

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARDO LITERADO Y PARON, ACCUSED/APPELLANT.

G.R. No. 77114. May 27, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from a decision rendered by the Regional Trial Court*, Branch IX. Third Judicial Region, finding herein accused/appellant guilty of the crime of murder, the dispositive portion of which reads:

“WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime of murder and sentences him to suffer imprisonment for life (sic) with the accessory penalties provided by law; to indemnify the heirs of the deceased in the amount of P12,000, and P20,000 as moral damages, and the amount or P5,947.00 as actual damages.

“x x x” (Rollo, p. 33)

The facts as summarized by the Solicitor General, are as follows:

“On March 29, 1981, between 7:00 p.m. and 7:30 p.m., witnesses Esperidion B. Mendoza and Delfin Gonzales, together with companions Jaime Gonzales, Marcelo Ignacio and Ernesto Andres were standing and conversing along Mendoza Street, Lolomboy, Bocaue, Bulacan, opposite the billiard hall (TSN, Esperidion B. Mendoza, July 1, 1981, p. 2); outside the house of Delfin Gonzales where Jaime Gonzales was celebrating his birthday (TSN, Delfin Gonzales, July 17, 1982, p. 2). They went out to get a tricycle to take Ernesto Andres, nicknamed Nestor, home (Id., p. 2). They flagged down a tricycle and Nestor seated himself on the motorcycle right behind the driver (TSN, July 13, 1981 at 4). Nestor’s two companions, Marcelo Ignacio and one called ‘Ogong’, boarded the side car of the tricycle (Id., at 3-4). When Delfin was flagging down the tricycle, he noticed that the appellant Bernardo Literado was standing on the other side of the road (TSN, July 17, 1981, p. 3; TSN, July 13, 1981, p. 4). He had been standing there for about 20 minutes (TSN, July 17, 1981, p. 3).

“When the tricycle accelerated and had travelled about one and a half meters (TSN, July 13, 1981, p. 5) and was in front of the place where appellant was standing, appellant suddenly pulled out a knife and thrust it on Ernesto Andres hitting the latter on the left side. Ernesto alighted and ran after Literado who ran inside the house of Angelina Literado (TSN, July 17, 1981, p. 4). After sometime, Ernesto Andres came out with his breast oozing with blood. Delfin and two companions helped him and brought him to the Marilao Medical Center but the doctor told them he was dead on arrival (Id., p. 5). Delfin gave his sworn statement to the police on April 4, 1981.

“Before the stabbing incident, about 6 or 7 o’clock, there was misunderstanding between accused-appellant Literado and Nestor (Id., at 3-4). The witnesses were not clear what was the misunderstanding. Appellant and Nestor were at the store of Angelina Literado where there was ‘shouting or loud exchange of words’ between the two (Id., p. 5). Helen Literado shouted at Nestor that Bernardo Literado was her cousin so Nestor approached Helen to apologize to her ‘because on that particular date they stood as sponsors.’ After this, Nestor went back to his companions at the terrace of the house of Delfin Gonzales. After resting for a while, they went to flag down a tricycle for Nestor Andres (Id.,).

“The medical finding has established that Nestor’s death was caused by ‘massive external hemorrhage, blood that is out of the body, and internal hemorrhage that are being accumulated inside the body due to stab wound on the left side of the chest along the mid axillary line at the level of the left nipple.’ The weapon used in inflicting the stab wound penetrated the left lung up to the vertebral bone (TSN, Dr. Benito Caballero, September 12, 1981, p. 7). The stab wound has a length of about 2 1/2 centimeters, and it has a depth of more than 10 inches since it reached the left lung and the vertebral column (Id., at 9). It could have been caused by a sharp pointed object (Id. at 10). The massive hemorrhage and the concomitant shock resulting from the stab wound caused the death of Nestor (Id.,). It is probable that Nestor was clinically dead after the infliction of the stab wound (Id.,). After the inflicting of the stab wound, Nestor would still survive for thirty minutes, more or less (Id.,).

“Aside from the stab wound, an incised wound was also inflicted on Nestor. The incised wound, which is caused by a sharpened instrument or object, is located immediately above the stab wound. Its width is 3 1/2 centimeters, and it penetrated inside the body. It affected the left lung and the vertebral bone. If Nestor did not die instantaneously after the infliction of the first wound, he would only live for around thirty (30) minutes after the wounding (Id., at 8-9).

“It is clear therefore that both the stab and the incised wounds are fatal although the stab wound, it appears is more fatal than the incised wound.

“The evidence for the defense tried to portray the following scene: On May 29, 1981, while appellant Bernardo Literado was standing at the door of his cousin’s house, i.e., the house of Angelina Literado, a person, whom appellant did not know, approached and mauled him. This incident caused appellant to go inside a room of his cousin’s house. The person who mauled him followed and entered the room, and appellant saw him holding a knife that was more or less 10 inches long including the handle (TSN, Bernardo Literado, February 5, 1982, p. 3). When he saw him holding the knife (Exh. ‘A’), he went under the bed, and while he was there, the intruder swayed the knife. Appellant could not run to any place anymore, and ‘on that particular instant, I happened to take hold of the bolo (Exh. ‘B’) and swayed it towards him, and I was not expecting that the same bolo would kill him’ (Id., at 4). Bernardo made only one thrust of the bolo against the intruder, and after said thrust, the intruder went out (Id., at 5). He did not know what happened to the intruder outside. He remained inside the room for five (5) minutes. Then a policeman entered the room holding a gun telling him to surrender. He surrendered the bolo, and the policeman brought him to the municipal building (Id., at 6).

“Another witness for the defense, Isabel Francisco, testified that in the evening of March 29, 1981, between 7:00 and 7:30 p.m., she was at the house of Angelina Literado for the purpose of obtaining an advance, a vale, from Angelina, the employer of Isabel Francisco’s husband (TSN, Isabel Francisco, October 16, 1981, p. 2 and 3). Isabel saw Bernardo Literado, ‘standing near the road by the side of the house of Angelina Literado near the door’ (Id., at 3). Then, suddenly, Nestor rushed towards Bernardo and ‘boxed him on the left chin’ (Id.). Bernardo, in response, ‘boxed’ Nestor but he was not able ‘to land the first blow.’ Then Bernardo ran and entered Angelina’s house (Id.). He hid under a bed crouching on his stomach (TSN, Isabel Francisco, November 20, 1981, p. 14). Nestor pursued Bernardo inside the house. The next thing that Isabel saw was Nestor holding a kitchen knife (Exh. ‘A’) and ‘stabbing Bernardo Literado under the bed’ (TSN, Isabel Francisco, October 16, 1981, p. 3). Nestor, however, did not hit Bernardo because the latter was under the bed (Id.). She saw Bernardo get hold of the knife and stab Nestor (Id.). She also saw Bernardo pull ‘something under the bed and she saw it was a long bolo (Exh. ‘B’) and he used it in stabbing Ernesto Andres’ (Id., at 4).

“The prosecution, presented the rebuttal testimony of a Meralco representative that on March 29, 1981, from 5:20 to 7:20 p.m., there was a pre-arranged interruption of electric service by Meralco in the area that included Mendoza Street, Lolomboy, Bocaue, Bulacan where the crime had happened (TSN, Lucito Santos, June 7, 1982 and July 16, 1982). In other words, there was a brownout in the place where the crime was committed on March 29, 1981 from 5:20 p.m. to 7:30 p.m. Witnesses for the prosecution and the defense testified that the crime happened between 7:00 and 7:30 p.m. on March 29, 1981. (Appellee’s Brief, pp. 4-9)

After trial, accused/appellant was found guilty of murder under Art. 248 of the Revised Penal Code and was sentenced to suffer life imprisonment (reclusion perpetua).

Not satisfied with the verdict of the trial court, appellant took the instant appeal with the following assignment of errors, viz.,:

I

“THE TRIAL COURT ERRED IN HOLDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE MORE CREDIBLE AND IN DISREGARDING THE VERSION OF THE DEFENSE.

II

“THE TRIAL COURT ERRED IN FINDING THAT THE KILLING WAS ATTENDED BY QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

“THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF MURDER CONSIDERING THAT HIS GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT.” (Appellant’s Brief, p. 1)

It is settled jurisprudence that the findings of the trial court as regards the credibility of witnesses are disturbed by this court unless it is amply demonstrated that the trial court overlooked certain facts or circumstances which would affect the result of the case (See *Medina v. Asistio*, 192 SCRA 218 [1990]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]).

While there may be accepted exceptions to the foregoing pronouncement, none exist in the case at bar. We have gone over the records of the case before us, and contrary to appellant’s protestations, there is nothing therein which would otherwise compel us to depart from said doctrine.

Appellant likewise seeks to exculpate himself from criminal liability by invoking the justifying circumstance of self-defense.

In order that the justifying circumstance of self-defense may be properly invoked, it is imperative that the following requisites must concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (Art. 11, Revised Penal Code).

In *People v. Bausing* (199 SCRA 355 [1991]), this Court ruled that:

“The first requisite is indispensable. There can be no self-defense unless it is proven that there had been unlawful aggression on the part of the person injured or killed by the assailant. If there is no unlawful aggression, there is nothing to prevent or repel (*People v. Malazzab*, 160 SCRA 123 [1988]; *Ortega v. Sandiganbayan* [1990]). In addition, for unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude (*People v. Pasco, Jr.*, supra; *People v. Rey*, 172 SCRA 149 [1989] and the accused must present proof of positively strong act of real aggression (*Pacificar v. Court of Appeals* 125 SCRA 716 [1983]; (*People v. Aquiatan*, 123 SCRA 501 [1983]; *People v. Aquino*, 124 SCRA 835 [1983]).”

According to appellant, the deceased ran after him with a knife inside the house of Angelina Literado and he squeezed himself under the bed to avoid the thrusts of the deceased and that while underneath, he managed to

grab a bolo with which to stab the victim.

As found by the court a quo, however, “it is inconceivable that the accused could have hidden himself underneath the bed in such a hurried manner when the deceased was following the accused inside the room. The bed was barely 1 foot in height from the floor such that a person placing himself under it could hardly squeeze himself in and put up a fight in self-defense. A person in such a situation could not make a thrusting blow of the bolo without exposing at least his upper extremities. x x x. The accused had no time to place himself underneath the bed. Once inside the house (after stabbing the accused outside), the accused could have gotten the bolo nearby and waited for the (deceased) to enter and there deliver the thrusting blow.” (Rollo, pp. 29-30). Further, the unrebutted testimonies of the prosecution witnesses indicate that it was accused/appellant, and not the deceased, who acted as the aggressor. Such being the case, appellant’s invocation of self-defense cannot be given a scintilla of credibility.

But what is more important is the fact that accused/appellant admitted the killing of the accused. As we have held in *People v. Bausing* (supra), “it is thus incumbent upon the accused to prove the justifying circumstance to the satisfaction of the court in order to be relieved of any criminal liability. In such instances, the accused must proffer strong, clear and convincing evidence of self-defense and depend not on the infirmity of the prosecution, for even if the latter was weak, the plea of self-defense cannot prosper especially so where the accused himself has admitted the killing, x x x. (citing *People v. Bayocot*, 174 SCRA 285 [1989]; *People v. Masangkay*, 157 SCRA 320 [1988]; *People v. Abagon*, 161 SCRA 255 [1988]; *People v. Tesorero*, 71 SCRA 579 [1976]); *People v. Llamera*, 51 SCRA 48 [1973]; *People v. Bauden*, 77 Phil. 105 [1946]; *People v. Ansoyon*, 75 Phil. 772 [1946]).”

The prosecution witnesses also testified that the victim was suddenly attacked by the accused/appellant while seated behind the tricycle driver. Appellant, on the other hand, would like this Court to believe that the stabbing incident in its entirety took place inside the house of Angelina Literado.

The Court finds more worthy of belief the finding of the trial court based on the testimonies of the prosecution witnesses that the deceased was first stabbed by the appellant while seated on board the tricycle and moments. Later, appellant while waiting in ambush inside the house of Angelina Literado, inflicted another stab wound on the hapless victim. In both instances, the victim was totally defenseless as found by the trial court which ruled that the killing was attended by the qualifying circumstance of treachery.

Treachery is present when the offender commits any of the crimes against persons by employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. In other words, the offended party was given no opportunity to defend himself (Art. 14, par. 16, Revised Penal Code; *People v. Samson*, 176 SCRA 710).

Through its eyewitnesses, the prosecution has duly established the manner in which accused/appellant dastardly perpetrated the offense charged without risk to himself as against the victim who was not only unarmed but was left without means of defending himself from appellant’s treacherous attack. As found by the trial court, appellant was already waiting for the victim and took advantage of the deceased’s position behind the tricycle driver in stabbing him. The mode of attack ensured a risk-free retaliation from the deceased who had his hands on the tricycle and could not parry a sudden and unexpected knife thrust by the accused.

A word more. The court a quo sentenced appellant “to suffer imprisonment for life with the accessory penalties provided by law.”

The crime of murder is defined and punished under Art. 248 of the Revised Penal Code. The penalty provided thereunder is reclusion temporal in its maximum period to death. Within the range of the penalty prescribed, i.e.,

reclusion temporal maximum to death, is the penalty of reclusion perpetua. The penalty of reclusion perpetua is invariably imposed for serious felonies penalized under the Revised Penal Code. It carries with it imprisonment for at least thirty (30) years, after which the convict becomes eligible for pardon, and also accessory penalties, e.g., perpetual special disqualification, etc. (Art. 27, Revised Penal Code).

Life imprisonment, on the other hand, does not have any definite extent or duration nor does it carry accessory penalties. It is imposed as a penalty for serious offenses penalized by special laws. The crime of murder committed by appellant being penalized under the Revised Penal Code, the proper imposable penalty should therefore be reclusion perpetua instead of life imprisonment. It is necessary to employ legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties (*People v. Mobe*, 81 Phil. 58 [1948]; see also *People v. Baguio*, 196 SCRA 4599 [1991]).

WHEREFORE, the appealed judgment is hereby AFFIRMED with the modification that the penalty imposed upon appellant is reclusion perpetua and not imprisonment for life and as to the indemnification which is hereby increased to P50,000.00 conformably with current jurisprudence. Costs against accused/appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

* Penned by Judge Jesus R. de Vega

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