

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SATURNINO REY, DEFENDANT-APPELLANT.

G.R. No. 80089. April 13, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

Saturnino Rey was charged with the crime of Murder before the Regional Trial Court of Capiz, committed as follows:

"That on or about 8:40 o'clock in the evening of May 28, 1983, at Poblacion, Pilar, Capiz, Philippines, within the jurisdiction of this Court, the above-named accused armed with a .45 caliber pistol, did then and there, wilfully, unlawfully and feloniously shoot one NICOLAS PAGAYUNAN in a sudden and in unexpected manner, thereby inflicting upon the latter a gunshot wound above the nipple and sternum, right, thru and thru which caused his death thereafter;"[1]

After trial, Judge Rodrigo V. Cosico found the following facts to have been established:

"x x x On the evening of May 28, 1983, which was a fiesta day, while Rosette Pagayunan, a teacher at the San Esteban Elementary School, was preparing to cook food at her house, she found out that there was no water. Accordingly, Mrs. Pagayunan instructed her two (2) children, Babette and Nicolas, to get water from the faucet of the accused Saturnino Rey, also a public school teacher. At that time, Mr. Rey's faucet was allegedly the only one with water at the neighborhood because of the long drought. Nicolas was then a nineteen-year old fourth year high school student at the Colegio de la Purisima Concepcion, Roxas City. Babette and Nicolas proceeded towards the house of Mr. Rey to get water. Babette and Nicolas found Roban Rey, son of the accused, near the faucet. Roban was sitting atop the steps of the kitchen stairway talking with Nicolas. While Nicolas was standing beside the faucet waiting for his pail to be filled with water, he was shot twice by Saturnino Rey from the window of his bedroom which was about four (4) meters away. The shooting was witnessed by Roban Rey and Babette Pagayunan, who was about three (3) meters away from the faucet. After he was hit, Nicolas said to Roban: 'I was hit'. Soon after, Nicolas fell front of Roban. Roban went up their house and told Saturnino Rey: 'Daddy you hit Colas'. Babette went home and reported the shooting incident to her mother who fainted. The Pagayunan sisters and their group went to the place to get the body of Nicolas, who was taken to the Medicare Hospital in Pilar, Capiz, where he was given a first-aid treatment. Thereafter, Nicolas was taken to Roxas City but died before reaching the hospital.

"On the morning of May 29, 1983, Patrolmen Jose Ballera and Hanzel Villareal conducted an investigation at the place of the shooting incident and found an empty shell (Exh. C) below the window of the room of Saturnino Rey. During the investigation, Roban Rey, in the presence of the police investigators and Romeo Bacalocos, pointed to the direction of the window of the room of his father, Saturnino Rey, as the place where the firing came from."[2]

The trial court found the defendant-appellant guilty, as charged, and sentenced him to suffer the penalty of reclusion perpetua to indemnify the heirs of the victim in the amount of P30,000.00, to pay the heirs of the victim the amount of P50,000.00 for moral damages and to pay the costs.

From this judgment, the accused Saturnino Rey appealed. His counsel assails the trial court for completely believing the testimony of the prosecution witnesses. Counsel points to certain facts and circumstances of weight and substance which the trial court allegedly overlooked, misapplied or misinterpreted, and which, if considered, will materially alter the result, to wit: "1) the fact that it was summer and the water system connections, particularly those in the higher level of the town, were not functioning; 2) the fact that the water faucet at the backyard of the accused-appellant was not functioning, not merely because the water pressure was too weak for the faucet to function but also because the water connection had been disconnected (t.s.n., p. 283); 3) the fact that the houses of both the deceased and the accused-appellant and their immediate neighborhood are on the same higher level of the town; 4) the fact that the household of the accused-appellant were getting their water supply from Martin Cunada, their nearest neighbor, because he had a water pump, several water storage tanks, and a well; 5) the fact that the immediate neighbors of the Pagayunans had wells, water storage tanks, as well as water system connections and some of their neighbors were relatives and close friends of the Pagayunans; 6) the fact that the Pagayunans were known and seen to obtain their water supply from these immediate neighbors; 7) the fact that the Pagayunans (who were relatively new in the neighborhood) had never drawn water from the faucet of the accused-appellant; 8) the fact that the house of the accused-appellant was at least 120 meters away from the house of the deceased; 9) the fact that the only access to the accused-appellant's bedroom window from the outside was through the shuttered gate of the wire-enclosed vegetable garden; 10) the fact that the six-foot-high chicken and bar-wire fence of the vegetable garden was covered with climbing plants, thereby blocking the view from the window as well as from the outside into the bedroom; 11) the fact that the accused-appellant's house was of the bungalow type and the sill of the bedroom window was only about 3.5 feet from the ground; 12) the fact that the deceased was found just below or near the bedroom window and within the enclosed vegetable garden, not only by members of the accused-appellant's family but also by Martin Cunada, a friend and barkada of the deceased, who happened to be passing by just after gunfire sounded; 13) the fact that Martin Cunada, who stayed for some five minutes at the scene of the incident right after the shooting, did not see Babette Pagayunan or any other member of the deceased's family anywhere in the vicinity; 14) the fact that after the shooting only Babette Pagayunan of the Pagayunan household was seen with the deceased and the Rey children at the Medicare Hospital in Roxas City; 15) the fact that none of the four water containers the deceased allegedly brought with him to the accused-appellant's backyard faucet was ever found or seen before, during, or after the shooting; 16) the fact that except for Dr. Buenvenida, all the other four (4) witnesses of the prosecution concocted some material portions of their testimonies; 17) the fact that in a small rural town in the interior the inhabitants sup and sleep early; and 18) the act that it was the night of the town fiesta and older folks tend to be more security-conscious." [3]

The appeal is without merit. The circumstances enumerated by the counsel for the appellant are of little importance because the accused-appellant, Saturnino Rey, had admitted having fired the shot that killed the deceased Nicolas Pagayunan. His testimony in court reads, as follows:

“Q Now, will you please inform the Honorable Court at about 8:40 in the night of May 28, 1983 where you were and what you were doing.

A I was inside my room of my house.

Q And what were you doing?

A I was lying down.

Q Did you have any companion in your room that night and at that time?

A Yes, sir.

Q Inform the court who were your companions.

A My child aging four years of age with my second wife.

Q What happened while you were in your room that night and that time with your child?

A There was a person who opened my window, the window of my room where I was lying down.

Q Now do you know who was that person who opened the window of your room where you were lying down?

A No, sir. At first I did not know.

Q Will you please describe to the Honorable Court the room where you were staying in and the window which was opened?

A The frontage of my house is facing (witness pointing to the western direction). The elevation of the flooring is one foot. The height of the window from the floor is this high (witness referring to the window of the courtroom estimated to be 2 1/2 feet).

Q After you noticed that a person opened your window, the window of your bedroom, what happened?

A I felt for my pistol.

Q What happened after that?

A I sat on the bed and asked, 'Who are you?'

Q And did you receive an answer after asking who was that person?

A No, sir.

Q What happened after you received no answer?

A I fired a shot.

Q How many times did you fire your pistol?

A Twice.

Q By the way, how wide was that window in your room?

A About 1 1/2 meters wide.

Q And did you see anybody to whom or at whom you fired your pistol?

A The first shot that I fired was upward, on the air.

Q My question to you is, did you see any person outside the window?

A Yes, sir.

Q Were you able to discern the facial features of the person you saw at the window?

"ATTY. PATRICIO:

Objection, your Honor.

COURT:

All right, reform.

ATTY. ABELA:

Q How well did you see the person you saw at your window?

A Silhouette.

Q Will you be able to recognize the person you saw at your window that night?

A No, sir.

Q And what was the person you saw at your window doing when you fired the shot?

A You mean the first shot?

Q The first shot what was the person doing?

A After he pushed the shutter of the window he put his hand down.

Q And at that time you fired the second shot what was the man doing?

A I was looking at him and he had the action of drawing something and that was the time I fired the second shot.

Q By the way how close was the man to your window that night?

A Just like this, from myself up to Atty. Abela (distance estimated to be 1 ½ meters).

Q My question to you is, how close was that man to the window of your room?

A He was right at the window.

Q And what part of the body of that man can be seen by you?

A From the waist.

Q And how far were you seated on your bed, how far was your bed from the wall of the window?

A About one foot.

Q What happened after you fired the second shot directed at that man at your window?

A I gave out an alarm to my children."^[4]

Having invoked self-defense, it was incumbent upon the defendant-appellant to prove by clear and convincing evidence the fact that he acted in self-defense. The defendant must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused himself admitted the killing.^[5] In this regard, defendant-appellant failed to discharge the burden reposed upon him by law to prove self-defense. The trial court found that the testimony of the defendant-appellant gave evasive and ambiguous answers before the court. ^[6] We have examined the record of the case and we find no cogent reason to disturb said findings of the trial court. The witnesses for the prosecution had no evil motive to testify falsely against the appellant.

Besides, defendant-appellant's testimony, even if true, does not establish a case of self-defense. There is no evidence of unlawful aggression on the part of the deceased. The defendant-appellant merely testified that he saw a person open the window of his bedroom and when he inquired who the person was and received no answer, he fired a shot into the air; then, when said person lifted his right arm chest high,^[7] he fired the second shot. The interval between the two shots was only about three (3) to five (5) seconds.^[8] For unlawful aggression to be appreciated in self-defense, there must be an actual sudden and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude.^[9] The raising of the right arm chest high alone by an unarmed

person cannot be considered unlawful aggression. Absent unlawful aggression on the part of the deceased, there cannot be self-defense on the part of the accused.

The defendant-appellant also failed to rebut the presumption that the shooting was done with criminal intention. His conduct after the shooting incident was inconsistent with the conduct of a person who had innocently shot a person by accident. It would appear that he did not do anything to help his victim who was lying down on the ground, bleeding and moaning. He did not go down from his house even after finding that the person he had shot was Nicolas Pagayunan. Instead, he uttered curses.[10] Then, very early the next morning, at about 5:30 o'clock, he left his house and stayed with his brother in a neighboring municipality,[11] and did not go home even to help the police in their investigation.[12] Flight is an indication of a guilty mind.

The defendant-appellant also contends that treachery or alevosia was not charged in the information filed against him, or proven by the evidence presented by the prosecution at the trial.

The contention is without merit. The information filed in this case specifically stated that the accused, Saturnino Rey, armed with a .45 caliber pistol, wilfully, unlawfully and feloniously shot Nicolas Pagayunan "in a sudden and unexpected manner." This is sufficient allegation of treachery because a sudden and unexpected attack, without the slightest provocation on the person of the one attacked is the essence of treachery or alevosia. It is not necessary that the information should use specifically the word "alevosia" or treachery. It is sufficient if the information alleges facts in clear and explicit language which would show treachery or alevosia without the use of the specific word.[13]

Treachery in the shooting of Nicolas Pagayunan was established by the testimony of Babette Pagayunan who declared that the accused-appellant suddenly and without warning shot the deceased as the latter was waiting for his pail to be filled with water and while talking to the son of the accused-appellant. The attack was sudden, unexpected, without warning, and without giving the victim an opportunity to defend himself or repel the aggression. In fact, the deceased did not sense any danger that he would be shot by the defendant-appellant as there was no previous grudge or misunderstanding between them.

The claim of the defendant-appellant that he had fired a warning shot into the air appears to be an afterthought. Babette Pagayunan categorically declared that her brother, Nicolas Pagayunan, was hit on the first shot. Her testimony, on cross examination, reads as follows:

"Q How many shots did Saturnino Rey the accused, direct to your brother?

A Two shots were delivered by Saturnino Rey. The first shot hit my brother. I did not know whether the second shot hit my brother. After the first shot my brother staggered towards Roban."[14]

Besides, the shots were fired in rapid succession so that the first shot could not serve as a warning shot. Babette Pagayunan stated:

"Q How long after the first shot did you hear the second shot?

A Seconds only. The interval was seconds.

Q So that the second shot came right after the first shot?

A Yes, sir."[15]

The defendant-appellant, Saturnino Rey, also testified, as follows:

Q You testified a while ago that you fired two shots. How long after you fired the first shot that you also fired the second shot?

A The interval was only seconds.

Q About two seconds?

A Three seconds or more.

Q But it could not be more than five seconds, right?

A No, sir."^[16]

As the People's counsel observed, if the version of the defendant-appellant were true, the empty shell would have fallen near the defendant-appellant's bed; inside his room, and not outside the house where Pat. Hanzel Villareal found it; and that the first shot would have hit a part of the house.

The trial court, therefore, correctly found the offense committed by the defendant-appellant to be murder, qualified as it was by treachery.

WHEREFORE, the judgment appealed from is AFFIRMED. With costs against the appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), J., with reservations as to the penalty only consistent with her dissent in P. vs. Millora.

Paras, Sarmiento, and Regalado, JJ., subject to the same reservations indicated by the chairman.

[1] Rollo, p. 15

[2] Id., pp. 26-27

[3] Appellant's Brief, pp. 62-64

[4] t.s.n of October 27, 1986, pp. 4-6

[5] People vs. Liamera, G.R. No. L-21604-06, May 25, 1973, 51 SCRA 48, 57, and cases cited therein

[6] Decision, pp. 3-4

[7] t.s.n. of October 27, 1986, p. 16

[8] t.s.n. of March 26, 1987, p. 17

[9] People vs. Pasco, Jr., G.R. No. L-45715-16. June 24, 1985, 137 SCRA 137

[10] t.s.n. of March 26, 1987, pp. 22-25

[11] Id., p. 11

[12] Id., p. 16

[13] Sec. 9, Rule 110, Rules of Court

[14] t.s.n. of November 27, 1984, pp. 67-68

[15] Id., p. 68

[16] t.s.n. of March 26, 1987, p. 17

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