

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE PACUDAN, ACCUSED-APPELLANT.

G.R. No. 57002. August 17, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

VICENTE PACUDAN was accused of murder in the defunct Court of First Instance of Cebu. The information against him reads:

"That on or about the 1st day of October, 1980, at about 3 o'clock p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a revolver, with deliberate intent, with intent to kill, with treachery and evident premeditation did then and there attack, assault and use personal violence upon one Ricardo B. Varon, by firing of several shots at him (deceased) on different vital parts of his (deceased) body, thereby inflicting upon him the following injuries:

'GUNSHOT WOUNDS, MULTIPLE, HEAD & RIGHT UPPER EXTREMITY',

as a consequence of which said Ricardo B. Varon died instantaneously." (Expediente, p. 1.)

The decision of the trial court states:

"Before arraignment, counsel for the accused moved that the accused be allowed to plead guilty to the lesser offense of homicide. Since the prosecution vigorously opposed the motion, the court denied the offer to plead guilty to homicide.

"Thus, when arraigned in accordance with law, the accused, assisted by counsel of his choice, entered the plea of not guilty to the information for murder." (Expediente, pp. 74-75.)

After trial wherein the only witness for the defense was the accused, the court rendered the following judgment:

"WHEREFORE, the Court finds the accused Vicente Pacudan guilty beyond reasonable doubt of the crime of MURDER described in the aforequoted information. While we consider abuse of superiority or the fact that means were employed by the accused to weaken the defense, we take into account the relatively tender age of the accused and, thus, we hold that 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 Ricardo Varon by way of compensatory and actual damages in the sum of P12,000.00 and by way of moral and exemplary damages in the sum of P25,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs." (Expediente, p. 82.)

The appellant admits having shot and killed Ricardo B. Varon who was a fellow security guard assigned by the Sentinel Security Agency to the Pacific Banking Corporation in Cebu City. He claims, however, that it was done in self-defense.

The following narration is taken from the appellants brief:

"At about three o'clock p.m., the appellant Vicente Pacudan, a security guard then on duty at the main door of the Pacific Banking Corporation branch in Cebu, was called by Ricardo Varon, another security guard, to the security office on the third floor of the building. After calling another guard to take his place, Pacudan went up to the office where Varon was waiting for him. Varon immediately berated Pacudan for reporting him to the security officer, Daniel Kho, for his misdeeds, calling him a bootlicker, and saying "I will kill you." Varon then grabbed the .38 caliber pistol in a holster at Pacudan's waist. They grappled for the gun which fell, and went off. Then Pacudan butted Varon with his head as Varon tried to grab the gun, and once he had it in his hand, the gun was fired at least more than two times.

"Pacudan then went down and surrendered the gun to the security guard below, and this guard kept the gun in the drawer. Pacudan then surrendered to the Philippine Constabulary officer." (Brief, p. 2.)

The question is whether under the facts supplied by the appellant himself he acted in self-defense. We hold that he did not.

In *People vs. Talaboc, Jr.* L-25004, Oct. 31, 1969, 30 SCRA 87, this Court held that in self-defense the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence. Having admitted the killing of the deceased but failing to present sufficient evidence to establish self-defense, the accused must be convicted.

In the case at bar, the claim of self-defense is negated by the following observations of the trial court:

"Significant in his answers to questions on cross-examination is the allegation that, when Varon threatened to kill him, he admittedly had no reason to fear such a threat because Varon had no gun. It was he who was armed instead with his service revolver.

"The gun of the accused was placed in his holster and it was safely put in place by a strap with snap buttons.

"The holster was hooked to defendant's belt and, notwithstanding the force exerted by the protagonists, neither the trousers nor the belt was destroyed. This casts grave doubt as to the version of the accused, thus leading Us to conclude that the shooting was deliberate and not perpetrated because of self-defense.

"While the gun in its holster was tucked to the right waist of the accused and the protagonists were facing each other, it was easy for the accused to prevent the taking. Yet, his mind again becoming blank at this point, the accused neither saw how the deceased relieved him of his gun nor did he see the hand of the deceased that reached out to take it. He claims that he did not point his gun at Varon because he did not want to kill the latter; yet, when asked as to why he fired the gun at all, he answered that it was a matter of life and death.

"The foregoing evidence considered, We find the main issue to be, whether or not the accused shot the deceased Varon in self-defense. A threshold question would be whether the deceased truly grabbed the service firearm of the accused and tried to kill the accused.

"We find the allegation of the accused in this regard to be fallacious because it is inconceivable. The deceased Varon was admittedly unarmed. The accused, on the other hand, was fittingly possessed of his service firearm. It would be preposterous to assume that the deceased Varon would threaten to kill the accused in this situation and try to grab the service firearm of the accused, considering that the accused's gun was locked to its holster and, while the protagonists were face to face, the accused could effectively prevent the taking and easily get hold of the gun ahead of the deceased. It is a conclusion conceived in logic and our experience of the affairs of mankind that an unarmed person will not ordinarily try to kill another who is armed with a gun by grabbing for the gun by the skin of his teeth, so to speak, so as to kill his opponent with his opponent's gun. A person may not have the temerity to attack a man with a gun." (Expediente pp. 79-80.)

The next relevant question is: what is the proper denomination for the crime, murder or homicide only? The

information alleges two qualifying circumstances neither of which had been proved. There was no treachery because the adversaries were face to face. There was no evident premeditation because there is no proof that the accused had planned the killing. And contrary to the decision of the court a quo there was not even abuse of superiority because it was a one on one, face to face confrontation and no means were employed to weaken the defense. The crime committed was homicide not murder.

The appellant admittedly surrendered voluntarily after the killing. He is entitled to this mitigating circumstance which calls for the application of the minimum period of the appropriate penalty.

WHEREFORE, the judgment of the court a quo is modified in that the appellant is held guilty of homicide only and sentenced to an 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, the rest of said judgment being affirmed in all other respects. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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