

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JOVEN BAUSING AND MANUEL LOROSO, ACCUSED/APPELLANTS.

G.R. No. 64965. July 18, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision* of the Regional Trial Court of Dapa, Surigao Del Norte, Branch XXXI, convicting appellants of the crime of murder, the decretal portion of which reads:

"WHEREFORE, viewed in the light of the foregoing, the Court finds the accused JOVEN BAUSING and MANUEL LOROSO guilty beyond reasonable doubt of the crime of MURDER qualified with treachery. There being no aggravating circumstance and mitigating circumstance, the Court herreby sentences JOVEN BAUSING and MANUEL LOROSO, to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of the late ALEXANDER MANTILLA, jointly and severally, the amount of Twelve Thousand Pesos (P12,000.00); without subsidiary imprisonment in case of insolvency; with the accessory penalties imposed by law and to pay the costs." (Rollo, p. 66)

The facts, as summarized by the trial court, are as follows:

"x x x last August 3, 1978, approximately 9:15 o'clock in the evening, the victim, Alexander Mantilla, as incumbent Barangay Councilman and a Ronda Member of Barangay Consuelo, General Luna, Surigao del Norte, while performing his official duties, was at the billiard hall of accused Manuel Loroso, together with the following persons, namely: Ruirino Crisologo, Domingo Teraytay, Estanislao Sunico, Aureliano Pacanor, Segundiano Pacanor, Edisimo Minglana, Barangay Captain Rufo Buña, Pepito Tokong, Juanito Tokong, Manuel Loroso, Joven Bausing and Valentin Bausing.

"There were two (2) billiard tables and on them the following persons were playing: Domingo Teraytay, Barangay Captain Rufo Buña, Juanito Tokong and Estanislao Sunico.

"The billiard game was first interrupted when Domingo Teraytay and Manuel Loroso were grappling for the knife which was protruding at the back pocket of the former, the knife was ultimately taken with the assistance of Estanislao Sunico and Aureliano Pacanor. Manuel Loroso, as owner of the billiard hall, confiscated the knife in order to prevent any trouble therein.

"Thereafter, Valentin Bausing, sometimes called 'Rodolfo', clattered the billiard balls which caused Alexander Mantilla to admonish him to stop his act as he was not concerned with the game.

"Without any word, accused Manuel Loroso who came from the back of Mantilla, held the hands of the latter while being raised when all of a sudden, Joven Bausing appeared in the scene, with unsheathed sharp pointed bolo (Exh. 'A') which was hidden inside the umbrella (Exh. 'B') thrust many times said bolo upon Mantilla. Mantilla was released only by Loroso, after the victim was staggering unconsciously who later fell dead outside the billiard hall." (Rollo, pp. 29-31)

Appellants Bausing and Loroso were then charged with murder with assault upon an agent of person in authority.

Both pleaded not guilty to the charge and after trial, the trial court rendered the judgment which appellants now seek to be reversed.

During the trial, the prosecution established the guilt of appellants through the testimonies of Crisologo, Tokong, Teraytay and Minglana, among others, who were all present at the billiard hall when the incident happened.

Crisologo testified that in the billiard hall, he saw Manuel Loroso and Dominog Teraytay grappling with each other for possession of a knife. The others present in the hall tried to pacify the two and the knife was taken by Estandisao Sunico. He also testified that he saw Valentin Bausing making trouble inside the billiard hall and was advised by the deceased Alexander Mantilla to stop as he had nothing to do with the game. At this point, Manuel Loroso approached the deceased from behind and took hold of the latter's hands, whereupon Joven Bausing run towards them repeatedly thrusting a sharp pointed bolo at the victim (Alexander Mantilla) who kicked his assailant in a futile attempt to defend himself. The victim was hit below his left breast and right breast. Weakened and already down, appellant Joven Bausing again stabbed the helpless victim on the mouth after which appellants Bausing and Loroso walked away (TSN, March 8, 1979, pp. 3-11; Original Records, pp. 172-180).

The above testimony of Crisologo was corroborated in all material points by the testimonies of (1) Pepito Tokong who was inside the billiard hall because of rain (TSN, April 25, 1979, pp. 3-12; Original Records, pp. 218-227); (2) Domingo Teraytay who was also playing billiards (TSN, June 28, 1979, pp. 3-16; Original Records, pp. 250-263); and (3) Edisimo Minglana who was also in the hall watching the billiard game (TSN, November 13, 1979, pp. 4-17; Original Records, pp. 232-245).

All of the above witnesses gave exactly the same version of the gruesome and merciless killing of Alexander Mantilla to the effect that the deceased was only trying to stop Valentin Bausing from making trouble when Manuel Loroso approached the deceased from behind, held both of the latter's hands, while the accused Joven Bausing, father of Valentin, suddenly attacked Mantilla and stabbed the latter several times. As the victim staggered towards the door, he fell flat on his face. Not satisfied with the injuries already inflicted by him, accused Bausing held the head of the fallen victim and stabbed the latter on the armpit, hacked him at the left arm biceps, forearm and mouth.

In this appeal, appellants raise the following errors:

"1. THAT THE LOWER COURT ERRED IN HOLDING THAT APPELLANT MANUEL LOROSO HELD ALEXANDER MANTILLA FROM THE BACK WHILE THE LATTER WAS BEING STABBED SEVERAL TIMES BY APPELLANT JOVEN BAUSING, THAT APPELLANT MANUEL LOROZO AND JOVEN BAUSING CONSPIRED IN KILLING ALEXANDER MANTILLA AND THAT APPELLANT MANUEL LOROZO'S DEFENSE IS ALIBI, THUS, ERRED IN CONVICTING MANUEL LOROSO OF MURDER;

"2. THAT THE LOWER COURT ERRED IN HOLDING THAT EDERESA TOKONG'S TESTIMONY HAS BEEN UNREBUTTED AND THEREFORE FATAL TO THE DEFENSE;

"3. THAT THE LOWER COURT ERRED IN NOT BELIEVING APPELLANT JOVEN BAUSING'S DEFENSE THAT HE WAS ACTING IN DEFENSE OF HIS SON, RODULFO BAUSING, AND IN HOLDING THAT HIS DEFENSE LACKS THE QUANTUM OF PROOF REQUIRED BY LAW;

"4. THAT THE LOWER COURT ERRED IN HOLDING THAT THE CRIME COMMUTED WAS QUALIFIED WITH TREACHERY;

"5. ASSUMING ARGUENDO THAT APPELLANT JOVEN BAUSING HAS TO BE CONVICTED, THE LOWER COURT ERRED IN CONVICTING HIM OF MURDER AND NOT ONLY OF HOMICIDE AND IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN

HIS FAVOR." (Appellant's Brief, pp. 1-2; Rollo, p. 85 c-d)

Appellants' assignment of errors being interrelated, the same shall be addressed jointly.

Joven Bausing admitted the killing of the deceased but invokes the justifying circumstance of defense of a relative in a bid to escape criminal liability. After a careful examination of the verdict rendered by the trial court, We find no compelling reason to reverse the judgment of conviction.

In order that the justifying circumstance of defense of a relative may be properly invoked, the following requisites must concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, that the one making the defense had no part therein (Art. 11, par. 1 & 2, Revised Penal Code).

The first requisite is indispensable. There can be no self-defense unless it is proven that there had been unlawful aggression on the part of the person injured or killed by the assailant. If there is no unlawful aggression, there is nothing to prevent or repel (*People v. Malazzab*, 160 SCRA 123 [1988]; *Ortega v. Sandiganbayan* [1990]). In addition, for unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude (*People v. Pasco, Jr.*, *supra*; *People v. Rey*, 172 SCRA 149 [1989] and the accused must present proof of positively strong act of real aggression (*Pacificar v. Court of Appeals* 125 SCRA 716 [1983]; *People v. Aquitan*, 123 SCRA 501 [1983]; *People v. Aquino*, 124 SCRA 835 [1983]). Unlawful aggression must be such as to put in real peril the life or personal safety of the person defending himself or of a relative sought to be defended and not an imagined threat.

In the case at bar, appellant Bausing's claim of unlawful aggression committed by the deceased has not been sufficiently established to warrant the appreciation of defense of a relative as a justifying circumstance. All four prosecution witnesses who were eyewitnesses to the killing of Mantilla testified categorically that no unlawful aggression was committed by the deceased. The victim merely admonished Valentin Bausing, son of appellant Joven, to stop meddling with the game going on. Appellant's claim of defense of his son cannot prevail over the positive testimonies of the eyewitnesses pointing beyond reasonable doubt that he (appellant) was the aggressor who treacherously assaulted the deceased.

More importantly, appellant Bausing already admitted the killing of Mantilla. Having made the admission, it is thus incumbent upon the accused to prove the justifying circumstance to the satisfaction of the court in order to be relieved of any criminal liability. In such instances, the accused must proffer strong, clear and convincing evidence of self-defense and depend not on the infirmity of the prosecution, for even if the latter was weak, the plea of self-defense cannot prosper especially so where the accused himself has admitted the killing, as in the case at bar (*People v. Bayocot*, 174 SCRA 285 [1989]; *People v. Masangkay*, 157 SCRA 320 [1988]; *People v. Abagon*, 161 SCRA 255 [1988]; *People v. Tesorero*, 71 SCRA 579 [1976]); *People v. Llamera*, 51 SCRA 48 [1973]; *People v. Bauden*, 77 Phil. 105 [1946]; *People v. Ansoyon*, 75 Phil. 772 [1946]).

Appellant Loroza next contends that the trial court erred in holding that Ederesa Tokong's testimony has been un rebutted and therefore fatal to the defense. Loroza argues that he has in fact testified as a sur-rebuttal witness and rebutted the testimony of Tokong point by point.

The argument is devoid of merit and need not be discussed at length. What the trial court meant when it said that the testimony of Tokong was un rebutted is the fact that appellant Loroza failed to rebut the testimony of Tokong that after the killing of Mantilla, said appellant slept in their (spouses Tokong's) house with bloodstains on his shirt and pair of trousers and that the blanket and beddings used by him were also stained by blood. The trial court's pronouncement did not mean that no sur--rebuttal witness was ever presented by the defense.

The nature, character, location and number of the wounds suffered by the deceased belie any supposition that the deceased was the unlawful aggressor (*People v. Marciales*, 166 SCRA 436 [1988]). As reflected in the autopsy report and the testimony of Dr. Prospero Tayco, the deceased suffered seventeen (17) incised wounds, including the "through and through" incised wound of the heart, 21 inches long with entrance at the apex of the heart which is the primary cause of death and massive blood loss secondary thereto, aside from the numerous abrasions and avulsions (Autopsy Report, Exh. 15, Original Records). In contrast, both Valentin and Joven Bausing suffered no injury. The infliction the 17 wounds on the deceased could only lead to the conclusion that Mantilla was the victim of aggression and not the unlawful aggressor.

On the other hand, appellant Loroso faults the trial court for classifying his denial of participation in the killing of the deceased as one of alibi. Appellant claims that he was busy pumping air into his petromax lamp lighting the billiard hall at the time the incident occurred and ran away as soon as he saw blood after the second thrust by appellant Bausing. Appellant's defense would therefore appear as a simple denial of his participation in the commission of the offense.

Appellant's unsubstantiated disclaimer of participation cannot be given any credence. Self-serving as it is, his denial of participation in the commission of the crime cannot prevail over the forthright and positive testimonies by the prosecution witnesses as they uniformly pointed to him as having held both hands of Mantilla from behind and raised them upwards while Joven Bausing suddenly appeared on one side of Mantilla, unsheathed the bolo inside the umbrella he (Bausing) was carrying and stabbed the victim continuously. Loroso released his hold of Mantilla only when the latter was already on the verge of death as a result of the stab wounds inflicted by appellant Bausing. The weak denials of appellant cannot prevail over the clear and positive testimonies of the eyewitnesses regarding his participation in the killing of the deceased (*People v. Bocatcat, Sr.*, 188 SCRA 175 [1990]; *People v. Delavin*, 148 SCRA 25 [1987]; *People v. Alcid*, 135 SCRA 280 [1985]; *People v. Tuscano*, 137 SCRA 203 [1985]) for it is a settled rule that greater weight is given to the positive identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime (*People v. de Mesa*, 188 SCRA 48 [1990]; citing *People v. Canada*, 144 SCRA 121 [1986]; *People v. Mostoles, Jr.*, 124 SCRA 906 [1983]).

That the killing of Alexander Mantilla is murder qualified by treachery is borne out by the records. The victim was not only unarmed but was also deprived of every means to defend himself from the treacherous attack. Loroso held both hands of the deceased victim while Joven Bausing suddenly appeared and started stabbing the victim. In *People v. Mahusay* (138 SCRA 452 [1985]), this Court ruled that there is treachery where the victim was held tightly by one of the accused before his co-accused stabbed him, as in the case at bar. The appellants executed the crime in a manner that tended directly and specially to ensure its execution without risk to themselves arising from the defense which the deceased might have made (Art. 14, par. 16, Revised Penal Code; *People v. Pacabes*, 137 SCRA 158 [1985]).

The presence of conspiracy was inferred from the concerted acts of both the accused. They both approached the victim almost simultaneously. As one held the victim's hands tightly from behind and raised them upward, the other delivered the fatal stabs which caused Mantilla's death. The manner by which Loroso held the victim's hands from behind which clearly prevented the latter from defending himself and without which act the crime would not have been accomplished, makes appellant Loroso a conspirator and a principal by indispensable cooperation (*People v. Martinez*, 127 SCRA 260 [1985]). Where the accused by their acts aimed at the same object, one performing one part and another performing another part so as to complete it, with a view to the attainment of the same object, and their acts were concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the lower court was justified in concluding that the defendants

were engaged in conspiracy wherein the act of one is the act of all (People v. Manlolo, 169 SCRA 394 [1989]). Conspiracy can be inferred from and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests (People v. Monadi, 97 Phil. 575 [1955]).

The mitigating circumstance of voluntary surrender invoked by Joven Bausing deserves scant consideration. While appellant Bausing claims to have voluntarily surrendered to Pat. Arturo Esparrago of Surigao del Norte Police Station on the night of the incident, records of the case show that appellants were in fact arrested on August 28, 1978 as per return made by Station Commander Saturnino Plaza of General Luna, Surigao del Norte Police Force (Original Records, p. 7). The mitigating circumstance of voluntary surrender cannot be appreciated considering that the return of the warrant of arrest showed that appellant was in fact arrested.

WHEREFORE, the appealed judgment is hereby AFFIRMED with the modification as to the indemnification which is hereby increased to P50,000.00.

SO ORDERED.

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

* Penned by Judge Melchor M. Libarnes

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