonardo Malong lying dead in a yard (Exhibit 'A-4') some thirty (30) to forty (40) meters away from Domingo Banasen's house (Exhibit 'A-2'). Patrolman Camalao prepared a sketch. (Exhibits 'A' and 'A-1'). There were bloodstains (Exhibits 'A-3', 'A-5', 'A-6', 'A-7') within the perimeter. There were also shreds of the skull. (Exhibit 'A-8'). Similarly, an inspection on Domingo Banasen's house revealed the presence of bloodstains on the flooring.

Further inquiries indicated that Domingo Banasen went to Loob, Uyong, Labrador, Pangasinan. So, the police authorities went over to the place. Here, they came upon Domingo Banasen hiding in a 'boho' groove. Identifying themselves, the police ordered Domingo Banasen to surrender. After a while, Domingo Banasen came out. He threw his bolo to the ground. (Exhibits 'B' and 'B-1'). Domingo Banasen was asked about Leonardo Malong's death. Domingo Banasen readily admitted causing the victim's death.

Domingo Banasen was brought to town. He was treated of his wounds on his hand and knee by the Municipal Health Officer. Thereafter, Domingo Banasen was lodged in jail."^[1]

The accused admitted authorship of the crime but claimed that he killed Leonardo Malong in defense of himself and of his wife's honor. His version of the event was summarized by the Trial Court in this wise:

"On the other hand, the evidence for the accused tends to show that at about 12:30 to 1:00 o'clock in the early morning of December 2, 1979, Domingo Banasen came home from the mountain at Imbo, Labrador, Pangasinan. He carried a sack full of palay. As he approached his house, he heard his wife crying. So, he silently went up the ladder. Then and there, he saw Leonardo Malong atop his (Banasen's) wife. Domingo Banasen confronted Leonardo Malong. Leonardo Malong immediately put on his pants and stood up. Then Leonardo Malong drew a bolo. He held Domingo Banasen's hair. Simultaneously, Leonardo Malong boloed Domingo Banasen on the left palm. This was followed by blows hitting Domingo Banasen on the left hand and knee. Thereafter, Domingo Banasen moved back. He also drew his bolo. He hacked away at Leonardo Malong first hitting his right wrist. As a result, Leonardo Malong's bolo fell. Leonardo Malong ran downstairs, Domingo Banasen gave chase. Once at the ground, Leonardo Malong held Domingo Banasen by the left arm. But Domingo Banasen extricated himself from Leonardo Malong's hold. There was a struggle. The protagonists sought to evade each other. But then, Leonardo Malong persisted at pursuing Domingo Banasen. So, Domingo Banasen boloed Leonardo Malong at the left hand. Domingo Banasen followed through. Leonardo Malong was hit in the forehead and the head. Leonardo Malong ran. Mockingly, he reminded Domingo Banasen of the earlier incident with Martha Banasen. Domingo Banasen got enraged. He could no longer control himself. So, he hacked away at Leonardo Malong. By then, the protagonists were already on the road.

Leonardo Malong fell dead. After a while, Domingo Banasen came to his senses. So, he dragged Leonardo Malong to a nearby yard. By now, the thought for repentance overcame Domingo Banasen. He pondered on his options on whether to go to the Municipal Building or to proceed to Loob, Labrador, Pangasinan where he had his relatives. He decided on going to his relatives. He intended to seek his relatives' assistance at surrendering at Alaminos, Pangasinan. His plans did not go through. Police authorities caught up with him at Loob, Labrador, Pangasinan. He gave himself up to the police. He also handed over his bolo.

Domingo Banasen was brought to the Municipal Building of Labrador, Pangasinan. He refused a formal investigation. He was treated of his wounds. (Exhibits '1' and '1-A')."

The Trial Court, on August 21, 1980, rendered a verdict of guilty, thus:

"WHEREFORE, with these considerations, judgment is hereby rendered finding the accused DOMINGO BANASEN, guilty beyond reasonable doubt of MURDER as charged in the Information and is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased, Leonardo Malong, in the amount of Twelve Thousand Pesos (P12,000.00). With costs."

In this appeal, the accused assigned the following errors:

- "1. The lower court gravely erred into having believed in and relied upon the biased and uncorroborated testimony of prosecution witness Nemesio Gonzales;
2. The trial court gravely erred into finding defendant-appellant guilty of the crime of murder.
3. The trial court gravely erred in not acquitting defendant-appellant of the crime charged against him, on the ground of reasonable doubt."

Upon the evidence, we find merit in this appeal. The Trial Court failed to accord the correct significance to the physical evidence consisting of blood stains found on the flooring of the accused's house, porch and stairs as testified to even by prosecution witness Pat. Camalao[2] and by Atty. Pedro Rodriguez, defense counsel, and as confirmed by the sketch of the scene of the incident drawn by Pat. Diomedes S. Camalao showing additional blood stains in surrounding areas (Exhibits "A-3", "A-5", and "A-6"). Those blood stains confirm the accused's

version that the fight between the accused and the victim started inside the sala of the house, down the stairs with the accused chasing the victim, with the fight continuing by the kitchen, and up to the barbed wire fence on the southern shoulder of the road where the victim was fatally hacked as shown by the pieces of skull and brain tissue and blood stains scattered thereat. From that point, the accused realizing the gravity of what he had done, dragged the victim to the adjoining yard belonging to Mariano Vinluan so that, according to the accused, the victim would not be trampled upon by a cart or animal.[3] It was on that spot that the victim was found (Exhibit "A-4").

The accused's version that the victim's hat flew off when he boloed the victim on the latter's forehead is likewise confirmed by Exhibit "A-7" showing the hat on the ground near the kitchen. That there was such a struggle on the ground outside the kitchen was also corroborated by defense witness, Merita Rosario, who was living in the accused's house at the time of the incident, and who testified that she heard such struggle from their bedroom.[4]

The presence of blood stains inside the house also supports the accused's version that upon arriving from the mountain at around midnight of December 2, 1979, he heard his wife crying for help and upon going up, he surprised the victim having carnal knowledge of her, after which the fight between him and the victim started inside the house. Corroborating this is the testimony of Merita Rosario, who stated that the accused's wife woke her up in the middle of the night, "trembling and afraid", and informed her that her Uncle Domingo and one Dadoy were fighting each other[5], after which said witness went downstairs and ran immediately to the house of "grandmother Binay" (mother of the victim) to fetch her to go to the house of the Barrio Captain to seek assistance, but they went instead to the house of Melecio Gonzales whom she woke up, after which they proceeded to the residence of the Barrio Captain.[6]

That the wife, Martha Banasen, mentioned nothing of the assault on her honor to the Barangay Captain that early morning when she went there to ask for assistance, nor did she testify on that happening, does not militate against the accused's version as the transcript shows that Martha had started to testify but the Trial Judge opined that she needed the consent of her husband, the accused, to do so.[7] When the defense counsel dispensed with her testimony, it is likely that the accused did not want to expose his wife and his family to the dishonor and disrepute that would result from the exposure of the cause of the fight in a public trial.

The accused was apparently a mild-mannered man for his immediate reaction upon seeing the victim atop his wife was to say "why Compadre are you doing this to my wife".[8] It was only after the victim drew the bolo under his hat which he had picked up that the accused retaliated and did so unrelentingly, taunted by the victim who had told him "anyway, I fucked your wife".[9]

The accused's declaration that upon surprising the victim, the latter pulled up his pants hurriedly and was about to leave, is further confirmed by the "physical findings" in the Medical Certificate of Dr. Ranulfo Parras (Exhibit "C") that the victim was "1. wearing pants, zipper opened."

That the bolo used by the victim was not presented as evidence by the defense should neither be taken against the accused. The latter, while incarcerated, had asked his children to look for it but it could no longer be found, the house having been abandoned soon after the incident out of fear by the wife and the fact that the breadwinner of the family had been incarcerated and was not allowed to post bail.

Additionally supportive of the accused's version is the fact that the accused himself had suffered incised wounds of "4-5 cms. lateral aspect, dorsum (1) hand' 2-3 cms. distal end index finger (1); and 3-4 cms. lat. aspect of right knee" (Exhibit "1"). Although apparently superficial, his wounds were found by the police to have been bleeding for which reason, they immediately took him to the Municipal Health Officer for treatment.

Neither can it be said that the accused took to flight because he was found by the police in barrio Loob hiding in

the "buho" grove. As he had explained, he was so overcome by remorse over what he had done that he actually did not hide but just sat there until help from his relatives could come. Besides, when found by the police, he immediately turned over his bolo and went with them.

In contrast, the version of prosecution witness, Melecio Gonzales, that he and the accused were together that fateful evening and that while said witness was answering the call of nature, the accused suddenly hacked the victim by the side of the road after which the witness ran away in fright to report to the Barangay Captain, do not and cannot explain the blood stains inside the house, and from there, the blood stains to the exact spot where the victim was found sprawled flat on his back, as well as the blood stains from the side of the road where pieces of the skull and brain tissue were found, to the said spot.

The explanation of the Trial Court to the effect that the accused had gone back to the house before he went into "hiding", which would account for the blood stains thereat, is not plausible because the accused himself testified that he went direct to Sitio Loob, Labrador, Pangasinan where he and his wife had relatives[10] after he had killed the victim.

Gonzales' version is further refuted by Merita Rosario's testimony that after having been awakened by Martha Banasen, she and grandmother Binay whom she fetched immediately proceeded to the house of Melecio Gonzales and woke him up, and together, they went to the house of the Barangay Captain to report the incident and to ask for help. Further, Gonzales gave inconsistent declarations when he stated in his Affidavit (Exhibit "2"), that three persons held the victim (Exhibit "2-A") but that he recognized only the accused, whereas on the witness stand he declared that only the accused attacked the victim suddenly.

These inconsistencies aside from the fact that his version does not compaginate with other factual circumstances surrounding the case strongly militate against his credibility.

The next point to consider is the accused's plea of defense of the person of his spouse. Upon the facts, as established by the evidence, we find that the three requisites required by law to justify the offense under paragraph 2 of Article 11 of the Revised Penal Code are present, namely, unlawful aggression; reasonable necessity of the means employed to prevent or repel it; and in case the provocation was given by the person attacked, that the one making the defense had no part therein.

The accused upon coming home, caught the victim in the act of raping his (accused's) wife. Thereafter, a fight, commenced by the victim, ensued, both protagonists using their respective boloes, culminating in the fatal wounding of the victim. The circumstances under which the victim was hacked to death by the accused, as already discussed above, prove that the accused merely made use of his legitimate right to defend the honor of his wife, and neither did he provoke the affair nor had any part therein, consequently, he incurs no criminal responsibility.

"Where a husband entered his house one morning while it was yet dark and surprised a person in the act of holding his wife by the hands, with the intention of laying her on the floor and lying with her, if his first impulse was to inflict upon the aggressor a rather serious wound on one of the arms, he undoubtedly acted in defense of the person and rights of his offended wife; he made use of a legitimate right, one which is included in article 8, No. 5, of the Penal Code, inasmuch as there concurred the three requisites required by the law; neither of the spouses provoked the affair nor gave the wounded man any occasion to enter the house, in which the woman was alone at a very early hour of the morning, and the husband, on seeing that a man was making a violent attempt upon the honor of his wife, found himself obliged to repel and prevent his attempt, availing himself as a rational means of the bolo which he carried, and for this reason he is exempt from all responsibility and should be absolved." [11]

In fact, it can even be said that the accused was himself acting also in self-defense. In the ensuing fight between

him and the victim, and the obfuscation that must have been produced in his mind, he could not be expected to retain the presence of mind to employ some other less violent means.

"One who, together with his wife, is wounded with a bolo in an effort to protect said wife from an assault with intent to rape, and who in turn inflicts a wound with said bolo upon the aggressor from which the latter dies is acting in self-defense and incurs no criminal responsibility." [12]

WHEREFORE, the appealed judgment is hereby reversed and the accused, Domingo Banasen, is hereby acquitted of the crime with which he has been charged. Costs de officio.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] pp. 126-127, Record of Criminal Case No. L-2081.

[2] T.s.n., June 24, 1980, pp. 16 & 29.

[3] T.s.n., July 17, 1980, p. 19.

[4] T.s.n., July 17, 1980, pp. 10-11.

[5] T.s.n., *ibid.*, p. 4.

[6] T.s.n., *ibid.*, pp. 5-6.

[7] T.s.n., *ibid.*, p. 35.

[8] T.s.n., *ibid.*, p. 13.

[9] T.s.n., *ibid.*, p. 18.

[10] T.s.n., *ibid.*, p. 20.

[11] U.S. vs. Padilla, 34 Phil. 641 (1916).

[12] U.S. vs. Salandanan, 1 Phil. 478 (1902).

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