

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSENDO DELGADO ALIAS "NONGNONG",
DEFENDANT-APPELLANT.**

G.R. No. 79672. February 15, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Calbayog City, Branch 31, the dispositive portion of which reads:

"WHEREFORE, the Court finds and declares the accused Rosendo Delgado GUILTY beyond reasonable doubt of the crime of "Murder" as charged and considering the absence of mitigating circumstance or aggravating circumstance, sentences him to suffer the penalty of reclusion perpetua, and indemnify the heirs of the deceased the sum of P30,000.00 and the costs.

"The preventive imprisonment undergone by the accused shall be deducted in the service of his sentence pursuant to Republic Act 6127." (At p. 12, Rollo)

The information filed against the accused alleged:

"That on or about the 9th day of August, 1984, in the afternoon, at Brgy. Pilar, Oquendo District, Calbayog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of a deadly bladed weapon, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously attack, assault, hack, stab and wound one Santos Zamoras, who, as a result thereof, sustained wounds on the different parts of his body which directly caused the death of said Santos Zamoras." (At p. 5, Rollo)

The facts to which the trial court gave credence in its finding of guilt beyond reasonable doubt are based on the narration of the lone eyewitness, Rogelio Zamoras, supported by the post-mortem examination report and the testimonies of Leonardo de Ballon and Aurora Zamoras. The facts are as follows:

"Rogelio Zamoras, 15 years old, testified that on August 9, 1984 about 4:30 p.m. while he was playing with some other children near the place of Conchita Zamoras in Brgy. Pilar, he noticed that his father, Santos Zamoras, who was walking in the street towards the reading center, was boxed by Clemente Zamoras, hitting the lower part of the right ear. His father retaliated by stabbing Clemente Zamoras with a knife hitting the left breast. That after stabbing Clemente Zamoras, his father Santos Zamoras sat on the cemented pavement placing his right hand over his left and put his head on top of it; that believing his father was asleep and nothing more would happen, he returned to play with his playmates; that shortly thereafter, one of his playmates told him that his father Santos was stabbed and when he looked to the direction of his father he saw accused Nongnong (Rosendo Delgado) stabbed (sic) his father Santos hitting the lower part of the back of the body on the right side, then the lower part of the neck and on the chest, using a bolo, 30 inches long. Thereafter, his father died falling to the ground face down. At that time he was more than two (2) arms lengths from his father. To help his father he picked up a stone and hurled it at Rosendo Delgado but was (sic) not hit.

That then he ran to his mother in the house of his grandmother, about 250 meters away, telling her that father is dead killed by Rosendo Delgado. When he ran, the accused was near about half meter to his father who was lying face down and even stretched his father. Thereafter, he saw Rosendo Delgado and the brother walking towards the direction of Barangay Cabatuan. That her (sic) mother, when informed, went to Brgy. Councilor Jose Sagadai and a member of Civilian Home Defense Force (CHDF) and with them took the body of Santos Zamoras from the place of incident and brought to the house of his grandmother." (At pp. 7-8, Rollo)

"Post-Mortem findings on the body of the deceased by Mr. Leonardo Ballon, Sanitary Inspector of the Calbayog City Health Office, indicated the injuries sustained by the deceased and the cause of his death, thus:

"POST MORTEM EXAMINATION REPORT"

Name of the deceased Santos Zamoras, 60 years old, married, Brgy. Pilar Oquendo District, Calbayog City.

Date & Place of Death August 9, 1984 — 4:00 p.m.

Parent Cleto Zamoras and Paz Miel

Spouse Aurora Baloja Zamoras

Date, Time & place of Autopsy August 11, 1984 — 7:00 p.m. Oquendo District, Calbayog City

Corpse identified by Aurora Baloja Zamoras — spouse

F I N D I N G S

Corpse in the state of rigor and liver mortis with visible thrust wound in the different parts of the body." (At pp. 6-7, Rollo)

LESIONS

"(1) Wound, thrust, back right side thru and thru measuring 10 cm. long x 7 cm. at its widest portion, directed a little downward anteriorly penetrating the small and large intestines with exit wound No. 4 above the umbilical region measuring 3 cm. long x 3 cm. widest portion with intestine coming out.

(2) Wound, thrust, chest, left, below and the right of the nipple measuring 4 cm. long x 3 cm. at its widest portion x 7 cm. depth directed a little upward to the right and back, penetrating the mediasternum.

(3) Wound, thrust, below the xyphoid region, measuring 4 cm, widest portion x 9 cm. depth directed a little upward posteriorly hitting a right lung.

CAUSE OF DEATH

Shock, due to hemorrhage, due to thrust wound on the different parts of the body.

Mr. Ballon testified that the aforescribed multiple thrust wounds located in the back, chest and below the xyphoid region must have been caused by a long bolo." (At pp. 6-7, Rollo)

The accused raises the following assignment of errors in his appeal, to wit:

I

"THE LOWER COURT ERRED IN GIVING FULL CREDIT TO THE TESTIMONY OF THE PEOPLE'S WITNESS ROGELIO ZAMORAS

II

THE LOWER COURT ERRED IN FINDING ACCUSED'S ACCOUNT OF THE INCIDENT UNWORTHY

OF BELIEF

III

THE LOWER COURT ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER

IV

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT AND IN SENTENCING HIM TO LIFE IMPRISONMENT." (At p. 30, Rollo)

In these errors, the appellant questions the trial court's appreciation of the testimony of Rogelio Zamoras as against his own testimony.

The appellant while admitting the stabbing, however, claims self-defense. His testimony is as follows:

"That on August 9, 1984 about 4:30 p.m. that while he was seated resting by the side of the street, with other people as he just came from his farm, he saw Clemente Zamoras being chased by the deceased Santos Zamoras with an eleven inches long bolo, towards the direction of the house of Vicente Guades in Brgy. Pilar, and was five (5) meters distance (sic) apart (sic). Upon reaching the house of Vicente Guades, Clemente went up not overtaken. So Santos Zamoras hurled a challenge to fight anybody who decided to fight in the yard. He was then seven (7) armslength to Santos Zamoras and just kept sitting while Santos was hurling a challenge; that then Santos Zamoras approached him and challenged him to a fight. When challenged he ran away, but Santos Zamoras ran after him, and when he reached the yard of a certain Conching Zamoras, he stumbled down and his elbow sustained a bruise. When he was about to get up, Santos Zamoras was already very near to him and was about to stab him. So he pulled his bolo, 21 inches long, including the handle, from the scabbard tied around his waist and visible, and stabbed Santos Zamoras. When he stabbed Santos Zamoras, the latter was about to stab him. (He demonstrated that Santos was stooping his body down and the hand was as if holding something making stabbing blow) and he was still on the ground with both his elbows and knees on the ground; that while in that position, his both elbows and knees on the ground, he pulled the bolo on his left waist with his right hand and looked up to the left and stabbed the deceased hitting the left portion of the body above the waistline. That he did not remember how many times he stabbed Santos Zamoras because he already lost his senses. After that he went home to the house of his parents in Brgy. Pilar, not knowing whether Santos Zamoras was already dead or not, but was lying on the ground having fallen down. That then he went to Brgy. Cabatuan near to Oquendo, to get away from the brothers of the deceased; that he surrendered on August 16, 1984 to the City Jail Warden, Julio Sermense, telling the latter that he stabbed Santos Zamoras. He further stated that when Santos Zamoras was chasing, the latter was drunk that he could not run fast and was zigzagging.

Continuing his testimony on cross-examination the accused declared that his house is 30 armslength distance to the house of Vicente Guades, Brgy. Pilar; that when chased by Santos Zamoras, he did not run fast as he did not think Santos really intended to kill him; but when he stumbled and saw Santos about to stab him, that was the time he pulled his bolo from its scabbard; that Santos Zamoras was not able to inflict a wound on his body, only on the left wrist (showing a scar along the side of the left thumb); that he stabbed the deceased several times as he lost his senses; that Santos is more than ten (10) years older than him; that he did not surrender his weapon; that he told City Jailer Sermense the reason why he stabbed Santos Zamoras; that he was brought to the office of the Investigator of the IMP of Calbayog City and made a statement regarding the incident but did not tell that he killed the deceased in self-defense because he was not asked (However in the letter transmittal and Booking Sheet and Arrest Report attached to the record, it appears that accused was at-large; also in the return of the warrant of arrest it was noted by Julio Sermense that accused was arrested)." (At pp. 8-9, Rollo)

In the case of *People v. Batas*, G.R. Nos. 84277-78, August 2, 1989, the Court held:

"A person who seeks justification for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstance for having admitted wounding or killing his adversary, and he is criminally liable unless he is able to satisfy the Court that he acted in legitimate self-defense."

For there to be legitimate self-defense, there must be three requisites as provided in paragraph 1 of Article 11 of the Revised Penal Code, namely: (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. (*People v. Batas*, supra)

The appellant contends that the victim was the unlawful aggressor. This contention is negated by the physical evidence. If indeed, the appellant and the victim were in the positions described by the appellant, it would have been impossible for him to inflict the back stab wound described in the post-mortem report.

The appellant contends that the entry point of Wound No. 1 was in the abdomen or stomach thus making the three wounds inflicted on the deceased possible. However, this contention is not supported by any proof or explanation and is, in fact, contradictory to the post-mortem examination report issued by an independent third party, the sanitary inspector among whose main functions is the performance of autopsies on cadavers of deceased persons.

The appellant's claim of self-defense is further negated by other circumstances such as the absence of any major injury on his body as against three severe wounds, any one of which would have been fatal, suffered by the victim. According to the appellant, the victim was in a superior position to inflict harm. Moreover, the appellant failed to tell the police authorities that he killed the victim in self-defense. His defense theory is obviously an afterthought.

The trial court found no cogent reason to doubt the positive testimony of Rogelio Zamoras. In the case of *People v. Tayapad*, 129 SCRA 353 [1984]), we affirmed the decision of the trial court which gave credence to the testimony of a guileless 12 year old girl there being corroborative circumstantial evidence. In the case at bar, the testimony of Rogelio Zamoras is not as patently absurd as contended by the appellant. It was natural for Santos Zamoras, after he had stabbed Clemente, to realize the gravity of his act, sit on the concrete pavement, place one hand over the other, and press his head (obviously the forehead) on top of the two hands. The appellant states that it was abnormal for the eyewitness to deduce from the act that Santos Zamoras was going to sleep. We do not think so. The attribution of sleepiness instead of remorse, reflection, or fear indicates naivete and guilelessness. The testimony which bespeaks of sincerity, is supported by the post-mortem examination report. The most severe stab wound had its entrance at the back of the victim, penetrated the abdominal cavity and exited in front just above the waistline. Part of the intestines spilled out from the exit wound in the victim's front body. It has been held in the case of *People v. Pedrosa*, G.R. No. 56457, January 27, 1989, that "from the mouths of children, we get the truth."

We have time and again upheld the well-established principle that findings of fact of trial courts are accorded great weight and respect considering that they had the opportunity to observe the deportment and behavior of the witnesses. (*People v. Espinosa*, G.R. No. 72883, December 20, 1989; *People v. Maghanoy*, G.R. Nos. 67170-72, December 15, 1989; *People v. Guevarra*, G.R. No. 66437, December 4, 1989; *People v. Mitra*, G.R. No. 80405, November 24, 1989; *People v. Aranja*, G.R. No. 56268, October 13, 1989). We see no reason from the records of the case and the arguments of the defense to deviate from this rule.

Moreover, the testimony of the appellant was not only contrary to the physical evidence but is also uncorroborated by any separate competent evidence. In self-defense, the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence, otherwise conviction would follow from his admission that he killed the victim. He must rely on the strength of his own evidence and not on the weakness of that for the

prosecution. (People v. Montejo, 167 SCRA 506, 512 [1988]).

We agree with the trial court's findings that there was treachery. In the case of People v. Batas, supra:

"We sustain the finding of treachery against him as it is clear that he had adopted means and methods to insure the commission of the offense without risk to himself from any defense his unwary victim might make."

In the case at bar, the stabbing was from behind, done in a sudden and unexpected manner while the deceased was sitting and his head down on his hands.

The appellant contends that the mitigating circumstances of incomplete self-defense and voluntary surrender should be appreciated.

The mitigating circumstance of incomplete self-defense cannot hold as was held in the case of People v. Cañete, G.R. No. 82113, July 5, 1989:

"There is no self-defense to speak of as it was not proven that there was unlawful aggression on the part of the victim. There being no unlawful aggression, there is nothing to prevent or repel."

The appellant cites Section 8, Rule 112 of the 1985 Rules of Criminal Procedure which reads:

"SEC. 8. Record of preliminary investigation. — The record of the preliminary investigation whether conducted by a judge or a fiscal, shall not form part of the record of the case in the Regional Trial Court. However, the said court, on its own initiative or that of any party, may order the production of the record or any part thereof whenever the same shall be necessary in the resolution of the case or any incident therein, or shall be introduced as evidence by the party requesting for its production. (n)"

The appellant contends that since the Booking Sheet and Arrest Report (Record, p. 6), which respectively show the appellant at large as well as being turned over to the Regional Trial Court (Record, p. 17) by virtue of a warrant of arrest (Record, p. 16), were never presented in evidence, the testimony of the appellant that he voluntarily surrendered should be appreciated.

This contention is without merit.

The abovementioned provision states that the production of the preliminary investigation record or any part thereof whenever the same shall be necessary in the resolution of the case or any incident thereon may be ordered. It does not mean that because of its non-production, the appellant's self-serving statements must be given credit. The trial court validly took judicial cognizance of the entries in the arrest report and the transmittal letter as these form part of the records of the criminal case. They are official documents reporting on whether or not the warrant of arrest was served and how the accused was turned over to the jurisdiction of the trial court.

WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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