

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO GAVINO, SR., ACCUSED-APPELLANT.

G.R. No. 73981. November 13, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the judgment rendered by the Regional Trial Court, 12th Judicial Region, Branch XX, Tacurong, Sultan Kudarat, convicting the accused, Pio Gavino, of Murder and thereby sentencing him the penalty of reclusion perpetua.

There are no witnesses to this violent incident except the protagonists, one of whom survived and lived to tell his tale while the other succumbed to his stab wounds and his lips were forever sealed, unable to dispute the narration of the herein accused-appellant.

It is not disputed that the deceased had other enemies and was a person of violent temper especially when he was drunk (Hearing of October 27, 1983, TSN pp. 34; 45).

On the other hand, defendant-appellant is a married man with eleven (11) children (Hearing of June 21, 1984, TSN p. 4). He is a simple man who calls people by their nicknames and a hard working man who would work until late at night (Appellant's Brief, p. 3).

It appears that Primitivo Tupaz had a dispute with the defendant-appellant over the planting of corn on a piece of land. Subsequently, a carabao he had been leasing was taken away from him by its owner and leased to the defendant-appellant causing him (Tupaz) to leave the locality for a while. Because of this, Tupaz bore a grudge against the appellant.

But appellant admitted that he stabbed Primitivo Tupaz resulting in the latter's death (Appellant's Brief, p. 2). Because of such admission, the burden of evidence was shifted from the prosecution to the defense and it became incumbent on the latter to prove self-defense to the satisfaction of the court, to exculpate him from liability.

The prosecution's version is as follows:

In the evening of July 15, 1982, Eduardo Pacaonces, a farmer tenant and an immediate neighbor of the deceased Primitivo Tupaz, noticed the presence of the latter in his hut where there was a light. He had a conversation with Primitivo Tupaz which did not last long. Shortly thereafter, he noticed that the light from the house of Primitivo Tupaz had been turned off and he presumed that Tupaz had gone to sleep (Rollo, p. 23). At about 10:00 o'clock in the evening, Eduardo Pacaonces was roused from his sleep by someone shouting "Doy, please help me because I have been stabbed". He peeped through the window and saw Primitivo Tupaz trying to enter his (Pacaonces) house. Feeling apprehensive, he shouted for help from his neighbor Dioscoro Villaruel. At this instant Primitivo Tupaz succeeded in forcing the door downstairs open and dived to the floor inside the house (TSN, October 27, 1983, p. 32; Brief for Appellee, p. 2), where he died later. At the time of his death, Primitivo Tupaz was clutching the handle of his scythe minus the scythe itself (Brief for Appellee, p. 3). Appellant who was also seriously

wounded, immediately surrendered to Sgt. Dante Palabrica, the local Philippine Constabulary (PC) Detachment Commander. After his surrender to Sgt. Palabrica, he was brought by the same to the Bautista Clinic for treatment (Rollo, p. 28).

On July 28, 1982, Station Commander Eladio Sustiguer, Jr., filed Criminal Complaint No. 2245 for Murder against the accused Pio Gavino, Sr., in the Municipal Circuit Court of Tacurong, Mariano Marcos, Province of Sultan Kudarat. Immediately thereafter, the accused was arrested and detained in the Municipal Jail. On the same day he filed a waiver of rights to preliminary investigation which was given due course and granted. As above-stated, Pio Gavino, Sr. admits the fact that he killed Primitivo Tupaz (Rollo, p. 3, Brief for Appellee).

On August 16, 1982, the following quoted information was filed in the Court of First Instance of Sultan Kudarat, 16th Judicial District; Lone Branch, Sultan Kudarat.

"INFORMATION

"The undersigned First Assistant Provincial Fiscal accuses Pio Gavino, Sr., of the Crime of Murder, committed as follows:

"That on or about July 15, 1982, in the evening at Barangay New Passi, Municipality of Tacurong, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously, with treachery and evi-dent premeditation, attack, assault and stab, one Primitivo Tupaz alias Boy, with the use of a bladed instrument, thereby inflicting upon the latter's chest and abdomen multiple stab wounds which directly caused his death.

"CONTRARY TO LAW, particularly Art. 248 of the Revised Penal Code, with aggravating circumstances of nighttime which the accused especially sought for to facil-itate the commission of the crime and of dwelling, the crime having been committed at the house where the victim resided.

"Isulan, Sultan Kudarat, Philippines, August 16, 1982.

(SGD.) MACABANGAN A. ALMADA NPS III

1st Assistant Provincial Fiscal

APPROVED:

(SGD.) GERMAN M. MALCAMO NPS II

Provincial Fiscal"

On the other hand, the version of the defense is as follows:

On the same evening of July 15, 1982, Pio Gavino, Sr. was on his way to the house Of Eduardo (Dodoy) Paca-ones, when he passed the hut of Primitivo Tupaz. He coughed as was the custom of the place to let the occupant know he was passing by. When Tupaz learned who was passing, he came out looking angry and told Gavino, Sr. that his blood boils each time he sees him, because had it not been for him, the carabao would not have been taken away from him. When Gavino, Sr. pleaded that he had no fault, Boy Tupaz challenged "So, what do you want?" Immediately, Tupaz pulled out a scythe from his waist and thrust it at Gavino, Sr. The latter retreated, but Boy Tupaz stepped on his left foot causing him to fall down with his face up. Boy Tupaz hacked at him, hitting him on the forehead and upper lip. At this juncture, Gavino, Sr. remembered the jungle knife at his waist. He pulled it out and thrust it twice at his lunging assailant. Tupaz ran towards his house, but when Gavino, Sr. was beginning to run away, Tupaz again jumped on him and Gavino, Sr. had to stab him with the jungle knife once more (Hearing of June 21, 1984, TSN, pp. 8-16). Thereafter, he ran away and surrendered to Sgt. Palabrica

(Ibid., p. 19). He was then brought to the Bautista Clinic for treatment of his wounds.

The Regional Trial Court, after hearing and careful evaluation of the evidence presented by the parties gave more weight to the evidence of the prosecution and found the accused guilty beyond reasonable doubt of Murder, the dispositive portion of the decision reading:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Pio Gavino, Sr. guilty beyond reasonable doubt of the crime of murder qualified the aggravating circumstance of voluntary surrender, both off-setting each other, to be appreciated and considered, the Court hereby sentences the accused Pio Gavino, Sr., the penalty of RECLUSION PERPETUA and to indemnify the surviving heirs of the late Primitivo Tupaz the amount of TWELVE THOUSAND PESOS (P12,000.00) as damages."

The accused while in detention at Camp Sampaguita, Muntinlupa, Metro Manila, in a letter addressed to the Supreme Court on October 28, 1985, manifested his intention not to pursue his appeal for the reason that he could not afford to hire a lawyer. (Rollo, p. 47).

In the resolution of July 2, 1986, the Supreme Court accepted the appeal interposed by the accused-appellant and appointed Atty. Hector Hofilena as his counsel de oficio. (Rollo, p. 49).

Accused submitted his appellant's brief on October 3, 1986 docketed as G.R. No. 73981. The People of the Philippines as represented by the Solicitor General, also filed the cor-responding Brief for the Appellee on January 27, 1987. The appellant submitted his reply brief (Rollo, pp. 83-88) on July 13, 1987 in compliance with the resolution of this Court of March 25, 1987 (Rollo, p. 77).

Accused appellant raised the following errors allegedly committed by the trial court:

I

The trial court erred in not dismissing the case for lack of jurisdiction.

II

The lower court erred in holding that the deceased Primitivo Tupaz was stabbed three times while he was sleep-in in his hut.

III

The lower court erred in giving full credence to the testimony of Sgt. Dante Palabrica.

IV

The lower court erred in not holding that defendant-appellant acted in self-defense.

The crucial issues in this case are: (a) whether or not the accused has sufficiently substantiated the justifying circumstance of self-defense; and (b) whether or not the Regional Trial Court of Sultan Kudarat, Branch XX had jurisdiction to try the case.

Having admitted that he killed the deceased, the appellant who claims self-defense was duty bound to prove the essential requisites for this justifying circumstance, namely:

- (a) unlawful aggression on the part of the deceased;
- (b) lack of sufficient provocation on the part of the accused;

(c) reasonable necessity of the means employed by the accused to defend himself.

We believe there was unlawful aggression on the part of the victim. It was he who went down his house to confront the accused and it was he who blurted out the accusation that were it not for the accused, he (the victim) would still have his carabao. It was he who, irritated by appellant's answer that he (appellant) had nothing to do with the carabao, lashed out with his scythe at the appellant, injuring the latter in the process. Certainly, this was unlawful aggression of the clearest degree, committed by an individual known to be a man of violence.

The prosecution makes much of the fact that appellant was carrying a "jungle knife" instead of a bolo (which allegedly is what farmers usually use in their farm work) but then, as aptly explained by him, a knife is much more convenient to carry than a bolo, which in the usual course of things is heavier and more bulky. Besides it was night time and his farm work was finished for the day. A knife for self-protection was what common sense dictated. He did not carry a knife to deliberately kill: there was at the beginning no need for violence of any kind.

The prosecution also harps on the presence of blood on the bedding of the deceased as well as the fact that the victim was seen still clutching the handle of the scythe minus the blade itself. This does not eliminate the great possibility that he who harbored a deep-seated grudge against the accused was the person who started the whole bloody fray. One significant thing should not escape Us, and this is the fact that accused was himself grievously and painfully injured by the thrusts of the scythe. Had the killing been planned by him, he would have resorted to strategies that would render minimal any assault on his person. As to the blood stains on the bedding, they could have been from the victim's backtracking to his own hut after he had lost in the encounter. Anent the unstained and untorn mosquito net, it is possible that the same had been previously set to one side when the victim first came down from the house. Then again testimony as to the non-staining of the net could have been inaccurate. All told there is no doubt in Our mind that the unlawful aggression came from the victim, not from the accused.

We likewise note the utter absence of provocation on the part of the accused. His disclaimer on the carabao incident was very mild, and was harmless. At the time he gave his answer he brandished no weapon, displayed no belligerence.

That appellant eventually made use of the knife he was carrying is to be expected. Attacked by a scythe, he knew bare hands could not stop the assault. His knife then came to his rescue, and pitted against his assailant's weapon, the knife merely evened up the odds. No person in his right mind can dispute the fact that all things considered, a scythe may even be more effective, certainly more deadly than a knife.

WHEREFORE, We REVERSE and SET ASIDE the decision of the trial court and hereby ACQUIT the appellant who in killing the victim did so in legitimate self-defense.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

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