

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLEMENTE RADOMES Y SABIDO, ACCUSED-APPELLANT.***G.R. No. 68421. March 20, 1986*

Ponente: GUTIERREZ, JR., J.

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This is an appeal by Clemente Radomes y Sabido from the decision of the Samar Regional Trial Court finding him guilty of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Rosalina Acaba the amount of P12,000.00, to suffer the accessory penalties provided for by law, and to pay the costs.

In an information filed by the Provincial Fiscal of Samar, the appellant was charged with the crime of murder for the killing of Rosalina Acaba. The crime was alleged to have been committed with the qualifying circumstances of treachery and evident premeditation and attended by the ordinary aggravating circumstances of nighttime and insult or disregard of the respect due the offended party being a woman. When arraigned, Radomes pleaded "NOT GUILTY".

Rosalina Acaba, 49 years old died as a result of seven stab wounds which were inflicted on various parts of her body at about 3:30 in the morning of December 2, 1982. The prosecution pointed to Radomes as the perpetrator of the crime. On the other hand, Radomes denied the accusation and pointed to Ramon and Juanito Acaba, Rosalina's children, as the ones who caused the death of Rosalina. The conflicting versions of the incident leading to the death of Rosalina Acaba were summarized by the trial court as follows:

"The evidence of the prosecution shows that at past midnight on December 2, 1982 Edita Sabuco was in her house at Brgy. No. 2 in the poblacion of Pinabacdao, Samar tending her sick three-year old baby to sleep; her husband was then out in the sea in their fish pen; while thus attending to her child she heard an unusual remark outside but near her house saying: 'Whoever shall pass by, I will kill him' (Bisan hino an lumabay akon papatayon). She went to the balcony of her house facing the street to find out who made the remark and she saw Clemente Radomes holding a bolo going under her house; for fear that Clemente might go upstairs, she bolted the main door of the house. Because she could not sleep after her sick child had gone to sleep, she went out to the unlighted balcony where she saw at about 3:30 A.M. Rosalina Acaba going down her house across the street carrying a sack which Rosalina spread on the bench by the side of the street and Rosalina placed thereon some stocks of firewood. As Rosalina was about to carry the sack with the firewood, Edita saw Clemente emerge from under her house who suddenly approached and hacked with his bolo Rosalina at the back; when Rosalina turned to face him, Clemente stabbed her several times until she fell to the ground. Then Clemente ran to his house which is about twelve (12) meters away from the house of Edita on the same side of the street while Rosalina shouted for help. After a short while, her children Ramon and Flor arrived and after they shouted for help, Juanito, another son of Rosalina, arrived from his house nearby. When Juanito, Ramon and Flor were trying to carry their mother, accused Clemente Radomes re-appeared still carrying a bolo and said 'I will kill all of you' and when Juanito turned his head and looked up, the accused hacked him in the forehead which was followed by a stab hitting Juanito on his left palm. At this point, his brother Ramon ran to

their house and returned with a bolo which Juanito grabbed from Ramon and while they were grappling for the possession of the bolo the accused slashed Ramon on the left side of the face near the mouth. After Juanito took possession of the bolo, he fought the accused, slashed the latter on the left face and twice at the back; then the accused ran towards his house but Juanito did not make chase as he and his brother Ramon and sister Flor brought their mother inside the house. Shortly thereafter, Pat. Leonardo Distrajo of the Pinabacdao INP Sub-Station arrived.

"Edita Sabuco stated that she clearly saw the incident happen from the balcony of her house as Rosalina's house is only around ten (10) meters away across the street almost opposite her house and because the place of the incident was well lighted by an electric mercury lamp just thirty (30) meters away and the moon was bright. Besides, she said, the light coming from the electric fluorescent lamp inside the house of Rosalina reached the street where the incident happened as the door of the house was open.

"While approaching the scene of the incident, Patrolman Leonardo Distrajo saw the accused running to his house with a bolo. He followed the accused and when he was in front of the latter's house he advised the accused to go down. The accused went down bringing his bolo, Exhibit "A". He ordered the accused to put down the bolo and when the accused dropped the bolo, he picked it up, and arrested the accused whom he brought to the Municipal Jail where, on being interrogated by him, the accused admitted having killed Rosalina Acaba. This, he said, was confirmed and reiterated by the accused in an affidavit of confession executed by the latter five (5) days after the incident happened when he was released from confinement at the Samar Provincial Hospital. The accused signed the confession wherein he admitted that he killed Rosalina Acaba and wounded her sons Juanito and Ramon. It was taken by Pat. Distrajo but was not under oath because the Municipal Judge of Pinabacdao allegedly refused to administer the oath of the accused. Pat. Distrajo gave the confession to the INP Sub-Station Commander who filed the complaint against the accused in the Municipal Court. Despite diligent efforts, said confession could not, however, be located in the office of the INP Sub-Station Commander of Pinabacdao.

"Dr. Marcelino R. Villavicencio, Municipal Health Officer of Villareal, Samar, conducted the autopsy on the body of Rosalina Acaba and found seven (7) wounds in the body of the victim which he described in the post mortem report, Exhibit "B", to be as follows:

"Thorax -

"1. Stab wound - 3 cm. long, 1 cm. wide, penetrating, 2nd intercostal space, along the midclavicular line, directed inward and upward, left.

"2. Stab wound - 4 cm. long, 2 cm. wide, penetrating, 1 inch lateral, nipple, left.

"3. Stab wound - 3 1/2 cm. long, 1 1/2 cm. wide, penetrating, level of the 9th intercostal space, medial line.

"Back -

"1. Stab wound - 3 cm. long, 1 cm. wide, below the right scapula, 3 cm. deep.

"2. Stab wound - 3 cm. long, 1 cm. wide, along vertebral column, level of the 7th thoracic rib, bony deep, right.

"Abdomen -

"1. Stab wound - 3 cm. long, 2 cm. wide, penetrating, 3 inch above right pelvic crest.

"Extremities -

"1. Incise wound - 3 1/2 cm. long, skin deep, outer 3rd forearm, right.

"The doctor opined that the cause of death is hemorrhage secondary to stab wounds on the chest and abdomen, Exhibits "B-2", "D" (Death Certificate) and "D-1". He further stated that wound No. 2 in the thorax was the most

fatal injury as the heart of the victim was pierced although he also stated that, without proper medical attention, the wound in the abdomen may by itself cause the death of the victim considering that both the large and small intestines were affected. A sharp-pointed bladed instrument must have caused the injuries sustained by the victim according to the doctor.

"The following facts and circumstances allegedly surrounding the incident in question were presented by the defense; that defense witness Pelagia Deleña, a 70-year old woman residing in Brgy. Muñoz, Catbalogan, Samar, was in the poblacion of Pinabacdao, Samar in the afternoon of December 1, 1982 to visit a relative and buy empty bottles. She did not go home to Catbalogan so she slept in Pinabacdao in the house of accused Clemente Radomes whose father is a close relative of her mother, Agripina Abbang, of Pinabacdao. About 3:00 or 4:00 o'clock early morning on December 2, 1982, Pelagia woke up and went to the balcony of the house of the accused in order to smoke cigarette. At that time the accused was preparing to go to his fish coral. When he went down from his house he saw the brothers Juanito and Ramon Acaba by the gate of the fence of his house and immediately Juanito slashed the accused three (3) times hitting him on his face and he sustained three (3) injuries on his left shoulder and left forefingers. After sustaining these injuries, he drew his bolo from his waist and fought with Juanito and Ramon by stabbing Ramon on the left face and Juanito on his hand. When the fight was in progress in the street, Rosalina Acaba arrived and pacified her sons saying: 'Don't do that, don't do that Juanito and Ramon because Clemente has no fault'. But while Rosalina was pacifying Juanito and Ramon, they kept on stabbing the accused who escaped by staying behind Rosalina who, as a result, was the one hit by the stab blows of her sons; when the accused was about to run away Ramon stabbed him at the back above his waist. Then the accused hid in front of his house and when it was already bright he went up his house; while he was by the door, it did not take long when two (2) policemen arrived and brought him to the municipal building. But at 7:00 o'clock in the morning the accused was brought to Catbalogan where he was treated by Dr. Dominga C. Perez for the following injuries: (1) incised wound, face left, superficial, (2) incised wound, superficial, face left and (3) incised wound non-penetrating, lumbar region, left, as borne out by the clinical record of Clemente Radomes (Exhibits "1", "1-A", "1-B", "1-C" and "1-D"). Dr. Perez testified that the wounds sustained by the accused were not fatal being merely superficial hence he was confined in the hospital for only four (4) days."

The trial court gave credence to the prosecution's version of the incident. Radomes was found guilty of the crime of murder for the killing of Rosalina Acaba.

In this appeal, Radomes assigns the following error allegedly committed by the trial court:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PUNISHED UNDER ARTICLE 249 OF THE REVISED PENAL CODE DESPITE THE EXISTENCE OF EVIDENCE WARRANTING HIS ACQUITTAL.

The appellant assails the credibility of eyewitness Edita Sabuco on the ground that her testimony was highly improbable and contrary to the natural experience and conduct of man. He cites the testimony of Edita to the effect that she and the victim, Rosalina did not shout for help while the latter was being hacked. He argues: "Man's nature and experience dictate that a person in danger of losing his life as well as one who witnesses an unusual incident would should (sic) for help or protection."

In her testimony, Edita Sabuco clearly explained her reasons for not shouting for help upon witnessing the incident:

**"FISCAL ORIEL:**

**"Q**

When the accused Clemente Radomes approached Rosalina Acaba while she was carrying the firewood, where did Rosalina Acaba come from?

**"A**

He came from under our house.

**"Q**

You saw Clemente Radomes approached Rosalina Acaba, is it not?

**"A**

Yes sir.

**"Q**

And at the time Clemente Radomes was approaching Rosalina Acaba, did you shout?

**"A**

I did not shout because I was afraid.

**"Q**

Why were you afraid?

**"A**

Because I was alone with my children.

**"Q**

When Clemente Radomes stabbed Rosalina Acaba several times, did you shout for help?

**"A**

I did not.

**"COURT:**

"Why did you not shout?

**"A**

Because I was afraid.

"Q

Why were you afraid when you were upstairs and the door of your house was already locked?

"A

Because he might go upstairs." (TSN, April 27, 1983, pp. 55-56)

We do not find Edita's reaction at that moment contrary to human experience.

It is to be noted, that prior to the incident, at past midnight of the same day, Edita already saw Radomes holding a bolo and heard him shouting "Whoever shall pass by, I will kill him." She testified that Radomes even went under her house. Hence, her explanation that she did not shout for help for fear that Radomes "might go upstairs" is worthy of belief. As we ruled in the case of *People v. Damiar* (127 SCRA 499):

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"x x x. Persons react differently to a given situation. Some would have really run away and be fired at by the assailants to do away with an eyewitness; others would do what Blas de la Vega did, to avoid detection and see what would transpire before him. Thereafter, it was only natural to inform Emilio Balat what he saw because the deceased had been staying at the latter's house."

While it may be true that Rosalina did not initially shout for help upon being hacked by Radomes, witness Sabuco categorically stated that the victim shouted for help when she fell down. Again, we do not find such behaviour of Rosalina contrary to human experience. As we stated in an earlier case, "there is no standard form of behaviour when one is confronted by a shocking incident." (*People v. Amoncio*, 122 SCRA 686). In the case at bar, Rosalina must have been so shocked by the suddenness of the attack on her person that she could not immediately utter an outcry, much less shout for help.

Another point raised by the appellant to assail the credibility of eyewitness Sabuco was her not making any outcry or statement after the police arrived at the scene of the crime. According to the appellant, this shows lack of spontaneity and sincerity. The facts show otherwise.

Edita was at the balcony of her house when the police arrived. Her house is about ten (10) meters away from the scene of the incident. From her house, she saw the newly arrived police officer go after Radomes who was then running towards his house. Under these circumstances, we find no reason why Edita should shout out an outcry or statement to the police about the crime she just witnessed. There is no implication of a delay on her part to report the crime to the police so as to affect her credibility.

Edita is a disinterested witness. The appellant was a neighbor and friend and was known to her since childhood. The appellant has shown no motive on her part to falsely implicate him in such a heinous crime as murder. Her narration of the details of the crime was consistent all throughout her testimony and is substantiated by the material evidence on record. We agree with the following findings of the trial court:

"x x x [T]he evidence of the prosecution overwhelmingly establishes the fact that Rosalina Acaba was slain by the accused without legitimate and justifiable reason. This was clearly narrated by witness Edita Sabuco who said that while she was in the balcony of the house about ten (10) meters from the scene of the crime which was illuminated by a nearby electric mercury lamp, the light coming from the electric fluorescent lamp inside the house of the victim and the bright moonlight, she saw the accused criminally assault the victim by stabbing her several times. The testimony of Edita Sabuco was not denied or controverted by the accused. Hence, it cannot be ignored or impugned. In addition, the policeman who went to the scene of the crime immediately after the incident saw the accused running to his house with a bolo, whom he followed and ordered to go down

and when the accused went down from his house and put down his bolo upon order of the policeman, the accused was arrested and brought to the municipal jail where he admitted having killed Rosalina Acaba which the accused confirmed in an affidavit of confession taken by Pat. Leonardo Distrajo which could not, however, be presented as evidence as it could not be found in the office of the INP Sub-Station Commander of Pinabacdao, Samar. The admission made by the accused immediately after his arrest that he killed the victim is part of the *res gestae* and may be admitted as evidence (Sec. 36, Rule 130, Rules of Court)."

The theory of the appellant is destroyed by the number and kind of wounds sustained by Rosalina Acaba and the appellant during the incident. If it is true that the aggression first came from Ramon and Juanito Acaba, the children of Rosalina, logically it should have been the appellant suffering the seven wounds, two of which would have been fatal causing his death. It is inconceivable that Ramon and Juanito would not stop hacking Radomes after they accidentally hit their mother as alleged by the appellant. No person would continue hacking his victim while his mother who is trying to stop him is the one being hit and is already profusely bleeding from the hack wounds he himself inflicted. As it is, the appellant suffered only three wounds all of which were superficial. This clearly gives credence to the testimony of Ramon and Juanito Acaba that they hacked the appellant after their mother had already suffered the fatal wounds and when the appellant went after them with the bolo.

The relationship of Ramon and Juanito to the victim does not discredit their testimonies. We ruled in *People v. Jabequero* (125 SCRA 144):

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"x x x Well settled is the rule that when there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. 'On the contrary, their natural interest in securing the conviction of the guilty would deter them from impli-cating persons other than the culprits, for, otherwise, the latter would thereby gain immunity' (*People v. Alcantara, et al.*, 33 SCRA 812)."

On the other hand, the testimonies of the witnesses for the defense are tainted with inconsistencies and improbabilities. We agree with the following findings of the trial court, to wit:

"x x x [T]he Court is not impressed by the claim of the accused that as soon as he went down his house at around 4:00 o'clock in the early morning of December 2, 1982, he was immediately assaulted by the brothers Juanito and Ramon Acaba in the presence of defense witness Pelagia Deleña who was allegedly in the balcony of his house. There is serious doubt about the truth of the testimony of Pelagia Deleña, a close relative of the accused, who is a prejudiced or biased witness. It is hard to believe that she was in the house of the accused when the incident in question happened because she said that only one sister of the accused was in the house while the accused said that his two sisters were there. If Pelagia was really present when the incident happened, she could have been still in the house of the accused when the policemen arrived immediately after the incident when they arrested the accused. She admitted that until she left the house of the accused at past five o'clock in the morning, no policemen had arrived. But the accused said that just as soon as he went up his house the policemen arrived. Pelagia could not have missed seeing the policemen if she was in fact there. Moreover, Pelagia testified that she was only about five (5) meters to the scene of the fight between the accused and the Acaba brothers when Rosalina Acaba allegedly arrived and started pacifying her sons telling them to desist from maltreating or doing harm to the accused. Pelagia, however, did not in any manner state in her testimony that Rosalina was ever wounded and that anything happened to her, contrary to the assertion of the accused that Juanito and Ramon Acaba were the ones who injured their mother for everytime they would stab him, lie would stay behind her."

Considering the foregoing, we are convinced that the trial court did not err in finding the appellant guilty of the crime of murder. Treachery has been clearly established by the record to qualify the crime to murder. The

concurrence of the two conditions necessary for treachery to exist which are: (1) the employment of means, methods or manner of executions which would insure the offender's safety from any defensive or any 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) the deliberate or conscious choice of such a method or manner of execution, is present in the case at bar. (People v. Rhoda, 122 SCRA 909). We agree with the trial court that no sufficient evidence was presented to substantiate the existence of evident premeditation and the aggravating circumstance of nighttime and insult or disregard of the respect due to the offended party being a woman. There is no specific showing that the appellant in committing the crime deliberately intended to offend or insult the sex of the offended party (See People v. Mangsang, 65 Phil. 548; People v. Mori, 55 SCRA 382).

However, the appellant presents the alternative plea that if he is convicted of the crime the mitigating circumstance of voluntary surrender should be considered in his favor. For voluntary surrender to be considered as a mitigating circumstance we apply the following test:

"Voluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his search and capture would require (Quial v. Court of Appeals, 126 SCRA 28)."

Patrolman Leonardo Distrajo related how he arrested the appellant as follows:

**"Q**

And then what act did you make upon reaching the scene of the incident?

**"A**

When I was approaching the scene of the incident, I saw Clemente Radomes running towards their house with a bolo so I immediately followed him up to his house

**"Q**

Prior to that incident, have you known Clemente Radomes?

**"A**

Yes sir.

**"Q**

If he is in Court now, will you point him out?

**"A**

There he is. (Witness pointing to a person who identified himself to be Clemente Radomes.

**"Q**

You said you followed the accused to his house. Did you actually go to his house?

"A

Yes sir.

"Q

What did you do upon reaching in front of his house?

"A

I ordered him to come down.

"Q

Who?

"A

Clemente Radomes.

"Q

Did the accused Clemente Radomes heard your request to come down?

"A

Yes sir.

"Q

What did he bring with him?

"A

Bolo.

"Q

Was that the same bolo which you saw Clemente Radomes was carrying when you approached the scene of the incident?

"A

Yes sir.

"Q

Could you identify that bolo?

"A

Yes sir.

**"Q**

Showing here a bolo already marked as Exhibit "A" for the prosecution, will you please see and tell what relation has this to the bolo that you got from Clemente Radomes?

**"A**

This is the one.

**"COURT:**

"What did you do when you saw Clemente Radomes bringing a bolo?

**"A**

I ordered him to come down.

**"Q**

Did he follow your instruction?

**"A**

Yes sir.

**"Q**

What did you do?

**"A**

I arrested him.

**"FISCAL ORIEL:**

**"Q**

Where did you bring him?

**"A**

To the Municipal Building.

**"Q**

When you brought him to the Municipal Building, did you conduct an investigation?

**"A**

Yes sir.

**"Q**

What was the nature of the investigation?

**"A**

He admitted that he was the one who killed Rosalina Acaba." (TSN., July 21, 1982, pp. 5-7)

The police officer's testimony shows that the appellant did not offer any resistance nor try to hide when the policeman ordered him to come down his house. He even brought his bolo used to commit the crime and voluntarily gave himself up to the authorities before he could be arrested. These circumstances are sufficient to consider the mitigating circumstance of voluntary surrender in his favor.

WHEREFORE, the judgment appealed from is MODIFIED in that appellant Clemente Radomes y Sabido is found guilty of the crime of MURDER with the mitigating circumstance of voluntary surrender and the penalty of imprisonment for Radomes is accordingly reduced to an indeterminate penalty of 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. The award of TWELVE THOUSAND PESOS (P12,000.00) as indemnification for the death of Rosalina Acaba is increased to THIRTY THOUSAND PESOS (P30,000.00). The judgment is AFFIRMED in all other respects.

**SO ORDERED.**

Teehankee, (Acting C.J.), Melencio-Herrera, Plana, and Patajo, JJ., concur.

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