

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO LEGASPI AND OSCAR LEGASPI, ACCUSED-APPELLANTS.

G.R. No. 74953. June 30, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision dated September 20, 1985 of the Regional Trial Court, Branch 46, at Masbate, Masbate which found accused Antonio Legaspi and Oscar Legaspi guilty beyond reasonable doubt of the crime of murder and sentenced them as follows:

"WHEREFORE, premises considered, the Court finds accused Antonio Legaspi and Oscar Legaspi, GUILTY as charged beyond reasonable doubt of the crime of murder and hereby sentences Antonio Legaspi to suffer a penalty of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS OF reclusion temporal and Oscar Legaspi is hereby sentenced to reclusion perpetua, to jointly and severally indemnify the heirs of the victim, Fausto Apalla, Jr., the amount of P30,000.00 as moral damages; in the amount of P70,000.00 and P3,000.00 as actual and compensatory damages, without subsidiary imprisonment in case of insolvency; together with all the accessory penalties provided for by law, and to proportionately pay the costs." pp. 41-42, Rollo).

Antonio Legaspi was credited with having surrendered to the barangay captain right after the incident. The court appreciated the surrender as a mitigating circumstance. There being no, aggravating circumstance to offset it, accused Antonio was sentenced to reclusion temporal in its maximum period.

Both Antonio Legaspi and Oscar Legaspi filed a notice of appeal from the above cited decision (Original records, p. 88).

The Citizens Legal Assistance Office, counsel for the two appellants has an alternative prayer for either the acquittal of both appellants or, if the self-defense theory of Antonio Legaspi is rejected, for incomplete self-defense and voluntary surrender to be credited in his favor.

The facts of the case are found in the decision of the trial court as follows:

"It is uncontroverted that the incident at bar took place in the early morning of September 16, 1983 at the barangay plaza of Miaga, Uson, Masbate during the occasion of a dance and canvassing of votes for local 'beauty queen candidates', attended by the herein two accused Antonio Legaspi and Oscar Legaspi who arrived at the plaza (from Dongon, Uson, Masbate, where both reside) at about 8 to 8:30 o'clock the preceding night. As the dance and/or canvassing was in progress, a stabbing incident took place at the said plaza at about 2:00 o'clock in the morning wherein the victim, Fausto Apalla, Jr., suffered certain injuries resulting in his death nine (9) days thereafter while confined for treatment in Alino Hospital at Poblacion, Dimasalang, Masbate (Exhs. B & B-1).

"Dr. Alfonso Alino who attended and treated the victim until the latter's death confirmed his findings in his medical certificate issued on February 10, 1984 (Exhs. A & A-1), to wit:

- ""1. punctured wound 2-1/2 inches deep on the 4th I.C.S, left chest;
- ""2. punctured wound, 2" deep intra-abdominal punctur-ing the stomach, epigastrium;
- ""3. punctured wound 1" deep, left lumbar;
- ""4. incised wound, rt. hand, dorsal, 4" long;
- ""5. superficial incised wound, left wrist, 2" long.'

xxx xxx xxx

"The prosecution asserts that (as witnessed by 13-year old Fernando Sanchez, the victim's companion during the incident and who was seated with the latter on a bench near the gate of the plaza watching the dance and the canvassing), the herein two accused at about 2 o'clock that early morning, approached Sanchez and the victim and, without any provocation or warning, accused Antonio Legaspi immediately stabbed the victim, Fausto Apalla, Jr., with a 'machete', hitting the latter on his left chest. When the victim stood up, accused Antonio Legaspi delivered another blow of the 'machete' hitting the victim on the stomach. Accused Oscar Legaspi followed this up (using likewise a machete) by stabbing the victim on the left wrist, then on the right hand. Moments thereafter, the two accused chase the victim and overtaking the latter, accused Antonio Legaspi stabbed him on the left buttock causing him to fall down while prosecution witness Sanchez (who shouted to the accused 'Don't kill my companion') ran towards the victim's house and informed the latter's mother and elder brother, David Apalla, about the incident. All these had been witnessed by Fernando Sanchez because at the time of the incident, the plaza was well-lighted by several 'Coleman' mantle lamps and Sanchez was barely 2-arms length away from the victim.

"Sanchez reported the matter to the police authorities and subscribed and sworn to his affidavit on August 24, 1984 before Judge Jacinta Tambago of the circuit court of Dimasalang-Uson-Palanas (Exhs. C to C-2), the truthfulness of the contents of which he affirmed in Court.

"The victim's family incurred an expense of P3,000.00 for his medical attendance and hospitalization and the victim's mother got sick and later died because of mental anguish and anxieties. There was a delay in the filing of this case because the victim's brothers and sisters, except David Apalla, were then all in Manila and it took them sometime to reply to David Apalla's communication concerning the incident." (pp. 36-37, Rollo).

Antonio Legaspi admits having inflicted the fatal wounds but claims self-defense while Oscar Legaspi interposes alibi.

The evidence for the defense is summarized by their counsel as follows:

"Abundia Muana a classroom teacher, testified that she was at the plaza Miaga attending the last canvassing of votes for local 'Beauty Queen Candidates'. That at about 2:00 o'clock in the morning of September 16, 1983, while she was dancing, a commotion took place inside the plaza. She left her partner in the dance hall and ran towards the Chapel. When she arrived at the Chapel, she saw Oscar Legaspi sleeping. She woke up Oscar Legaspi and told the latter that there was a quarrel in the plaza. She came to know that the protagonists were Antonio Legaspi and Fausto Apalla, Jr. She proceeded to the house of her co-teacher where she waited for the last counting of votes.

"Remedios Legaspi testified that she is the wife of Oscar Legaspi. That Fausto Apalla is the uncle of Fernando Sanchez and the mother of Fernando Sanchez and Fausto Apalla, Jr., are half-brother and half-sister on the mother's side (TSN., p. 24, June 4, 1983 hearing).

"Romulo Capellan, testified that he was at Plaza Miaga attending a dance and the last canvassing of votes for 'local queen candidates' at about 2:00 o'clock in the morning of September 16, 1983. While he was dancing with a certain woman, he saw Fausto Apalla, Jr., and Antonio Legaspi, simultaneously requesting a woman for

a dance. Later, he saw Fausto Apalla, Jr., pulled out a 'machete'. He shouted at Antonio Legaspi 'Evitar Bebet' (TSN., p. 28, June 24, 1983). Antonio Legaspi stepped backward and they grappled for the possession of the 'machete'.

"Oscar Legaspi, the accused himself testified that at the time of the incident he was inside the chapel sleeping. On that night, he took two glasses of tuba and he felt sleepy. He was woke up (sic) by Miss Abundia Muana, who took refuge in the chapel because of the quarrel taking place in the plaza. Later he came to know that the persons involved in the quarrel were Antonio Legaspi and Fausto Apalla, Jr. He denied that he participated in the killing of Fausto Apalla, Jr.

"Accused Antonio Legaspi testified that at about 2:00 o'clock in the morning of September 17, 1983, he attempted to dance with a lady. Unfortunately the victim Fausto Apalla, Jr., also attempted to dance with the same lady. The lady refused to dance with any of the duo. Immediately after the lady's refusal, Fausto Apalla, Jr., pulled out his 'machete' and stabbed him. He was able to grab the 'machete' and he prepared to run. However, Fausto Apalla, Jr., pulled out another 'machete' and stabbed him again. He was able to parry the thrust of the victim. While he was parrying the blow of the victim he hit the latter. After hitting him, he surrendered to the Brgy. Chairman. The Brgy. Chairman surrendered him to the P.C., then the P.C. turned him over to the police authorities of Uson, Masbate, where he was detained for 3 days. He further testified that he saw Oscar Legaspi in the plaza Miaga at about 11:00 o'clock in the evening of September 16, 1983, and since that time, he did not see him anymore. He declared that he stabbed Fausto Apalla, Jr., to disable the latter from further attacking him with a 'machete'.

"Conrado Garcia testified that he is a P.C soldier. That on September 16, 1983, he was in Miaga to maintain peace and order. At about 2:00 o'clock in the morning of September 17, 1983, he went to plaza Miaga because of a reported incident involving Antonio Legaspi and Fausto Apalla, Jr. Brgy. Captain Andeza turned over to him a 'machete' which was given to Andeza by Antonio Legaspi. When Antonio Legaspi was turned over to him, he brought the former to the Municipal Building of Uson, Masbate (TSN., July 2, 1983). (pp. 3-5, Appellant's brief).

According to the appellants, the trial court committed the following errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF FERNANDO SANCHEZ WHO IS AN INTERESTED PARTY.

II

THE COURT A QUO ERRED IN CONVICTING THE APPELLANTS OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING IN FAVOR OF ACCUSED ANTONIO LEGASPI THE MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE AND VOLUNTARY SURRENDER. (Appellant's brief, p. 1).

The appellants are correct in stating that the trial court's findings on the credibility of witnesses are generally not disturbed on appeal but that this rule must yield to the "superior and immutable dictum" that the guilt of the accused must be proved beyond reasonable doubt. (Chase v. Buencamino, Sr., 136 SCRA 365; Phil. International Shipping Corp., v. National Labor Relations Commission, 136 SCRA 605; Minucheer v. Court of Appeals, 129

SCRA 479; and *People v. Grefiel*, 125 SCRA 102). The records, however, show that the evidence for the prosecution is more credible while that for the defense defies logic.

The immediate cause of the killing is given by Antonio Legaspi himself. At two o'clock in the morning of September 17, 1983, he asked a lady to dance with him. The victim Fausto Apalla, Jr., tried to cut in and have a dance with the lady himself. The lady refused to dance with either of the two.

The testimony of Antonio Legaspi regarding the stabbing incident is inherently improbable. He stated that Fausto Apalla, Jr., pulled out a machete and stabbed him but he was able to grab the machete and tried to run away with it. He alleges that Apalla pulled out another weapon, similar to an icepick, and it was while Antonio was parrying the second weapon with the machete that he unintentionally inflicted the wound which caused the death of the victim.

The number and location of the wounds found on the victim belie the testimony of Antonio Legaspi. The victim suffered three punctured wounds and two incised wounds. The stab wounds were on the left chest, the stomach, and the left lumbar region. The wound on the left chest was 2-1/2 inches deep while the other wound punctured the small intestines. The incised wound on the right hand was 4 inches long while that on the left wrist was 2 inches long. The physician testified that the wounds were caused by two different types of weapons thus negating the testimony of the other accused, Oscar Legaspi, that he was peacefully sleeping in a nearby chapel when the incident happened.

The records support the findings of the trial court which stated:

"Tested against the foregoing criteria, the Court finds the defense' posture totally shattered and rendered unworthy of credence it having been clearly and convincingly shown by the prosecution that it was the accused as the unlawful aggressors for having suddenly and without any warning attacked and wounded on the left chest with a machete the victim Fausto Apalla, Jr., while the latter was seated on a bench with Sanchez near the gate of the plaza. In fact, when Apalla was about to stand, the latter was again stabbed by the accused hitting him on the stomach. Moments thereafter, accused Oscar Legaspi lost no time in performing his own part in the conspiracy by stabbing the victim on the left wrist and on the right hand; and, both accused thereafter chased the victim who, upon being overtaken, was stabbed for the third time by accused Antonio Legaspi, hitting him on the left buttock causing him to fall to the ground. All these indubitably established that not one of the elements of self-defense has been proved and consequently the defense submission must fail. In the case of *People v. Martija*, 112 SCRA 528, it was held:

"One who rests his case on self-defense must prove the same by clear and convincing evidence and in so doing, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Even if the evidence of the prosecution is weak, it could not be disbelieved after the accused himself had admitted the killing.'

The crime committed here is murder qualified by treachery. While abuse of superiority was likewise proven in this case, the same, like nocturnity, is absorbed in treachery and cannot be estimated as an independent aggravating circumstance." (p. 41, Rollo).

Oscar Legaspi's defense of alibi that he was asleep inside the chapel while the stabbing incident was taking place cannot prevail over the positive testimony that he was also hacking the victim on the right hand and left wrist while Antonio was using the machete to inflict fatal wounds. The chapel where Miss Abundia Muana allegedly saw Oscar after the killing is only around 20 meters from the site of the stabbing. It was an easy thing to walk into the chapel and be seen there after the incident. Alibi in this case is an extremely weak defense (*People v. Surban*, 123 SCRA 218; *People v. Lakandula*, 123 SCRA 415; *People v. Sambangan*, 125 SCRA 726; *People v. Catipon*, 139 SCRA 192; *People v. Canturia*, 139 SCRA 280; *People v. Martinez*, 127 SCRA 260; *People v. Regato*, 127

SCRA 287; and *People v. Benaraba*, 129 SCRA 266).

The relationship of the key prosecution witness to the victim does not necessarily disqualify him as biased and interested. A nephew is not incompetent to act as a witness simply because of his relationship to either the accused or the victim of a crime (*People v. Vengco*, 127 SCRA 242; *People v. Ibasan, Sr.*, 129 SCRA 695; *People v. Centeno*, 130 SCRA 198; *People v. Maruhom*, 132 SCRA 116; *People v. Lopez*, 132 SCRA 188; *People v. Cielo*, 133 SCRA 117; *People v. Cruz*, 133 SCRA 426; *People v. Gacho*, 124 SCRA 671; and *People v. Jabeguero*, 125 SCRA 144).

The first and second assignments of errors are, therefore, without merit.

The third assignment of error is based on mistaken premises. The appellants state that the trial court should have appreciated in favor of Antonio Legaspi the mitigating circumstances of incomplete self-defense and voluntary surrender.

The fact is that Antonio Legaspi was credited with the circumstance of voluntary surrender. Hence, while he was the one who inflicted the first blow and the wounds which actually caused the victim's death, he was given a lighter penalty than his co-principal.

The plea of incomplete self-defense is unavailing. The killing was a one-sided affair. Antonio and Oscar Legaspi were the aggressors. They simultaneously attacked the victim. The latter had no chance to defend himself or to escape the sudden aggression. There was no opportunity to interpose a defense against the treacherous attack by the two assailants.

The appellants do not question the damages imposed by the lower court which, in the light of the records, appear to be correct.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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