

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL BADEO, ESPERIDION BADEO, ROGELIO BADEO (AT-LARGE) AND BONIFACIO TANGPUS (AT-LARGE), DEFENDANTS. MANUEL BADEO AND ESPERI...

G.R. No. 72990. November 21, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this appeal, father and son Esperidion and Manuel Badeo, seek the reversal of the July 5, 1985 decision of the Regional Trial Court of Leyte, Branch XV at Palo,[1] the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, finding the two accused Manuel Badeo and Esperidion Badeo guilty beyond reasonable doubt of Murder and hereby sentences said two accused to the penalty of RECLUSION PERPETUA, to indemnify the heirs of Cresenciano Germanes the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, and to pay each half of the costs.

"It appearing that the two accused Manuel Badeo and Esperidion Badeo were detained since December 4, 1984, when they were arrested by the police authorities of Tanauan, Leyte, they should be credited with the full time during which they have undergone preventive imprisonment, if they agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, they shall be credited with 4/5 only of the time during which they have undergone preventive imprisonment.

"SO ORDERED."

According to the sole prosecution eyewitness Eñega Abrio (Iñega Abreo), at around six o'clock in the evening of March 21, 1981, she was walking on her way home. Cresenciano Germanes was walking ahead of her. Near the house of Esperidion Badeo, four men attacked Cresenciano. Being about ten arms length away, she saw Manuel Badeo hack Cresenciano at the back with a bolo measuring around fifty-five centimeters in length. Rogelio Badeo then hacked Cresenciano with another long bolo also at the back. Bonifacio Tangpus followed with a stab at the right por-tion of Cresenciano's stomach, after which Esperidion Badeo hacked Cresenciano's back. Cresenciano fell down on his back.[2]

Cresenciano shouted after he had fallen. Noticing that Cresenciano was still alive, Rogelio came back and "finished him off." [3] During the attack, Eñega was as near to the group as seven arms length. [4] She did not go nearer because she was afraid. [5] Instead, she ran home taking a shortcut through the property of a certain Adriano. She immediately informed her husband, Gregorio, about the incident. She told him, however, not to go out anymore to inform Cresenciano's relatives about the hacking incident, as it was already dark. She eventually told Cresenciano's relatives about his fate in the morning of the following day, Sunday. [6]

The body of Cresenciano, who was single and 42 years old when he died, was autopsied on March 23, 1981 by Dr. Lesmes C. Lumen, the municipal health officer of Dagami, Leyte. The following findings appear on the

medical certificate (Exh. A) issued by Dr. Lumen:

- "1. Hacking wound on the skull, from vertex to left temporal area, 10 inches long, 1 inch wide, 2 inches deep with exposure of brain substance
2. Hacking wound, left supraclavicular area, 2.5 inches long, .5 inch wide; .5 inch deep
3. Hacking wound, extending from left subcostal area to the level of the third rib, 9.5 inches long, 2 inches wide, 1 inch deep
4. Stab wounds at the inframammary area, left
 - a) 2 inches long, .5 inch wide, 2 inches deep
 - b) .5 inch long, .5 inch wide, 2 inches deep
 - c) .5 inch long, .5 inch wide, 2 inches deep
5. Stab wound, right iliac region, level of the umbilicus, 2.5 inches long, 2 inches wide, 1 inch deep
6. Longitudinal, oblique, abrasion at left iliac region, 2.5 inches long
2. Hacking wound, extending from right to left lumbar areas, crossing the vertebral column, 7 inches long, 1 inch wide, 2 inches deep.
3. Hacking wound, left suprascapular region, 5 inches long, 2 inches wide, 1.5 inches deep
4. Hacking wound, left shoulder area (deltoid portion), 7 inches long, 3 inches wide, 2 inches deep."

Uldarico Germanes, a nephew of Cresenciano, believed that his uncle was killed by the four because Cresenciano was instrumental in dividing the land being tenanted by Manuel into two portions. One portion was to be retained by Manuel while the other half would be tenanted by him (Uldarico). He accompanied Cresenciano when the latter told Manuel of the new arrangement. Manuel did not like the arrangement because according to him, he could still work on the whole area.[7]

Manuel Badeo admitted having hacked Cresenciano but averred that he did so in self-defense. According to him, he was at home in the afternoon of March 21, 1981 as he was cutting the grass in his home in barangay Katipunan. Later in the afternoon, he went to barangay Hilabago to ask for kerosene from his mother arriving there at past six o'clock in the evening.

While he was at his mother's house, his brother-in-law, Rosito Dumpang and the latter's nephew Gabriel, passed by. They invited him to go home with them. As they were walking, they met Cresenciano Germanes behind the copra drier of Manuel's mother. Cresenciano asked him where he was going. When Manuel answered that he was going home, Cresenciano held him by his shirt and pointed a gun at him. As Manuel was about an arm's length away, he noticed that Cresenciano was reeking with the smell of tuba.

While pointing the gun at him, Cresenciano threatened to kill Manuel. After telling Cresenciano that they had nothing to fight about, Manuel retreated to a coconut tree, went around it, drew a bolo and hacked Cresenciano hitting him on the head. Then he stabbed Cresenciano's stomach. Manuel ran towards Rosito and Gabriel Dumpang who, in turn, "castigated" Cresenciano. Manuel told them to stop punishing Cresenciano but the two did not heed his advice.

Manuel did not see Eñega Abreo when he hacked Cresenciano. Neither was his father, Esperidion, around. But he noticed that when Rosito hacked Cresenciano, the latter's pistol fell from his hand. Manuel picked it up and later surrendered it to barangay captain Andrea Olimberio. When Manuel surrendered to the police authorities, he did

not implicate Rosito and Gabriel Lumpang because they had threatened that should he mention their names, they would kill him. That threat was also the reason why, together with Esperidion, he transferred his residence to Tanauan, Leyte.

Manuel stated in court that Eñega Abreo testified against him because her husband, Sabino (sic), was the first suspect in the killing of Cresenciano as there was "bad blood" between Sabino and Cresenciano.[8]

Andrea Olimberio, who was the barangay captain of barangay Katipunan when the incident occurred, corroborated Manuel's claim that he surrendered to her. According to Andrea, at about eleven o'clock in the evening of March 21, 1981, Manuel, accompanied by his wife and sister, came to her house and told her that he had killed Cresenciano Germanes. Manuel surrendered to her a pistol which he had taken from the victim. Andrea knew that the pistol belonged to Cresenciano because the latter had shown it to her when he drank liquor at her store.[9]

Esperidion Badeo, on the other hand, denied being at the scene when the killing occurred. He was then in the mountain in Saransang making a kaingin on the land owned by Estelita Tangpus. Saransang was more than seven kilometers away from barangay Hilabago and the distance could only be negotiated by foot through a trail used by sled-drawing carabaos. With him in the mountain were Estelita, Rogelio Badeo and Bonifacio Tangpus. He left the place only on March 22, 1981 when his wife fetched him because his son Manuel had wounded somebody. He went to Hilabago but he immediately left for the mountain because he was afraid that revenge might be taken on him.[10] Estelita Rubo corroborated Esperidion's alibi claiming that Esperidion did not leave the kaingin area even after work.[11]

Sometime in June, 1981, Esperidion and Rogelio Badeo executed a joint affidavit denying participation in the killing of Cresenciano. They affirmed therein that they had been in the homestead owned by Bonifacio Tangpus since March 14, 1981 when the crime transpired.[12] Bonifacio Tangpus did not execute any affidavit nor surrender to the authorities. Neither was he apprehended.

For his part, Manuel executed a counter-affidavit dated June 1, 1981 stating that in the afternoon of March 21, 1981, as he was cutting the grass in his lawn, Sagino Abrio (sic), the husband of Iñiga (Eñega), approached him and intimated to him that he had a big problem because Iñiga and Cresenciano were having an illicit relationship. Sagino said that the relationship downgraded his honor because it was known to everyone in their place. Sagino vowed that something would happen to Cresenciano.

According to the same affidavit, when Manuel arrived at his mother's house to get kerosene, his mother, Maria Badeo, Estelita Tangpus (sic), Elena Borja, Cresencio (sic) Germanes and Sagino Abrio were drinking liquor. As Manuel was about to leave, Germanes forced him to drink liquor. After taking one glass, Manuel turned to leave but Germanes grabbed his shirt. Sagino then followed Germanes, hacked him "many times" while telling Manuel that it was a problem he could handle. Upon seeing that Germanes had a firearm tucked in his waist, Sagino ordered Manuel to get it. Manuel and Germanes grappled for possession of the firearm and as soon as Manuel took hold of it, Sagino told him to surrender it to the police.[13]

The contents of said counter-affidavit as well as Manuel's insistence at the preliminary investigation that it was Eñega Abrio's husband who was responsible for Cresenciano Germanes' killing were totally discredited by the investigating fiscal who noted that during Manuel's 20-day detention, he never mentioned to the police Sagino's involvement in the crime. The investigating fiscal concluded that the rather belated facts revealed by Manuel were designed "to coerce or force Eñega Abrio from becoming a witness for the complainant." [14]

On February 8, 1982, an information for murder was filed against Manuel, Esperidion and Rogelio Badeo and

Bonifacio Tangpus.[15] They were charged with having conspired to kill and treacherously killing Cresenciano.

On September 24, 1984, the assistant provincial fiscal filed a motion for the issuance of an alias warrant of arrest.[16] Through the alias warrant of arrest issued by the court, on December 4, 1984, Manuel Badeo and Esperidion Badeo were apprehended by the police.[17]

On arraignment, Manuel pleaded guilty to the lesser offense of homicide while Esperidion pleaded not guilty to the crime charged. Manuel invoked the mitigating circumstances of voluntary plea of guilty[18] and voluntary surrender. However, the court ruled that a plea of guilty to a lesser offense demanded the conformity of the offended party.[19] Inasmuch as Catalina Germanes, the mother of the victim, was not agreeable to the plea entered by Manuel, the court considered the plea as one of not guilty.

After trial, the court rendered the aforementioned decision. Manuel and Esperidion appealed to this Court contending that the trial court erred in not appreciating the justifying circumstance of self-defense and the mitigating circumstance of voluntary surrender in favor of Manuel, and in not giving weight and credence to the alibi of Esperidion.

On August 10, 1990, Esperidion died of cardio-respiratory arrest secondary to pulmonary tuberculosis at the prison hospital in Muntinlupa, Metro Manila.[20] Inasmuch as no final judgment had as yet been rendered, in the resolution of August 21, 1991 the case against Esperidion was dismissed with costs de oficio and entry of judgment was made on August 22, 1991.[21]

On September 17, 1991, the Solicitor General filed a motion for the reconsideration of said resolution alleging that while the criminal liability of appellant Esperidion Badeo had been extinguished by his death pursuant to Article 89 of the Revised Penal Code, his civil liability arising from the criminal offense subsisted in accordance with Articles 1231 and 1161 of the Civil Code in relation to Article 112 of the Revised Penal Code and the ruling in *People vs. Pancho*, 145 SCRA 323. Hence, as provided for in Section 17, Rule 3 of the Rules of Court, upon proper notice, the legal representatives of the deceased appellant should appear as substitute parties herein insofar as the deceased's civil liability for the crime is concerned.[22]

We find merit in the motion for reconsideration. Article 89 of the Revised Penal Code provides that criminal liability is totally extinguished "by the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment." In *People vs. Alison*,[23] the Court, upon the recommendation of the then Solicitor General who was required to comment on the information that appellant Alison had died at the prison hospital, resolved that, there being no final judgment as yet, "the criminal and civil liability (sic) of Alison was extinguished by his death."

The Alison resolution was the basis of the resolution in *People vs. Satorre*[24] similarly dismissing the case against the deceased appellant. In a separate opinion in the resolution, then Associate Justice Ramon C. Aquino stated that as to the personal penalties, criminal liability is totally extinguished by the death of the convict but as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. According to Justice Aquino, the term "pecuniary penalties" (*las pecuniarias*) in Article 89 refers to fine and costs as distinguished from "pecuniary liabilities" (*responsabilidades pecuniarias*) in Article 38 which include reparation and indemnity.

As every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to a civil action for the restitution of the thing, repair of the damage and indemnification for the losses[25] whether the particular act or omission is done intentionally or negligently or whether or not punishable by law,[26] subsequent decisions of the Court held that while the criminal liability of an appellant is extinguished by his death, his civil

liability subsists.[27] In such case, the heirs of the deceased appellant are substituted as parties in the criminal case and his estate shall answer for his civil liability.[28]

In the light of the foregoing, we reconsider the resolution of August 21, 1991 insofar as it considers as extinguished Esperidion Badeo's civil liability, in order to determine whether or not such liability exist.[29]

Well-settled is the rule that where the accused admits having authored the death of the victim and his defense is anchored on self-defense, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution.[30] Otherwise, his conviction is inescapable.[31]

Of the three requisites of self-defense as stated in Article 11 (1) of the Revised Penal Code, namely: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the person defending himself, the first requisite is indispensable[32] for without it, there is nothing to prevent or repel. After a close scrutiny of the records, the Court finds that appellant Manuel Badeo failed to prove unlawful aggression.

Manuel contends that he was the object of Cresenciano's unlawful aggression because the latter held his shirt and pointed a gun at him. His testimony, however, was completely uncorroborated. He failed even to present Cresenciano's gun in evidence notwithstanding his claim that he surrendered it to the barangay captain and later, to the police.[33] Indeed, we agree with the trial court that if there really was a gun, Cresenciano would have used it not only against Manuel but also against Rosito and Gabriel Dumpang.[34]

Moreover, the location, number and seriousness of the wounds sustained by Cresenciano belie the claim of self-defense.[35] Of the nine wounds found on Cresenciano's body, Manuel admitted having inflicted the two wounds which the physician who performed the autopsy considered as fatal: the hacking wound on the skull and the stabbing wound on the stomach.[36] As such, even without the concerted assistance of the other accused, Manuel could have nonetheless produced the lethal consequence: the death of Cresenciano.

Manuel's assertion that the credibility of the sole prosecution eyewitness is questionable is belated if not baseless. He insists that Eñega had an illicit relationship with the victim and that if her testimony were true, she would not have lost time in reporting the murder to Cresenciano's relatives. On the issue of credibility, we find no reason to depart from the settled rule that the findings of the trial court on the credibility of witnesses should be accorded the highest respect because it had the advantage of observing the demeanor of witnesses and to discern if a witness was telling the truth.[37] The imputation of an illicit relationship between the prosecution witness and the victim which was not shown other than by the counter-affidavit of Manuel and which the investigating fiscal had even discredited, is not an acceptable evidence insofar as proof of improper motive on the part of Eñega is concerned.[38] Neither may Eñega's initial reluctance to denounce Manuel and his other co-accused as the killers immediately after the commission of the crime, affect the probative value of her testimony, specifically her positive identification of Manuel as one of the perpetrators of the crime. Usually triggered by fear, such reluctance is common and has been judicially declared not to affect credibility.[39]

However, we agree with the Solicitor General that the mitigating circumstance of voluntary surrender should be appreciated in favor of Manuel. Ordinarily, where there has been actual arrest, the mitigating circumstance of voluntary surrender cannot be invoked.[40] While it is true that Manuel was arrested with his father on December 4, 1981, the records show that Manuel did surrender: first, to the barangay captain and, in the morning of March 22, 1981, to the police of Dagami.[41] In fact, after his surrender, Manuel was detained for twenty days.[42]

The killing of Cresenciano is qualified by treachery which is shown by the suddenness by which he was attacked. Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion temporal maximum to death.

There being one mitigating circumstance, the penalty imposable shall be the minimum period.[43] Applying the indeterminate sentence law, the proper penalty is ten (10) years and one (1) day of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum penalty.

Anent Esperidion Badeo's civil liability, we find that there is no basis for its imposition in view of the absence of a clear showing that he committed the crime imputed to him.[44] Esperidion could not have been at the scene of the crime because the kaingin area where he had been staying since January 7, 1983 until he was fetched by his wife on March 22, 1985[45] was a good five-hour hike away through a trail.[46] Alibi is generally considered a weak defense but it assumes importance where the evidence for the prosecution is weak and betrays concreteness on the question of whether or not the accused committed the crime.[47]

In this case, Esperidion was implicated by the uncorroborated testimony of sole prosecution eyewitness Iñega Abrio. Her identification of Esperidion as one of the perpetrators of the crime is, however, short of the positiveness and reliability essential for conviction.[48] As several people committed the crime, it is probable that Abrio mistook Esperidion for another person considering that according to her, the attack was perpetrated when it was already getting dark. This does not however, totally discredit her entire testimony especially the portion thereof which imputes on Manuel the authorship of the fatal hacking blows on Cresenciano. Courts may believe one part of a testimony and disbelieve another part.[49]

WHEREFORE, the decision of the lower court is hereby affirmed insofar as appellant Manuel Badeo is concerned subject to the modifications that he shall serve the penalty of ten (10) years and one (1) day of prision mayor maximum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum and indemnify the heirs of Cresenciano Germanes in the amount of fifty thousand pesos (P50,000).

The resolution of August 21, 1991 is hereby reconsidered insofar as it considers as extinguished Esperidion Badeo's civil liability. However, finding that Esperidion Badeo should be acquitted as he did not commit the crime imputed to him, no civil liability is hereby imposed on him. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Hon. Fortunato B. Cuna, presiding judge.

[2] TSN, February 18, 1985, pp. 3-7.

[3] Ibid., pp. 9-10.

[4] Ibid., p. 8.

[5] Ibid., p. 9.

[6] Ibid., p. 7.

[7] TSN, April 10, 1985, pp. 12-14.

[8] TSN, June 10, 1985, pp. 13-21.

[9] TSN, May 29, 1985, pp. 22-23.

[10] TSN, May 19, 1985, pp. 2-6.

[11] TSN, May 10, 1985, p. 13.

[12] Record, p. 20.

[13] Record, p. 19.

[14] Record, pp. 3, 9-10.

[15] Criminal Case No. BN-1880.

[16] Record, p. 25.

[17] Record, back of p. 30.

[18] Plea of guilty may be considered as a mitigating circumstance only if it is made unconditionally. Hence, it may not be appreciated in favor of a defendant who pleads to the lesser crime of homicide and not to the charge of murder (*People vs. Saturnino*, 96 Phil. 868 [1955]).

[19] Record, pp. 40 & 43.

[20] Rollo, p. 97.

[21] *Ibid*, pp. 98-99.

[22] Rollo, p. 104.

[23] L-30612, April 27, 1972, 44 SCRA 523.

[24] L-26282, August 27, 1976, 72 SCRA 439.

[25] *Banal vs. Tadeo, Jr.*, G.R. Nos. 78911-25, December 11, 1987 156 SCRA 325 citing *U.S. vs. Bernardo*, 19 Phil. 265.

[26] *Occena vs. Icamina*, G.R. No. 82146, January 22, 1990, 181 SCRA 329.

[27] *People vs. Tirol*, L-30538, January 31, 1981, 102 SCRA 558; *People vs. Asibar*, L-37255, October 23, 1982, 117 SCRA 856; *People vs. Pancho*, L-32507, November 4, 1986, 145 SCRA 323; *People vs. Salcedo*, L-48642, June 22, 1987, 151 SCRA 220, among others.

[28] *People vs. Sendaydiego*, L-33252, January 20, 1978, 81 SCRA 120.

[29] *People vs. Ampo-an*, G.R. No. 75366, July 4, 1990, 187 SCRA 173.

[30] *People vs. Sazon*, G.R. No. 89684, September 18, 1990, 189 SCRA 700; *Araneta, Jr. vs. Court of Appeals*, G.R. No. 43537, July 3, 1990, 187 SCRA 123; *People vs. Lamosa*, G.R. Nos. 74291-93, May 23, 1989, 173 SCRA 518.

[31] *Ortega vs. Sandiganbayan*, G.R. NO. 57664, February 8, 1989, 170 SCRA 38.

[32] *People vs. Batas*, G.R. Nos. 84277-78, August 2, 1989, 176 SCRA 46.

[33] See: *People vs. Saturnino*, 96 Phil. 868, 870 [1955].

[34] Decision, p. 14.

[35] *People vs. Maralit*, G.R. No. 71142, September 19, 1988, 165 SCRA 425 citing *People vs. Abubakar*, G.R. No. 32102, February 10, 1986, 141 SCRA 286.

- [36] TSN, June 10, 1985, pp. 16-17; March 20, 1985, pp. 5 & 7.
- [37] *People vs. Orita*, G.R. No. 88724, April 3, 1990, 184 SCRA 105.
- [38] See: *People vs. Claro, Jr.*, G.R. No. 76132, September 26, 1988, 165 SCRA 695.
- [39] *People vs. Baysa*, G.R. No. 76391-92, April 25, 1989, 172 SCRA 706.
- [40] *People vs. Saturnino*, *supra*, p. 871 citing *People vs. Adlawan*, 83 Phil. 194.
- [41] Record, p. 16.
- [42] *Ibid*, p. 9.
- [43] Art. 64, Revised Penal Code.
- [44] *Padilla vs. Court of Appeals*, L-39999, May 31, 1984, 129 SCRA 558, 570.
- [45] TSN, May 19, 1985, pp. 4-5.
- [46] TSN, May 10, 1985, pp. 14-15.
- [47] *People vs. Padilla*, G.R. NO. 72709, August 31, 1989, 177 SCRA 129 citing *People vs. Delmendo*, L-32146, November 23, 1981, 109 SCRA 350; *People vs. Hizon*, G.R. No. 71273, July 29, 1988, 163 SCRA 760.
- [48] *People vs. Domingo*, G.R. No. 68993, September 26, 1988, 165 SCRA 620.
- [49] *People vs. Bombesa*, L-41133, June 22, 1988, 162 SCRA 402.

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