

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SOLDADO, CAMILO ZUÑIGA, NARCISO ZUÑIGA & BENIGNO ZUÑIGA, JORGE SOLDADO, TOMAS DELA CRUZ AND ROGELIO VALENCIA, ACCUSED-APPEL...

G.R. No. 80225. March 31, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

The twenty-year old Bernardo "Benny" Arellano went to a store to quench his thirst and ended up dead with four stab wounds, eight to eleven inches deep each.

Three of the seven accused have been arrested, tried, convicted and sentenced to reclusion perpetua for murdering the above victim.[1] Jose Soldao, Camilo Zuñiga, Benigno Zuñiga and Narciso Zuñiga remain at-large.[2]

In this appeal, they contend that self-defense should have been appreciated in favor of accused-appellant Jorge Soldao and that the trial court erred in ruling that the accused-appellants acted in conspiracy attended by treachery and evident premeditation.

The information filed against the accused reads:

"The undersigned hereby accuses JORGE SOLDADO y ANGELES, alias "Jorge", JOSE SOLDADO, TOMAS DELA CRUZ, ROGELIO VALENCIA y NAVARRO, alias "Yong", CAMILO ZUÑIGA, NARCISO ZUÑIGA, and BENIGNO ZUÑIGA of the crime of MURDER, committed as follows :

That on or about the 12th day of April 1985, in barangay Salomague Sur, municipality of Bugallong, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused Jorge Soldao y Angeles, Jose Soldao, Tomas dela Cruz and Rogelio Valencia, conspiring, confederating and helping each other, armed with knives, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack and stab Bernardo Arellano @ "Benny" inflicting upon him the following injuries:

External Findings:

- Chest -

(1)

Stab wounds over the left lower aspect of the left breast with extremities 1 1/2 inches long penetrating and about 9-10 inches deep.

(2)

Stab wounds along the anterior aspect of axilla shallow and with extremities 1/2 inch long.

(3)

Stab wounds over the left side of the chest penetrating with 1 1/2 long, gaping and about 10-11 inches deep.

- Back -

(1)

Stab wound over the left side of the back, penetrating with extremities 1 1/2 inches long, gaping and about 8-10 inches deep.

- Extremities: Left Arm: (1) There are two (2) puncture wound on the left arm with extremities 1/2 inch.

Internal Findings:

(1)

Heart with 1 perforating wound on the anterior border with 1 inch long extremities and about 1 1/2 inches deep.

(2)

Lungs left: with penetrating wounds on the lower border about 3 inches deep.

(3)

Diaphragm with perforating wounds about 1 inch long extremities and thru and thru.

and which injuries caused his death as a consequence, while accused Camilo Zuñiga, Narciso Zuñiga and Benigno Zuñiga, not being principals, did then and there, wilfully, unlawfully and feloniously participate and cooperate in the execution of the crime by simultaneous act by brandishing their respective boloes in order to prevent Ricardo Malicdem and Saturnino Fernandez from coming to the aid of Bernardo Arellano, to the damage and prejudice of his heirs.

Contrary to Article 248 in relation to Article 18 of the Revised Penal Code."[3]

Jorge Soldao, Rogelio Valencia and Tomas de la Cruz were convicted in a decision rendered by Judge Cornelio W. Wasan, Sr. of Branch 39, Regional Trial Court, First Judicial Region, Lingayen, Pangasinan. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered, finding accused Jorge Soldao, Tomas dela Cruz and Rogelio Valencia guilty, beyond reasonable doubt of the crime of Murder as charged, and therefore, the Court sentences them to suffer the penalty of Reclusion Perpetua with all the accessories provided by law and to pay the costs.

The Court further orders the accused jointly and severally to indemnify the heirs of the victim Bernardo Arellano in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the heirs of the victim the amount of actual expenses incurred in connection with the 7-days vigil, funeral and burial of the victim in the amount of P23,000.00; and to further pay moral damages in the amount of P50,000.00 pursuant to the provision of Article 2277 of the New Civil Code, also without subsidiary imprisonment in case of insolvency.

Considering that the accused are detention prisoners, they are credited to the full period of their temporary detention, pursuant to the provisions of Article 29 of the Revised Penal Code.

Let a copy of this decision be furnished the heirs of the victim Bernardo Arellano for their reference.

SO ORDERED."[4]

The court gave credence to the eyewitness accounts of the prosecution witnesses who related how the victim was attacked.

On April 12, 1985 before noontime, Saturnino Fernandez, Ricardo Malicdem and Bernardo Arellano were on their way to visit one Emma Espiritu who lived about a kilometer away. After a while, Bernardo "Benny" Arellano, the victim, became thirsty and stopped by the store of Jose Soldao. His companions, Saturnino Fernandez and Ricardo Malicdem, remained some five meters away. Jorge Soldao, Rogelio Valencia, and Barangay Captain Alfredo Maza were conversing in front of the store when Benny arrived. The victim knocked and bought Pop Cola, which Jose Soldao handed to him. Benny Arellano turned to his companions to offer the cola he had just bought. Suddenly and without warning, Jose Soldao covered Benny's eyes and Jorge Soldao immediately stabbed him on the left chest. The victim was able to run away but Jorge Soldao overtook him and stabbed him again on the left armpit with the balisong. Benny Arellano fell to the ground. Another accused, Rogelio Valencia or "Yong," arrived and urged Jorge Soldao to stab the victim again saying, "on the upper part, on the upper part."

Jorge Soldao ran but another accused Tomas de la Cruz came from behind the store and plunged a knife into the victim who already lay in a prone position on the ground. Before he left, Tomas de la Cruz turned Benny's body and stabbed him twice again on the breast.

Saturnino Fernandez and Ricardo Malicdem tried to help their fallen friend but the other accused, Bening, Isoy and Camilo, all surnamed Zuniga, brandished their boloes at the two. Fearing bodily harm, the two ran to tell the victim's uncle, Herminio Achera, of their friend's fate.

Ricardo Malicdem recounted what constitutes the first part of the evidence against accused-appellants.[5] Herminio Achera, Benny Arellano's uncle, testified to the following:

Upon hearing about what happened to his nephew, Herminio Achera ran to the scene of the crime but stopped nearby to take cover at the side of a fence.

He saw seven persons there, Oro Soldao, Yong Valencia, Isoy Zuñiga, Bening Zuñiga, Camilo Zuñiga, Berting Soldao and Tomas de la Cruz. This group was then clubbing and hitting Benny Arellano who lay fallen on the ground. Rogelio Valencia rode on top of the victim and clubbed his mouth. Jose Soldao uttered, "You said you are tough, now you are dead," and hit Benny on the jaw. Isoy, Bening and Camilo Zuñiga uttered, "Vulva of your mother, you finally die." They all left the place after Tomas de la Cruz pronounced the victim dead.

Achera went near the victim and found him dead, having sustained several wounds.[6]

The version of the defense goes thus:

Accused Jorge Soldao put up the defense of self-defense. According to him, he was seated outside the store of Jose Soldao when Benny Arellano arrived. The latter asked who is the tough guy in Salomague Sur. Barangay Captain Maza answered that there was none. Then, Benny asked if Jorge is the one known as Jorge Soldao. Immediately thereafter, Benny charged at Jorge Soldao, kicked him, boxed him several times and pushed him against a wall. Benny then drew a balisong and tried to stab Jorge Soldao but missed. After grappling for the balisong, the accused was able to get hold of it. Benny picked up a bottle of Pop Cola and hit the accused in the eyebrow resulting in the latter's injury. Benny's subsequent blows with the bottle were parried by the accused with the use of the balisong. He hit Benny on the left side causing the latter to fall. Thinking Benny was already dead, Jorge Soldao left and went home. He surrendered to the police and admitted to killing Benny Arellano in self-defense.

Rogelio Valencia similarly raises the defense of alibi and denial, alleging that he was at home taking care of a very young child, some two or three hundred (200 - 300) meters away from the store, also in the same barangay.

Tomas de la Cruz denied that he knew Benny Arellano and said he was living in San Carlos City and was nowhere in Salomague Sur, Bugallon, Pangasinan at the time of the attack.

The trial court, favoring the eyewitness accounts of Ricardo Malicdem and Herminio Achera, found the evidence sufficient to establish the guilt of the three accused, Jorge Soldao, Rogelio Valencia and Tomas de la Cruz, beyond reasonable doubt. The decision states that "the court has keenly observed the demeanor of the witnesses while testifying and found them to be straightforward, simple and natural in answering questions propounded to them." [7]

The detailed version of how the victim was killed led the court a quo to believe their testimonies. In this regard, the court said:

"x x x x x x x x x x"

2. The declarations of said witnesses described in detail the sequence and manner of stabbing, hitting and clubbing the deceased as corroborated by the victim's death certificate (Exh. "E"). For instance, the testimony of Herminio Achera disclosed that he saw Yong Valencia in a stooping position pulled the hair of the victim and said these words: 'We regret of your being handsome' and immediately clubbed him on the mouth. He further testified that he heard Jorge Soldao uttered these words: 'You said you are tough', thereafter clubbed him on the right side of the face, and then added: 'Why are you dead now?' and again hitting him on the right jaw. Then Isoy Zuñiga kicked the victim and said " 'Vulva of your mother, you finally died' and at the same time Jorge Soldao said these words: 'He is still alive, what are you doing?' and in reply, Tomas de la Cruz said these words: 'No, because he is already dead as he is being hit on the vital part of his body' after which, they all left, (tsn, p. 5, *ibid.*)."[8]

Accused Jorge Soldao put up self-defense to negate his criminal liability for the death of the victim, both in the trial court as well as in this appeal. There is no ground for disagreeing with the lower court when it found that the declaration of the eyewitnesses narrating the sequence and manner of stabbing, hitting, and clubbing the deceased proved the guilt of accused, in direct contrast to the latter's allegation of self-defense as an exempting circumstance.

Furthermore, as succinctly put by the lower court:

"The autopsy report (Exh. "C") shows that the victim Benny Arellano sustained six (6) wounds (stab and puncture). Considering the number of wounds, kinds and location on the different parts of the body of the deceased (breast, left side and other side of the body and back) this fact not only negates the defense of self-defense put up by Jorge Soldao but indicates the possibility that more than one assailant and more than one weapon was used as testified to by the attending physician." [9]

The second error assigned negating conspiracy is primarily anchored on the testimony of Barangay Captain Maza that accused Jorge Soldao merely defended himself after being attacked by Benny Arellano. Accused-appellant likewise assails Ricardo Malicdem's testimony as incredible. He contends that Jose Soldao could not have covered the victim's eyes because the former was inside the store and the victim, a brown belter in judo, could have easily pushed Jose Soldao aside. It is also improbable, according to the accused, that Tomas de la Cruz further stabbed the fallen victim for there is no reason to stab one who is already down and presumably dead.

We find no reason to overturn the court a quo's factual findings, particularly its conclusion that the true version was related by the prosecution eyewitnesses Ricardo Malicdem and Herminio Achera and not by the defense witnesses.

It correctly appreciated the presence of conspiracy from evidence of the concerted effort to kill the victim. The records show that accused Jose Soldao covered the victim's eyes while accused Jorge Soldao stabbed him immediately. Tomas de la Cruz came from behind the store and stabbed the victim again. Yong Valencia urged Jorge Soldao to further attack the victim as well as participated in striking the victim. When the companions of the victim tried to save him, the accused Zuñigas (Camilo, Narciso and Benigno) blocked them with boloes in hand. And finally, as Herminio Achera testified, the seven accused struck, hit and clubbed Benny Arellano repeatedly even as he lay stricken on the ground. No other conclusion can be deduced from the foregoing facts but that the accused-appellants acted in concert and with a common design.

The third error assigned by appellants is the finding of the circumstance of treachery, qualifying the killing to murder.

There is treachery or *alevosia* when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution thereof, without risk to himself arising from the defense which the offended party might make.[10]

The suddenness of the attack on the victim, when Jose Soldao covered Benny Arellano's eyes affording accused Jorge Soldao the opportunity to plunge his balisong into the victim cannot but be considered as treachery. An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack, constitutes *alevosia*. [11]

Covering the victim's eyes without any warning and stabbing him immediately thereafter, temporarily blinds and leaves the victim no opportunity to defend himself.[12]

Appellants argue that the circumstance of evident premeditation was wrongly appreciated by the court below. On this point, appellants are correct for there exists no proof on record of (a) the time when the offenders determined to commit the crime; (b) an act manifestly indicating that they have clung to their determination; and (c) a sufficient lapse of time between the determination and execution to allow them to reflect upon the consequences of their act.[13]

Evident premeditation cannot be appreciated in this case for there is no direct evidence of the planning and preparation to kill, and that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[14]

WHEREFORE, the decision appealed from is **AFFIRMED** subject to the modification that the death indemnity to be paid to the heirs of Bernardo Arellano shall be P50,000.00.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Accused Jorge Soldao withdrew his appeal on August 12, 1994. The Court received confirmation of accused's voluntariness in withdrawing the appeal from his counsel de oficio in a Manifestation dated February 16, 1995. Rollo, p. 207.

[2] *People of the Philippines v. Jorge Soldao, et al.*, Criminal Case No. L-3254, Regional Trial Court, First Judicial Region, Branch 39, Lingayen, Pangasinan; Rollo, pp. 26-49.

[3] Rollo, pp. 7-8.

[4] Decision dated January 8, 1987; penned by Judge Cornelio W. Wasan, Sr.; Rollo, pp. 26-49.

[5] TSN, November 6, 1985.

[6] TSN, January 30, 1986.

[7] Decision, p. 18; Rollo, p. 43.

[8] Decision, p. 18; Rollo, p. 43.

[9] Decision, p. 21; Rollo, p. 46.

[10] Article 14, No. 16, par. 2, Revised Penal Code.

[11] U.S. v. De Silva, 14 Phil. 413; U.S. v. Matanug, 11 Phil. 188; People v. Suits, 220 SCRA 419; People v. Villanueva, 225 SCRA 353.

[12] People v. Boniao, 217 SCRA 653.

[13] Article 14, No. 13, Revised Penal Code; People v. Cordova, 224 SCRA 319.

[14] People v. Rivera, 221 SCRA 647; People v. Estrella, 221 SCRA 543.

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