

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SEGUNDINO “GODING” JOTOY, ACCUSED-APPELLANT.***G.R. No. 61154. May 31, 1993*

Ponente: BELLOSILLO, J.

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Accused SEGUNDINO "GODING" JOTOY appeals from the judgment[1] of the court a quo finding him guilty of murder, imposing upon him a prison term of reclusion perpetua, and ordering him to indemnify the victim's wife in the amount of P12,000.00. Specifically, the Information alleges that on 27 December 1979, in Davao City, with treachery, evident premeditation and intent to kill, the accused feloniously attacked and stabbed one Maximo Lao with a knife, inflicting upon him mortal wounds which caused his death.

The version of the prosecution: On the night of 27 December 1979, at about 6:00 o'clock, Edna Bawasanta went out of her house at Datu Bago, Bankerohan, Davao City to get her son who was with her brother Maximo Lao at a nearby store. Then she retraced her way to her house with her son. Her brother Maximo followed some five (5) arms' length behind. While walking, Edna saw the accused carrying a knife and coming from the opposite direction. As he passed by her, Edna sensed that he was angry. So Edna looked back and was just in time to see the accused put his left arm around her brother's neck and stabbed him repeatedly, first on the neck, and then on different parts of the body. Moored to her position, she could only watch her brother fall to the ground after which she ran home to inform her father who responded by rushing to the crime scene. He saw Maximo lying prostrate on the street. Maximo was immediately brought to the hospital but was pronounced dead on arrival with the following injuries: (a) stab wound, 1.5 cm. by 0.6 cm., at the left base of the neck directed downwards hitting the esophagus and penetrating the upper mediastrium; (b) stab wound, 2.1 cm. by 1 cm., across the left parasternal line cutting the cartilage of the 5th rib directed downwards posteriorly hitting the pericardium thru the diaphragm, liver and puncturing the stomach; (c) stab wound, 2.2 cm. by 0.8 cm., across the left midclavicular line cutting the cartilage of the 7th and 8th ribs directed posteriorly and slightly downwards, hitting the stomach; (d) stab wound, 2.2 by 0.8 cm., at the right side of the back on the level of the 8th rib directed anteriorly and upwards, hitting the lower lobe of the right lung, collapsing the same; (e) stab wound, 2.6 cm. by 0.8 cm., at the posterior side, mid-portion of the right forearm; and, (f) hemothorax, left - approximately 3,000 cc. of fluid and clotted blood. As diagnosed, the cause of death was hemorrhage secondary to multiple stab wounds.[2]

Appellant invokes self-defense and imputes error to the court a quo in not sustaining his theory; in finding that he committed the crime with treachery and evident premeditation; and, in not acquitting him on reasonable doubt.

Appellant attempts to persuade Us that what he did was simply an act of self-defense as he calls Our attention to alleged repeated threats on his life by the deceased for having "cautioned" a snatcher under the deceased's protective custody. In addition, appellant sought to establish the propensity of the deceased for violence through the records of the Davao METRODISCOM[3] which disclose the fact that the latter had been picked up five (5) times before for various charges, the last being for attempted homicide.

It is oft-repeated that in criminal cases, the burden rests on the prosecution to establish the guilt of the accused by proof beyond reasonable doubt. However, when the accused invokes self-defense, the onus probandi is shifted and he is duty bound to prove the elements of the plea by clear and convincing evidence;^[4] otherwise, conviction is inescapable.^[5]

In the case at bar, appellant testified that it was the deceased Maximo who drew a knife and stabbed him when they met, but being bigger, he succeeded in catching the hand and twisting the arm of the deceased, after which he stabbed Maximo.^[6]

We are not convinced with the pretensions of appellant. For, aside from his self-serving assertion, there is no other evidence to bolster his plea. He contends that the deceased made repeated threats on his life. Assuming the same to be true, they merely tend to show that the deceased harbored hostile feelings against him, but they do not prove that there was in fact actual unlawful aggression on the part of the deceased that fateful night of 27 December 1979.

On the contrary, circumstances indicate that there was in fact no self-defense. For one thing, accused testified that he was stabbed by the deceased. However, there is not a scintilla of evidence to show that the accused suffered even a scratch as a result of the alleged stabbing. Secondly, the nature and number of the wounds sustained by the deceased belie self-defense. The autopsy conducted reveals that of the five (5) stab wounds suffered by the deceased, four (4) were fatal. Thirdly, appellant himself testified that he threw the knife near the riverside after having stabbed the deceased, and that he did not report the matter to the police for fear of being salvaged.^[7]

The fact that the accused threw away the weapon used instead of surrendering it to the authorities and reporting the incident negates the claim of self-defense.^[8]

But even if We assume that it was the deceased who attacked the accused with a knife, as the latter would make Us believe, We still hold that there was no self-defense because at that point when the accused was able to catch and twist the hand of the deceased, in effect immobilizing him, the unlawful aggression had already ended. Thus, the danger having ceased, there was no more need for the accused to start stabbing the deceased, not just once but five (5) times.

Since unlawful aggression was not established, discussion of the other two elements, namely, reasonableness of the means employed and lack of sufficient provocation, is futile because there can be no self-defense, either complete or incomplete, if no unlawful aggression can be attributed to the victim.^[9]

While We sustain the conclusion of the trial court that there was no self-defense, We cannot uphold its finding that evident premeditation or treachery existed to qualify the killing to murder.

Before evident premeditation can be appreciated, the elements thereof, namely, the time when the accused decided to commit the crime; the overt act showing that the accused clung to his determination to commit the crime; and, the lapse of time between the decision and the execution of the crime sufficient for meditation and reflection, must be established.^[10] None of these elements was established.

While appellant admits that he and the deceased had a misunderstanding during a drinking spree, i.e., when accused cautioned a snatcher under the protection of the deceased as a result of which the latter made repeated threats on his life, Edna Bawasanta herself claims that the accused and her brother were "friends" and that there was no quarrel between them.^[11] In fact, the prosecution did not even attempt to prove that the accused ever acted in such a way as to show that he harbored hostile feelings towards the deceased. Evident premeditation therefore cannot be properly appreciated against the accused, for it must be established as indubitably and clearly as the criminal act itself.^[12]

As regards the aggravating circumstance of treachery, the prosecution attempted to prove the same through the testimony of Dr. Jose Ladrado, Jr., the City Health Officer who conducted the autopsy on the deceased. Dr. Ladrado testified that it was possible that two (2) out of the five (5) stab wounds were inflicted from behind.[13] However, Edna Bawasanta, who witnessed the attack at its inception, testified that she only saw the "stabbing in front".[14] As between the testimonies of Dr. Ladrado and Mrs. Bawasanta, We are more inclined to accept the latter's version because she actually saw the infliction of the wounds, while Dr. Ladrado only drew his conclusion from the location thereof. More importantly, the fact that the accused passed by Edna who was five (5) arms' length ahead of the deceased points to two (2) things: that the attack was frontal, and that it was not so sudden as to have caught the deceased completely unaware.

Edna testified that she met the accused coming from the opposite direction, looking angry and carrying a knife. Apparently, the accused carried the knife in such a way that it could easily be seen, otherwise, Edna would not have noticed it. Since she actually saw the accused approach with a knife, and that was what prompted her into looking back, it is safe to conclude that the deceased, positioned some five (5) arms' length behind, had a similar opportunity to see the accused approach, looking angry and holding a knife. With this, the deceased was afforded enough time to prepare himself for the impending assault. Hence, it cannot be said that the attack was so sudden and treacherous as to qualify the crime to murder. Absent any qualifying circumstance, the accused should only be held guilty of homicide.

Appellant also argues that the lone testimony of Edna is not sufficient for conviction in view of her blood relationship with the deceased. Well-settled is the rule that mere relationship of a witness to the victim does not automatically impair his credibility and render the testimony less worthy of faith and credit.[15] We agree with the trial court that Edna's clear and positive testimony deserves full credence as compared to the unimpressive denials of the accused.

The penalty for homicide is reclusion temporal the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum to be imposed upon the accused should be taken from the penalty next lower in degree, which is prision mayor, the range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods, while the maximum, in the absence of modifying circumstances, should be taken from the medium of the imposable penalty. Consequently, We resolve to impose upon the accused a prison term of eight (8) years four (4) months and ten (10) days of prision mayor medium, as minimum, to fourteen (14) years ten (10) months and twenty (20) days of reclusion temporal medium, as maximum.

WHEREFORE, the conviction of the accused for MURDER is REDUCED to HOMICIDE. However, conformably with recent jurisprudence, the indemnity imposed by the trial court for the death of Maximo Lao is increased to P50,000.00, payable to his heirs.

Accordingly, accused-appellant SEGUNDINO "GODING" JOTOY is sentenced to suffer an indeterminate prison term of eight (8) years four (4) months and ten (10) days of prision mayor medium, as minimum, to fourteen (14) years ten (10) months and twenty (20) days of reclusion temporal medium, as maximum.

The period during which the accused was under preventive imprisonment should be credited to him in the service of his sentence.

Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Penned by then Presiding Judge Antonio M. Martinez of the Court of First Instance of Davao City, Br. IV, now Associate Justice, Court of Appeals.

[2] Exh. "A".

[3] Exh. "1".

[4] People vs. Bigcas, G. R. No. 94534, 20 July 1992, 211 SCRA 631, 638; People vs. Lacao, G.R. No. 95320, 4 September 1991, 201 SCRA 317, 326.

[5] Ortega vs. Sandiganbayan, G. R. No. 57664, 8 February 1989, 170 SCRA 38, 42.

[6] TSN, 29 June 1981, pp. 4-5.

[7] Ibid., p. 5.

[8] People vs. Solis, G. R. No. 93629, 18 March 1991, 195 SCRA 405, 415; People vs. Delgado, G. R. No. 79672, 15 February 1990, 182 SCRA 343, 350.

[9] People vs. Bayocot, G. R. No. 55285, 28 June 1989, 174 SCRA 285, 291.

[10] People vs. Clamor, G. R. No. 82708, 1 July 1991, 198 SCRA 642, 655; People vs. Nabayra, G. R. Nos. 96368-69, 17 October 1991, 203 SCRA 75, 83.

[11] TSN, 22 June 1981, p. 7.

[12] People vs. Caraig, G. R. No. 91162, 3 October 1991, 202 SCRA 357, 368.

[13] TSN, 1 June 1981, pp. 3-7.

[14] TSN, 22 June 1981, p. 5.

[15] People vs. Galendez, G. R. Nos. 56465-66, 26 June 1992, 210 SCRA 360, 373; People vs. Uy, G. R. No. 84275, 14 February 1992, 206 SCRA 270, 280.

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