

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOLAS MARCIALES AND JOSE CASTILLO, ALIAS "PEPE";
DEFENDANTS. NICOLAS MARCIALES, DEFENDANT-APPELLANT.**

G.R. No. 61961. October 18, 1988

Ponente: CORTES, J.

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CORTES, J.:

Defendants NICOLAS MARCIALES and JOSE "PEPE" CASTILLO were charged with murder for the killing of one JOSEFINO AMBITO. The trial court acquitted CASTILLO and found MARCIALES guilty of the crime charged.

The information filed against MARCIALES and CASTILLO reads as follows:

* * *

That on or about the 28th day of January, 1971, in the afternoon, in Barrio Lalab, municipality of Batan, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, motivated by hate, revenge and ill-will, with abuse of superior strength, with evident premeditation and treachery, and while armed with deadly weapon consisting of three-bladed instrument locally known as "Tres Cantos", and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and stab with the said weapon one JOSEFINO AMBITO, wounding the latter on different parts of his body, and thereby causing the said victim physical injuries, as follows:

* * *

. . . which injuries caused the almost instantaneous death of the said victim;

* * *

[Rollo, pp. 4-5]

During the arraignment, the accused pleaded not guilty. At the trial of the case, the adverse parties presented diametrically opposed narration of facts.

The prosecution's version as summarized by the trial court is as follows:

At around 5:00 in the afternoon of January 28, 1971 Josefino Ambito, the deceased, was sitting on a bench near or below the balcony, downstairs in the yard of the house of one Jovenal Viray at Sitio Himbis, Barrio Lalab, Municipality of Batan, Province of Aklan.

Herein accused Nicolas Marciales and Jose Castillo, passing by the side of the kitchen of the house of the said Jovenal Viray approached and proceeded to the place where the said Josefino Ambito was sitting and when they came close to the said Josefino Ambito herein accused Nicolas Marciales stabbed the said Josefino Ambito, hitting the latter at the breast. Nicolas Marciales again stabbed for the second time Josefino Ambito, hitting him at the neck. When Josefino Ambito stood up, herein accused Jose Castillo pushed Josefino Ambito

and he fell face downward. Again, Nicolas Marciales stabbed by (sic) the third time Josefino Ambito, hitting him at the back, and for the fourth time stabbed him on the head. Prosecution witness Mercedes Baltazar who was just nearby shouted for help.

Josefino Ambito was able to run some fifteen meters from the place where he was stabbed then fell down where he died. And the two accused ran together away.

The weapon used by accused Nicolas Marciales was a three-bladed knife locally known as "tres cantos". And while Nicolas Marciales was stabbing Josefino Ambito's back and head, accused Jose Castillo just stood by, watching.

In that evening of January 28, 1971 at around 7:30 o'clock two (2) Philippine Constabulary men came. When the Chief of Police of Batan, Aklan came along with three other policemen. And the following morning Dr. Cosme Abello came and conducted a post-mortem examination. Accused Jose Castillo was arrested around May 6, 1971 while accused Nicolas Marciales was arrested around June 15, 1971. [CFI decision, p. 3, Rollo, p. 8.]

MARCIALES, on the other hand, interposed the justifying circumstance of self-defense and testified as follows:

. . . accused Nicolas Marciales met Josefino Ambito at the premises of the house of Jovenal Viray, when he passed by Josefino Ambito was naked to the waist but his belt was placed on his shoulder and wearing shorts. Josefino Ambito was holding something behind his back. Josefino asked him if he was one of the witnesses against the brother Isidro Ambito. He answered he was a witness against Isidro Ambito in the killing of Dante Sarceno, a cousin of the accused Nicolas Marciales. Then Josefino Ambito drew his knife and lunged at him. When he parried stab blows, he was able to take hold of the knife and they wrestled for its possession. In the process Nicolas Marciales was wounded at the base of his left thumb, between the index finger.

When they grappled for the possession of the knife they fell to the ground. He fell on his back while Josefino Ambito was on top of him. While lying on his back, Josefino Ambito was on top of him pointing and pushing the knife towards him. He was able to twist the hand of Josefino Ambito that was holding the knife, then he pushed him and was able to twist the hand of Josefino Ambito that was holding the knife, then he pushed him and was able to take possession of the knife, extricated himself and stood up. He then thrust (sic) the knife at Josefino Ambito. He dropped Josefino's knife and ran away.

He went further to state that after Josefino Ambito drew his knife held in his right hand with a downward thrust to the floor, he stepped back with his two hands raised at the level of the chin. The left hand is 11 inches and the right hand 12 inches above the shoulder with palm open and fingers spread anticipating to parry the knife. Josefino Ambito stabbed him with the knife and hit his left hand between the thumb and forefinger. Then they grappled for the possession of the knife and fell to the ground. [CFI decision, p. 4, Rollo, p. 9.]

The lower court rejected this justifying circumstance of self-defense and rendered a decision the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds accused Nicoras Marciales GUILTY beyond reasonable doubt of the crime of murder. The Court hereby sentences him to a penalty of RECLUSION PERPETUA, with cost.

He is hereby ordered to indemnify the heirs of deceased Josefino Ambito with the sum of P12,000.00 for the death of said Josefino Ambito, P20,000.00 for moral damages and P5,000.00 for exemplary damages.

Accused Jose Castillo is hereby ACQUITTED. His bail bond is hereby discharged.

SO ORDERED. [CFI decision, p. 13, Rollo, p. 17.]

Defendant **MARCIALES'** appeal to this Court assigns the following errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT APPELLANT HAS NOT SATISFACTORILY ESTABLISHED THE FACT OF SELF-DEFENSE.

II

THE TRIAL COURT ERRED IN FINDING THAT THE CIRCUMSTANCE OF TREACHERY ALLEGED IN THE INFORMATION HAS BEEN DULY PROVED BEYOND REASONABLE DOUBT BY THE PROSECUTION WHICH QUALIFIES THE KILLING TO MURDER.

III

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS MERCEDES BALTAZAR.

IV

THE TRIAL COURT LASTLY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND IN NOT ACQUITTING HIM. [Rollo, p. 41.]

In his supplemental brief defendant-appellant added the following errors:

* * *

II

THE TRIAL COURT FAILED TO APPRECIATE THE BEARING ON THE CASE OF BOTH THE APPELLANT AND THE DECEASED RUNNING AWAY FROM THE SCENE AFTER THE STABBING INCIDENT TOWARDS OPPOSITE DIRECTIONS.

III

THE TRIAL COURT ERRED IN FAILING TO GIVE CREDENCE TO THE TESTIMONIES OF THE WITNESS FOR THE DEFENSE. [Rollo, p. 119.]

* * *

Defendant-appellant's assignments of error may be reduced to the issues of: whether or not the defendant has satisfactorily proved the justifying circumstance of self-defense which would exculpate him of the crime; and if not, whether or not treachery qualified the killing to murder.

I

Having invoked the justifying circumstance of self-defense, defendant-appellant already admitted the fact that he killed the deceased AMBITO. In view of the judicial pronouncement that "[S]elf-defense, just like alibi, is a defense which can easily be concocted" [People v. Pay-an, G.R. Nos. L-39089-90, July 31, 1978, 84 SCRA 353, 362], defendant-appellant has the burden of proving by clear and convincing evidence the fact that he killed the deceased because he acted in defense of his person. [Andres v. Court of Appeals, G.R. No. L-48957, June 23, 1987, 151 SCRA 268, 274; People v. Maruhom, G.R. No. L-28691, Sept. 28, 1984, 132 SCRA 116, 124; People v. Macariola, G.R. No. L-40757, Jan. 24, 1983, 120 SCRA 92, 100.]

The Revised Penal Code provides:

Art. 11. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

* * *

Defendant-appellant testified that the deceased AMBITO was an unlawful aggressor who lunged at him with a knife he was then holding, thus:

* * *

Q What was Josefino Ambito doing when you saw him at the premises of the house of Jovinal Viray?

A He has no clothes and his shirt was placed on his shoulder.

COURT (To witness):

Q You mean to say he was nude?

A He was wearing his shorts.

ATTORNEY MABASA:

Q

What was he doing when you saw him?

A He was holding something behind his back and asking me: "Are you one of the witnesses against my brother?"

* * *

Q What did you answer him?

A I told him that it was true that I was a witness against his brother, Isidro Ambito, when Isidro Ambito killed Dante Sarceno.

Q Are you in anyway related to Dante Sarceno?

A Yes, sir.

Q What was your relation to him?

A First cousin.

Q When you answered Josefino Ambito, what else happened?

A

He drew his bladed knife and he lunged at me. [TSN., Sept. 7, 1977, pp. 3-4.] (Underscoring supplied)

* * *

MARCIALES alleges that he was wounded and was thus forced to grapple and wrestle for possession of the knife.

The Court however finds this claim not credible.

- The nature, character, location and extent of the wounds suffered by the deceased belie any supposition that it was the deceased AMBITO who was the unlawful aggressor. "The nature and number of wounds inflicted by an assailant [are] constantly and unremittingly considered . . . important indicia which disprove a plea of self-defense." [People v. Ganut, G.R. No. L-34517, Nov. 2, 1982, 118 SCRA 35, 43.]

In this case, AMBITO suffered four wounds namely:

- Stab wound - $\frac{3}{4}$ x 3 inches, located at the right anterior chest, below the clavicle, along the mid clavicular line, directed posteriorly and medially, hitting the right lung.
- Stab wound - $\frac{3}{4}$ x 4 inches, located at the right side of the back of the neck, directed to the left.
- Stab wound - $\frac{3}{4}$ x 4 inches, located at the back, 2 inches below the tip of the right scapula, directed anteriorly and upwards, hitting the lung.
- Incised wound - 1 x $\frac{1}{2}$ inch, at the right side of the head. [CFI decision, pp. 1-2, Rollo, pp. 6-7.]

Dr. Cosme Abella, the physician who conducted the post-mortem examination on the body of AMBITO, testified that two of these wounds were fatal, namely wound numbers 1 and 3 [TSN, July 31, 1975, p. 66.]

While it may be that in self-defense, the person attacked has the right to repel or prevent the danger by wounding or, if necessary, completely disabling his opponent (U.S. v. Molina, 19 Phil. 227, 232 (1911)), it would seem highly incredible in this case that deceased AMBITO, who MARCIALES admits is of shorter and smaller build [TSN, Nov. 4, 1977, p. 34] than his 5'6 $\frac{1}{2}$ ", 120 lbs. frame [Record, p. 2] suffered four major wounds two of which are located at the back part of his body if the wounds were inflicted only in self-defense.

If the Court were to believe the facts as told by defendant-appellant, it would seem that he and AMBITO were facing each other right at the start [TSN, Nov. 4, 1977, p. 31.] This being their relative positions, it was logical

that, as was indeed in this case, the first wound was on the chest of AMBITO. Dr. Abella testified that this wound was already a fatal one. It would therefore naturally follow that, at this point, AMBITO was already so weak that if, for the sake of argument, he was an unlawful aggressor, he would no longer be capable of wrestling or grappling further with the accused.

- Another indicium that would negate the theory that it was AMBITO who was the aggressor was the fact that defendant-appellant did not suffer any wound at all.

MARCIALES' testimony that during the course of the wrestling, he was wounded at the left hand between the thumb and index fingers [TSN, Sept. 7, 1977, p. 5] does not merit credence.

First, he testified that he was totally unprepared to defend himself against any attack by AMBITO.

* * *

Q And when you saw him for the first time by that bench in the premises of Jovenal Viray you did not endeavor to avoid him?

A I did not avoid of course because I did not think that he was intercepting me.

* * *

Q.

You testified in the direct examination that you answered Josefino Ambito that you are a witness against his brother, did you give that answer?

A Yes, your Honor.

Q

When did Josefino Ambito draw his knife, was it while he was asking you that question or while you were answering that question or after you have answered that question?

A

I was in the act of answering his question when he lunged at me. [TSN, Nov. 4, 1977, pp. 20, 30-31.] (Underscoring supplied.)

* * *

This being the case, it would seem highly improbable that he, a totally unprepared and unsuspecting man who was at the point of answering a query, would only be superficially and not seriously wounded by the lunging, stabbing

movement of AMBITO, a man who is claimed to be in a very killing mood. That the wound was superficial was testified to by Dr. Eugenio Rondario, the examining physician of defendant-appellant [TSN, Oct. 23, 1978, p. 11.]

Second, MARCIALES contradicted himself when he testified that he was wounded when AMBITO lunged at him with a knife while both of them were still standing [TSN, Sept. 7, 1977, pp. 4-5.] Later, he said that he was wounded while both of them were wrestling on the ground, each one trying to grapple for the possession of the knife [TSN, Sept. 7, 1977, pp. 8-9.]

In effect, defendant-appellant talked of two instances when he was wounded by AMBITO. But the truth is that he had only one and the same wound to show.

Third, the very fact that he was wounded at all during the alleged wrestling incident is very doubtful. This piece of testimony is crucial since according to accused, it was the blood caused by his wound which ultimately made him believe that he was hurt badly thus leading him to stab AMBITO [TSN, Sept. 7, 1977, pp. 9-10.]

His examining physician Dr. Rondario, testified to the effect that the wound alluded to was a "fresh" wound meaning that it could not have been inflicted more than five hours before MARCIALES was treated [TSN, Oct. 23, 1978, p. 12.]

The medical report submitted by Dr. Rondario bore the date January 29, 1971 or a day after the stabbing incident. How could the wound inflicted allegedly on January 28, 1971 in the afternoon still be "fresh" when the examination was made the next day?

While even Dr. Rondario himself testified that such date might not have been the date he actually examined defendant-appellant [TSN, Oct. 23, 1978, p. 16], the latter himself testified that he went to see Dr. Rondario only on January 29, 1971 [TSN, Feb. 20, 1978, pp. 19-20.]

- Central to defendant-appellant's self-defense claim is the alleged grappling and wrestling between him and AMBITO for the possession of the knife [TSN, Sept. 7, 1977, pp. 6-10.] Corroborating such claim are defense-witnesses. Norberto Macahilig [TSN, Dec. 20, 1978, pp. 4-5] and Jose Rico [TSN, Aug. 3, 1976, pp. 79-81] and accused Jose Castillo [TSN, May 21, 1976, p. 5.]

The prosecution on the other hand, thru Mercedes Baltazar, did not mention any wrestling or grappling incident (or any commotion akin thereto) between AMBITO and MARCIALES notwithstanding the fact that she was able to witness the whole incident from its inception to the brutal end.

For a court to weigh which of two conflicting narrations is true requires careful deliberation. This is not easy in this case for no great weight can be attached to the finding of the trial court regarding the grappling for the weapon for the reason that the judge who had actually seen the demonstration of how the knife was wrested from the possession of the deceased is not the same judge who penned the decision.

After a close scrutiny of the record the Court finds that the version of the defense does not merit belief. It is flawed with inconsistencies particularly as to who were present at the time of the alleged grappling for the knife between the parties.

Norberto Macahilig testified that aside from AMBITO and MARCIALES he saw "many people" in the premises [TSN, Feb. 5, 1979, p. 11] but he did not see Jose Castillo (TSN, Dec. 20, 1978, p. 5.) He even testified that what attracted his attention to the commotion were shouts and voices of men and women [TSN, Feb. 5, 1979, p. 9.]

Jose Rico on the other hand testified that aside from the deceased and defendant-appellant he only saw Jose Castillo [TSN, Aug. 3, 1976, p. 87.]

And, Jose Castillo, MARCIALES co-accused who was acquitted by the trial court, mentioned the presence only of Jovenal Viray [TSN, May 21, 1976, p. 5.]

These testimonies are all contrary to that of defendant-appellant himself who stated that he and the deceased AMBITO were the only ones present during the incident and even Jose Castillo was not there. [TSN, Sept. 7, 1977, p. 11.]

To bolster his defense MARCIALES avers that it was error for the trial court to give credence to the testimony of Mercedes Baltazar because she is the sister of (1) the deceased AMBITO; and, (2) Isidro Ambito, the accused in a criminal case where defendant-appellant is a prosecution witness.

However, "[T]he relationship of the key prosecution witness to the victim does not necessarily disqualify him as biased and interested." [People v. Legaspi, G.R. No. 74953, June 30, 1987, 151 SCRA 670, 678.] As this Court had occasion to state:

* * *

. . . Oral declarations of interested witnesses are not necessarily biased and incredible. On the contrary, it would be unnatural for such persons interested in vindicating the crime to impute the same to any person other than those responsible. [People v. Bagsican, G.R. No. L-13486, Oct. 31, 1962, 6 SCRA 400, 407 citing People v. Lardizabal, G.R. L-8894, May 11, 1956.] (Underscoring supplied.)

* * *

Regarding Mercedes Baltazar's relationship to Isidro Ambito who admittedly is the defendant in a criminal case for the death of one Dante Sarceno, herein defendant-appellant's cousin, suffice it to say that MARCIALES himself stated in his testimony that Isidro Ambito had entered a plea of guilty to the crime for which he was charged [TSN, Sept. 7, 1977, pp. 12-14] and was incarcerated as a consequence thereof.

To further discredit the veracity of Mercedes Baltazar's testimony defendant-appellant alleges that she gave her statement only on March 2, 1971 during the preliminary investigation before the Municipal Court of Batan, Aklan or after the lapse of a considerable period from the time of the stabbing incident. The reasonable conclusion that can be deduced is that she was not really present during the stabbing incident.

However, as correctly argued by the appellee, "even without her (referring to Mercedes Baltazar) statements, the investigators had already gathered sufficient evidence for the purpose of filing a complaint against the suspects with the municipal court." [Brief for appellee, p. 24.] The police investigators who arrived at the scene of the crime two (2) hours after the incident took the statement of Jovenal Viray. And based on his statement the police concluded that it was MARCIALES who perpetrated the crime. What is important is that she gave her sworn statement during the preliminary investigation of the case. [Record, p. 9] and she took the witness stand during the trial of the case.

But more importantly, Mercedes Baltazar's testimony was corroborated to a great extent by witness Jovenal Viray whose presence at the time the incident occurred has been established by both the prosecution and the defense and who is a disinterested witness.

- The conduct of MARCIALES after the incident likewise belies his claim of self-defense. After the stabbing incident he admits that "he ran away from the scene in order to avoid any further danger" to himself [Supplemental brief for defendant-appellant, p. 10.] However this Court had occasion to state that, "[T]o run away from the scene of a crime is indicative of guilt". [People v. Pajenado, G.R. No. L-26458, January 30, 1976, 69 SCRA 172, 177.]

Further, the incident happened on January 28, 1971 but MARCIALES was arrested only on June 16, 1971 or

about five months after the incident. If defendant-appellant really did not commit any wrong and was himself the victim of an unlawful aggression the natural thing for him to do was to report the incident to the authorities or to any person for that matter. However, he himself testified that he failed to do this [TSN, Feb. 20, 1978, pp. 14-15.]

II

The next major question is whether or not treachery attended the commission of the offense so as to qualify the crime to murder.

The Revised Penal Code provides:

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. (Art. 14, par. 16, Revised Penal Code).

“The attendance of treachery as a qualifying circumstance is founded upon the concurrence of two (2) conditions, to wit: (1) the employment of means, method or manner of execution which would insure the offender’s safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and (2) that such means, method or manner of execution was deliberately or consciously chosen.” [People v. Ganut, G.R. No. L-34517, Nov. 2, 1982, 118 SCRA 35, 46-47.]

More importantly,

* * *

Treachery cannot be presumed. It must be proven as conclusively as the act of killing itself. The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof and not merely by an inference drawn more or less logically from hypothetical facts. This Court has ruled that the suddenness of an attack is not, of itself, enough to constitute treachery when the method of killing does not positively show that the assailant thereby knowingly intended to ensure the accomplishment of his purpose without risk to himself from any defense which the victim might put up. [People v. Manalo, G.R. No. 55177, Feb. 27, 1987, 148 SCRA 98, 108.] (Underscoring supplied.)

* * *

In this case, the Court finds that the circumstance of treachery was not clearly and convincingly proven. While the attack on AMBITO may have been sudden there was no testimony whatsoever that defendant-appellant deliberately and consciously adopted the method of attack he employed to insure against any risk to himself [People v. Chavez, G.R. No. 55830, April 28, 1983, 121 SCRA 806, and People v. Gadiano, G.R. No. L-31818, July 30, 1982, 115 SCRA 559.]

Thus the crime committed by defendant-appellant is homicide and not murder.

III

The dispositive part of the lower court’s decision regarding the award of damages should be modified. The P12,000.00 awarded for the death of AMBITO is increased to P30,000.00.

The P5,000.00 award of exemplary damages is deleted as no aggravating circumstance attended the killing of AMBITO [See Art. 2230 Civil Code.]

Likewise the P20,000.00 award of moral damages is deleted there being no evidence on record to warrant it.

WHEREFORE, the Court finds defendant-appellant guilty beyond reasonable doubt of the crime of HOMICIDE. There being no aggravating or mitigating circumstance he is hereby sentenced to suffer the penalty of RECLUSION TEMPORAL in its medium period. Applying the Indeterminate Sentence Law, the term of imprisonment is from a minimum of eight (8) years and one (1) day of prision mayor to a maximum of seventeen (17) years and four (4) months of reclusion temporal.

Defendant-appellant is further ordered to indemnify the heirs of the deceased Josefino Ambito the sum of P30,000.00. No costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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