

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO CANETE, ACCUSED-APPELLANT.

G.R. No. 82113. July 05, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Negros Oriental, Branch 30, Dumaguete City, the dispositive portion of which provides:

"IN VIEW OF THE FOREGOING, the Court finds Accused Romulo Cañete guilty beyond reasonable doubt of the crime of Murder charged in the information, defined and penalized in Art. 248 of the Revised Penal Code, and considering the aggravating circumstance of dwelling against him, there being no mitigating circumstance, he is hereby sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalties provided by law, to indemnify the heirs of Zacarias Tampipi in the amount of Thirty Thousand Pesos (P30,000.00), and to pay the costs." (Rollo, p. 33)

The information filed against the accused alleged:

"That on or about October 20, 1985, at sitio Abaca, Brgy. Cawitan, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery and taking advantage of darkness, did then and there wilfully, unlawfully and feloniously assault, attack, stab and hack, one Zacarias Tampipi, with the use of a bolo, with which the accused was then armed and provided, thereby inflicting upon the victim mortal stab and hack wounds in the different parts of the body, to wit:

"1) Stab wound, 2 inches wide perforating the abdominal cavity with herniation of the large intestine at the left lateral side of the abdominal region.

"2) Hacked wound at the elbow cutting off the head of the humerus extending from the medial to the lateral side of the elbow joint.

"3) Two superficial hacked wounds, 1 inch wide, 2 inches apart from each other at the posterior left forearm.

which wounds caused the death of said Zacarias Tampipi shortly thereafter." (Rollo, p. 6)

The prosecution's evidence upon which the trial court based its finding of guilt beyond reasonable doubt is narrated by it as follows:

"The version of the Prosecution, thru witnesses Dra. Rosita Muñoz, Dominador Manayon and Norma Tampipi, is as follows: That on October 20, 1985, Zacarias Tampipi, Dominador Manayon, Bomby Lastimosa and Tony Pantoja were in the poblacion of Barangay Cawitan, Sta. Catalina, Negros Oriental to sell bananas. On their return they all dropped by the house of Zacarias Tampipi in sitio Abaca, upon invitation of the latter, arriving there at about 8:30 o'clock in the evening. Zacarias Tampipi thereupon gathered about 4 liters of tuba from his coconut trees and the four of them (Zacarias, Dominador Manayon, Bomby Lastimosa and Tony Pantoja) had a drinking spree at the open porch of the house of Zacarias which was about 3 feet and 9 inches high from the ground. While Dominador Manayon, Bomby Lastimosa and Tony Pantoja were standing on the ground beside

the edge of the porch, Zacarias Tampipi was seated at the nearby corner thereof and his wife Norma was seated across him near the door leading to the living room. Beside Norma was a small wick lamp which furnished the illumination around the porch. At about 11:00 o'clock that same night Accused suddenly appeared from behind and stabbed Zacarias Tampipi on the left side with a long, sharp bolo, causing the latter to fall to the ground. Dominador Manayon moved back while Bomby Lastimosa and Tony Pantoja ran away. While Zacarias Tampipi was already lying on the ground, Accused kept on hacking him with the bolo until he was told to stop by Dominador Manayon and Norma Tampipi. Then Accused left. When Accused was no longer there, Bomby Lastimosa and Tony Pantoja came back and, together with Dominador Manayon, they carried Zacarias Tampipi upstairs where he died not long after.

"At the time of his death Zacarias Tampipi was only 39 years old and was an overseer of the sugar cane plantation of Junior Ferraren with a salary of P500.00 a month. His widow, Norma Tampipi, has spent P4,000.00 for his burial and for the customary 9-days prayer." (Rollo, pp. 25-26)

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

I

THAT SUBSTANTIAL FACTS AND CIRCUMSTANCE WERE OVERLOOKED BY THE TRIAL COURT AND WHICH, IF WERE PROPERLY CONSIDERED MIGHT HAVE AFFECTED THE RESULT OF THE CASE AT BAR.

II

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS GUILTY OF COMMITTING A CRIME, THE SAME SHOULD ONLY THAT OF HOMICIDE AND NOT MURDER AS ERRONEOUSLY HELD BY THE TRIAL COURT. (Rollo, p. 53)

The records sustain the factual findings of the trial court and its assessment of the credibility of witnesses. We affirm its decision.

On the first assigned error, the accused questions the non-production of two other witnesses who allegedly witnessed the commission of the crime. Only the wife and the neighbor of the victim were presented by the prosecution and their testimonies are allegedly biased.

The fact that the other two eyewitnesses were not presented as prosecution witnesses at the trial does not work against the prosecution nor invalidate the judgment of conviction. Their testimony, at best, would have been merely corroborative. (See *People v. Jandayan*, G.R. No. 74871, February 27, 1989).

Moreover, one was in fact presented as a witness for the defense.

As noted by the Solicitor General, to wit:

"More importantly, the number of witnesses to be presented and whom to present are matters within the prosecution's prerogative to decide. Besides, the two witnesses alluded to by the defense as having been not presented are Antonio Pantoja and a certain Bomby Lastimosa, and the records show that Antonio Pantoja is the brother-in-law of the accused, his wife Vicenta Cañete being the sister of accused Romulo Cañete. Being an adverse witness, the prosecution did not present him as Government witness.

At any rate, Antonio Pantoja was in fact presented as a witness for the defense and was cross-examined by the prosecution. Hence, his testimony was already taken into consideration by the trial court in rendering the judgment appealed from.

As to Bomby Lastimosa, the record shows that the prosecution sought his attendance through the issuance of

Subpoena (p. 104, rec.) but he failed to appear despite notice (p. 111, rec.), prompting the prosecution to dispense with his testimony in order not to delay the administration of justice. Besides, his testimony would only be corroborative, and not so indispensable. At any rate, in the determination of the values and credibility of evidence, witnesses are to be weighed and not numbered (*People v. Nabaunag*, 79 SCRA 33 [1977]). For the testimony of only one witness, if credible and thrustworthy, is sufficient to convict (*People v. Nabaunag*, *supra*).

Moreover, the accused has all the right and opportunity to have called Bomby Lastimosa as his own witness. Nothing could have prevented accused from doing so. For the accused has the right to use the processes of the court to compel the attendance of witnesses. This the accused failed to avail of. He should not lay the blame on the prosecution." (At pp. 10-11, Rollo)

The relationship between the prosecution witnesses and the victim does not work against the credibility of the former. This Court has held that where there is no showing of improper motive on the part of the prosecution witnesses, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. (*People v. Abonada*, G. R. No. 50041, January 27, 1989; *People v. Alvarez*, G.R. No. 70446, January 31, 1989).

The accused points out to alleged improbabilities in the narration of the prosecution witnesses to impugn their credibility. He contends that it is improbable that the victim and the witnesses would drink before taking supper, that there was no "pulutan" and that the witnesses stood for two hours.

The trial court observed that "[I]t is customary for village people in order to drive away fatigue and boredom, to "refresh" themselves with tuba (a cheap local drink taken from coconut sap) and while away the evening hours with conversation. And Zacarias Tampipi did just that with Dominador Manayog, Bomby Lastimosa and Antonio Pantoja who went with him and his wife to and from the poblacion of Barangay Cawitan on that same fateful day." (Rollo, p. 30)

It is not incredible that there would be no "pulutan" and that some of them would stand. Nothing was to prevent them from sitting on the floor as is often done in the barrios.

There is actually no doubt that the accused killed the victim. He admitted the killing, although he claims it was done in self-defense.

This claim, however, must fail.

There are three requisites to prove the claim of self-defense as stated 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.

It is elementary that the first requisite of self-defense is indispensable. The trial court ruled in the instant case that this was not satisfactorily proven. Thus 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. (*Ortega v. Sandiganbayan*, G. R. No. 57664, February 8, 1989).

As held in the case of *Ebajan v. Court of Appeals*, G. R. Nos. 77930-31, February 9, 1989:

"A person who seeks justification for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstance for having admitting 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."

The accused contends that his voluntary surrender shows that he has nothing to hide and attacks the delay in

reporting the incident.

We agree with the Solicitor General who stated:

"Third, contrary to appellant's claim, the fact that accused surrendered voluntarily (p. 11, rec.) does not give rise to the presumption that he had nothing to hide. From the evidence of the prosecution, it is more plausible that accused surrendered himself because the evidence against him was overwhelming. There being at least four (4) persons who witnessed the killing, accused surrendered voluntarily, for there is no chance to escape his liability.

"Fourth, appellant contends that the prosecution witnesses failed to report the incident right away, claiming that the wife of the victim gave her statement to the police authority only on March 24, 1986 while prosecution witness Dominador Manayon gave his statement only after three (should be four) days after the incident took place. The long failure allegedly 'would indicate that they never witnessed the incident as they have claimed during the trial.' (p. 8, id.)

"The contention is specious. Record shows that the killing of the victim was reported immediately to the police authorities. What was taken four days after on October 24, 1985 (p. 7, rec.) was the affidavit of witness Dominador Manayon. On the other hand, the wife of the victim was interviewed immediately by the police after the incident. The reporting of the incident to the police authorities is not reckoned by the date of the execution of the sworn statements of would-be prosecution witnesses but by the actual reporting of the incident to the authorities concerned although no statements were taken. Besides, it is not the fault of the victim's wife if her statement was not reduced into writing by the policemen when she reported the incident. x x x." (Appellee's Brief, pp. 15-16)

x x x x x x x x

"Lastly, appellant questions the credibility of witness Dominador Manayon considering his alleged behavior and manner when testifying on the witness stand.

"Again, this is a matter of credibility of witnesses. As earlier stated, on matters of credibility of witnesses, the findings of the trial court carry great weight and command favorable consideration (People v. Bernat, supra).

"From the foregoing, the alleged substantial facts and circumstances overlooked by the trial court are neither substantial nor overlooked by the trial court which would call for a judgment of acquittal." (Appellee's Brief, pp. 18-19).

On the presence of the qualifying circumstance of treachery, the Court finds no reason to disturb the trial court's findings on this point considering that it had the privilege of examining and observing the deportment of the witnesses.

The trial court held:

"The stabbing of Zacarias Tampipi by accused was, as the evidence of the Prosecution shows, sudden and unexpected, without the former having any expectation of its being done to him nor any warning of its happening.

"The unexpected assault (People v. Ventura, 80 SCRA 515) or the attack which was sudden and unexpected (People v. Ursal, 121 SCRA 410) has sufficiently proved the presence of treachery in the commission of the offense 'as accused employed means and methods in the execution of the offense which tended directly and specially to insure its execution without risk to himself arising from the defense that the victim might have made.' (People v. Yap, 125 SCRA 203; People v. de la Fuente, 126 SCRA 518).

"When Zacarias Tampipi was assaulted, he was unarmed entirely defenseless and the accused, who came from the dark behind the victim, was totally unexposed to any risk that might have come from him since he was not

at all in a position to fight back. The offense charged against accused was, therefore, properly categorized as Murder in view of the presence of the qualifying circumstance of treachery." (Rollo, pp. 32-33)

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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