

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PAULINO SAROL, DOROTEO SAROL, FRANCISCO SAROL, GENARO
SAROL AND VICTORIO SAROL, ACCUSED-APPELLANTS.**

G.R. No. 66240, October 08, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the judgment of conviction by the then Court of First Instance of Cebu, Branch IV, Cebu City, in Criminal Case No. CU-7660, for Murder.

In the Information filed before the Court below, the five SAROL brothers, Paulino, Francisco, Doroteo, Genaro, and Victorio, were charged with having conspired to commit the crime of Murder with the qualifying aggravating circumstances of evident premeditation, treachery, and taking advantage of superior strength. Bail was denied to PAULINO, FRANCISCO, and DOROTEO, while Genaro and Victorio were both admitted to bail of P30,000.00 each.

In the Decision, dated December 15, 1982, FRANCISCO and DOROTEO were both sentenced to suffer the penalty of reclusion perpetua, while PAULINO was sentenced to an indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, as he had in his favor the mitigating circumstance of voluntary surrender. The three accused were further condemned to pay P12,000.00 as civil indemnity, P20,000.00 as moral damages, and P3,000.00 for burial expenses.

Genaro and Victorio were acquitted on the ground of reasonable doubt.

The three convicted brothers, PAULINO, FRANCISCO, and DOROTEO, have appealed.

The Court a quo capsulized the facts as follows:

"On the afternoon of November 11, 1980, a basketball game was being played in an improvised basketball court on a street at Sitio Nag-arco, Barangay Tabionan, Municipality of San Fernando, Cebu. While the game was in progress, 45 year old Eutiquio Canoy was stabbed in the basketball court nine times: six in the front portion of the body and three in the back portion. He died on the spot.

"Paulino Sarol surrendered to the police at the Municipal Hall of San Fernando that same afternoon, giving up a small bolo called 'plamingko' (Exhibit '8').

"Three days after the incident, or on November 14, Visitacion Canoy executed a sworn statement before Judge Pedro Godinez of San Fernando, stating, among others, that she saw Eutiquio Canoy being encircled by the five Sarol brothers and raising his two hands, the right of which was held by Francisco, and that she saw Eutiquio close his eyes and heard him shout, 'Just finish me!' On the basis of that sworn statement, the four brothers of Paulino namely, Francisco, Doroteo, Genaro and Victorio, were included in the complaint for murder. Francisco, Genaro and Victorio were arrested on December 2, 1980, and Doroteo sometime earlier.

"Several years before the incident, the father of the accused was killed by a son of Eutiquio Canoy. He was convicted of homicide."

The eyewitnesses presented by the prosecution were the victim's daughter-in-law Visitacion Canoy, his nephew Juanito Canoy, and Regario Bonghanoy.

Partly rejecting and partly crediting the testimonies of those witnesses, the trial Court limited the credible portions as follows:

"The Court, however, accords credence to his (Juanito Canoy's) testimony to the effect that he saw Francisco holding Eutiquio's hands, Paulino stabbing Eutiquio at the back, and Doroteo stabbing Eutiquio from in front. These things which Juanito Canoy saw are a sequel to what Visitacion Canoy saw; the encirclement of Eutiquio by the five accused, the raising by Eutiquio of his arms, and the holding by Francisco of Eutiquio's right hand; and to what Regario Bonghanoy saw: the approach on Eutiquio by Paulino and Doroteo with knives in their scabbards.

"This credible portion of Juanito Canoy's testimony, particularly on the roles played by Paulino and Doroteo, accords with the findings of Dr. Flavia Villanueva, Officer-In-Charge of the Rural Health Office of San Fernando, who conducted an autopsy on the body of the deceased Eutiquio Canoy and executed an autopsy report (Exh. A). Dr. Villanueva declared in court that there were six wounds on the front portion of Eutiquio's body and three on the back portion; that the injuries were caused by sharp bladed instrument; that the wounds may or may not have been caused by more than one instrument; and that all the six wounds in the anterior or front portion were fatal, and only one wound in the posterior or back portion was fatal. Juanito Canoy's testimony to the effect that he saw Paulino stabbing Eutiquio at the back and Doroteo stabbing Eutiquio in front finds support in the medico-legal findings of Dr. Villanueva; three wounds at the back and six wounds in front."

Upon the other hand, the defense presented 12 witnesses to prove incomplete self-defense by PAULINO in that the deceased had beaten him first with a cane and was, therefore, the unlawful aggressor. Thus:

"Accused Genaro testified that when they arrived (Doroteo, Victorio and himself), accused Paulino was already stabbing Eutiquio because the former was being beaten with a cane by the latter (pp. 4, 11, t.s.n., June 10, 1982).

"On his part, accused Victorio, also declared that he saw Paulino stabbed Eutiquio, as much as he saw Eutiquio strike Paulino with a cane (p. 5, t.s.n., April 20, 1982; p. 2, t.s.n., April 22, 1982).

"Defense witness Doroteo Alfeche testified that he saw Francisco and Avelina Sarol, wife of accused Paulino, tried to pull away Paulino after Paulino had stabbed Eutiquio twice (p. 17, t.s.n., December 14, 1981).

"On her part, Avelina Sarol declared that her husband, Paulino was hit with a cane by Eutiquio four times, one on the left shoulder, arms and sides (p. 5, t.s.n., March 30, 1982)."

After full evaluation of the evidence, and as heretofore stated, the trial Court convicted PAULINO, DOROTEO and FRANCISCO and meted out to them their respective penalties, hence, this appeal.

Accused-appellants, through counsel de officio, assign the following errors:

"The trial Court erred in sustaining a verdict of guilt of the three herein appellants on the strength of the testimonies which it had already discredited for being palpably tainted with perjury;

"The trial Court erred in holding that the crime committed herein was murder;

"The trial Court erred in not acquitting appellants Francisco Sarol and Doroteo Sarol;

"The trial Court erred in not appreciating the privileged mitigating circumstance of incomplete self-defense in favor of herein appellant Paulino Sarol."

We reject the plea of incomplete self-defense. It is basic that the burden rests upon the accused to establish all the facts necessary to prove the circumstances of self-defense. This, PAULINO has failed to do. The evidence discloses that the deceased suffered nine (9) wounds — six (6) in front and three (3) at the back. The number of wounds indicates that PAULINO's act was no longer an act of self-defense but a determined effort to kill his victim. This determined effort was testified to even by PAULINO's wife, Avelina Sarol, as follows:

"Q But after Paulino has delivered the first blow hitting Eutiquio on the abdomen, Eutiquio was already down?

"A Not yet. He fell down on the second blow.

"Q At that time, if Paulino wants to run away to avoid inflicting further injuries to Eutiquio, he could have done so?

"A He did not run so I approached him and pulled his left arm and Francisco pulled his other arm.

"Q That was the time Paulino pushed you?

"A

Yes, Sir.

"Q And you fell down?

"A Yes, sir.

"Q Paulino pushed you away because he wanted to inflict more injuries to Eutiquio who was already down?

"A Yes, sir.

"Q How many more blows were delivered by Paulino to Eutiquio after the second blow?

"A Around seven times more." [1] (Emphasis supplied)

As ruled in *People vs. Martija*, 112 SCRA 528 [1982]:

"The fact that the victim suffered ten wounds is indicative that the act of the accused is no longer an act of self-defense but a determined effort in pursuance of an evil design to kill the victim x x x"

Noteworthy also is the fact that when PAULINO surrendered to the police he merely said "I have stabbed a man and I am now here to surrender".[2] If he had really acted in self-defense, the probability is that he would have immediately informed the authorities of that fact if only to minimize his guilt if not to exculpate himself.

As to the roles played by FRANCISCO and DOROTEO in the killing of the victim, which they emphatically deny, we agree with the trial Court that the combined testimonies of prosecution witnesses positively identify them also as culprits. They were two of the five brothers who had encircled the victim. FRANCISCO thereafter held the victim's hands thus enabling PAULINO to stab the victim at the back, and DOROTEO to stab the victim in front. DOROTEO was also seen as carrying a knife just before the incident.[3] The issue is really one of credibility of witnesses and we need only reiterate the fundamental rule:

"In raising the issue of which version to accept and believe, petitioner has to content with the oft-repeated fundamental rule in criminal as well as civil cases that in the matter of credibility of witnesses, the findings of the trial court are given great weight and the highest degree of respect by the appellate court. The reason of course, is that the trial court is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial." [4] (Underlining ours)

There is nothing improper or illegal in the actuation of the trial Court in partly crediting and partly rejecting the testimonies of prosecution witnesses. Significant is the fact that the trial Court supported its findings in this case with the objective evidence. It is perfectly reasonable for a trier of facts to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts in the ascertainment of the truth.

"18. Testimony may be partly credited and partly rejected. — Triers of facts are not bound to believe all that any witness has said; they may accept some portion of his testimony and reject other portion, according to what seems to them, upon other facts and circumstances, to be the truth. x x x. Even when witnesses are found to have deliberately falsified in some material particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they deem worthy of belief." [5]

The trial Court correctly categorized the crime as Murder as it was a killing qualified by abuse of superior strength. Three persons participated in the crime, two of them armed with knives, and they made a simultaneous attack upon a defenseless person, who had already raised his arms in a gesture of surrender.[6] All three are guilty as principals, their concerted action being only too evident.

As pointed out by the Solicitor General, however, the penalty imposed by the trial Court calls for modification. The penalty for Murder is reclusion temporal in its maximum period to death. PAULINO, being entitled to the mitigating circumstance of voluntary surrender, for purposes of the Indeterminate Sentence Law, the maximum of the imposable penalty is reclusion temporal in its maximum period and the minimum within the range of prision mayor also in its maximum period.

WHEREFORE, the Decision in question is affirmed except [1] with respect to the penalty meted out to Paulino Sarol, which is hereby modified to ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum; and [2] with respect to the civil indemnity, which is hereby raised from P12,000.00 to P30,000.00. Proportionate costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., De la Fuente, and Patajo, JJ., concur.

[1] T.s.n., pp. 8-9, July 13, 1982.

[2] T.s.n., p. 10, August 10, 1982.

[3] T.s.n., p. 6, June 9, 1981.

[4] Tapales vs. Court of Appeals and People of the Philippines, 120 SCRA 473 [1983].

[5] People vs. Keller, 46 O.G. No. 7, pp. 3222-3223 citing I Moore on Facts, p. 23.

[6] U.S. vs. Banagale, 24 Phil. 69 [1913]; U.S. vs. Abril, 51 Phil. 670 [1928]; U.S. vs. Lasada, 21 Phil. 287 [1912].

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