

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL VELAGA, JR., ACCUSED-APPELLANT.

G.R. No. 87202. July 23, 1991

Ponente: PARAS, J.

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PARAS, J.:

Rafael Velaga, Jr., was accused of the crime of murder before the Regional Trial Court of Dagupan City, committed as follows:

"That on or about the 16th day of December 1980 in the City of Dagupan, and within the jurisdiction of this Honorable Court, the abovenamed Rafael Velaga, Jr., being then armed with deadly weapon, with treachery and with intent to kill did then and there, willfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by stabbing and hitting him on vital parts of his body which caused his death Virgilio dela Cruz as per Certificate of Death issued by Dr. Eugenio N. Deleon and Cipriano M. Macaraeg, both of Dagupan City, to the damage and prejudice of the legal heirs of said deceased Virgilio dela Cruz to the tune of not less than Twelve Thousand Pesos (P12,000.00) Philippine Currency and other consequential damages.

"CONTRARY TO LAW." (p. 54, Rollo)

Upon arraignment on October 4, 1985, appellant pleaded "not guilty." (p. 30, Records)

Trial proceeded with the prosecution presenting evidence on the following facts as attending the commission of the crime:

"At about 11:00 o'clock in the evening of December 16, 1980, Virgilio dela Cruz (victim) together with his companions namely: Bob Sison, Josefino Siapno, Roberto Dadacay were on board a Toyota Land Cruiser driven by Pancrasio Rodriguez on their way to Mercedes Dawel. Upon reaching the corner of Perez Blvd., Herrero and M. H. del Pilar Streets in the City of Dagupan, a fast running motorcycle driven by accused-appellant Jun Velaga, hit the side of the Toyota Land Cruiser. After the bumping incident, the driver of the Toyota Land Cruiser, Pancrasio Rodriguez together with Bob Sison and Josefino Siapno, alighted from the vehicle to inspect the damage. The three then helped accused-appellant in pushing the motorcycle to the sidewalk. Thereafter, a heated argument ensued between Pancrasio Rodriguez and the accused-appellant blaming each other for the cause of the accident and in the course of the incident one from the group, Virgilio dela Cruz approached to pacify them. Standing between the two, the victim tried in vain to settle the matter at that moment, accused-appellant suddenly drew-out a knife from his pocket and stabbed the victim. Accused-appellant ran to the direction of Herrero St. Some of the companions of the victim gave chase but were not able to run after him. The victim was rushed to the hospital where he died three (3) days thereafter." (pp. 2-9, tsn, May 29, 1986)

The defense presented an entirely different version of the incident. The accused-appellant tried to prove, thru his testimony and that of his witnesses that he (accused) acted in legitimate self-defense. According to the defense, after the bumping incident at the corner of Perez Blvd. and M. H. del Pilar Street, accused stood and tried to lift the motorcycle but two men riding in the land cruiser alighted and went near him. The two men (Bobby

Rodriguez and Leo de la Cruz) went near him and asked him if he had a complaint. He told them he has none if only they would be willing to replace the signal light. All of a sudden, Bobby Rodriguez hit him at the back of his head. He asked them why but Leo de la Cruz drew out a weapon and said "you have so many complaints" (p. 32, Rollo). De la Cruz closed toward him and thrust the weapon. He parried the blow and held de la Cruz' hand while he and de la Cruz were struggling for the knife, the companions of de la Cruz alighted and started kicking him at the back causing him to fall on top of de la Cruz, as a result of which the knife struck the latter's stomach leading to his death.

After the information was filed on March 31, 1981 the case was archived by reason of the fact that the accused was then at large. It was only in September 1985 when he was arrested and charged with the crime of murder (p. 23, Records).

The trial court found the appellant guilty beyond reasonable doubt of murder as charged and correspondingly sentenced him to the penalty of reclusion perpetua. The decretal portion of the Decision reads:

"WHEREFORE, the Court finds accused Rafael Velaga, Jr. y Cabrera alias Jun Velaga guilty beyond reasonable doubt of the crime of Murder, and in view of the presence of the generic aggravating circumstance of nighttime which is not offset by any mitigating circumstance, the court hereby sentences the accused to suffer the penalty of Reclusion Perpetua (life Imprisonment) and to indemnify the heirs of the deceased in the sum of P30,000.00 plus costs.

"The accused is ordered to pay the heirs of the deceased the amount of P20,300.00 as actual damages.

"SO ORDERED." (P. 79, Rollo)

From this judgment, the accused Rafael Velaga, Jr. appealed.

He assigns on appeal the following alleged errors:

I

THE TRIAL COURT ERRED IN REJECTING ACCUSED'S PLEAS OF SELF DEFENSE.

II

THE TRIAL COURT ERRED IN APPRECIATING TREACHERY WHICH QUALIFIED THE OFFENSE TO MURDER.

III

THE TRIAL COURT ERRED IN APPRECIATING NIGHTTIME AS CIRCUMSTANCE.

(Appellant's Brief, p. 1; Rollo, p. 80)

After evaluating the records of this case, We find the defendant's version to be bereft of merit.

This court has always adhered to the rule that where the issue is one of credibility of witnesses the appellate court will not disturb findings of the trial court, as the latter is in a better position to decide said question having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial (People v. Olalia, G.R. No. 50669, March 12, 1984).

We therefore cannot disturb the trial court's ruling in giving more credence to the prosecution witnesses because the record reveals that there is nothing that the trial court had overlooked in its evaluation of any fact of substance and value which would affect the result of the case.

Moreover, appellant's contention with regard his plea of self-defense cannot be given credit by this court by the mere fact that he eluded arrest for almost four and a half years (4 1/2). If flight is evidence of guilt, then accused-appellant's act of eluding arrest for such a long period is indicative of his guilt and will consequently negate his plea of self-defense.

With regard to the second and third assignment of errors enunciated by the accused-appellant, We cannot appreciate the lower court's finding that the accused is guilty of murder qualified by treachery. How can treachery be imputed to a single man when his victim had four (4) companions nearby who could respond instinctively upon seeing their injured companion. Certainly, it could not have been accused appellant's intention to kill the victim in the presence of his four companions if his own safety was his primary concern.

Noteworthy is the fact that before the stabbing incident happened, accused-appellant already had an altercation with the driver of the Toyota Land Cruiser and such heated argument must have placed the deceased and his companions on their guard. All these negate the existence of treachery in killing the victim (*People v. Gonzales*, 76 Phil. 473).

Another reason why treachery cannot be considered is that the meeting of the victim and the accused was only accidental, that is, the stabbing followed the heated dispute between the accused-appellant Velaga and Pancrasio Rodriguez, the driver of the Land Cruiser and one of the companions of Virgilio de la Cruz (the victim) who tried to pacify the protagonists. The records clearly show that the attack was done on a sudden impulse.

There is treachery 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 ensure its execution, without risk to himself arising from the defense which the offended party might make (par. 16, Article 14 of the Revised Penal Code).

We also cannot appreciate the lower court's ruling of nighttime as an aggravating circumstance. The facts and evidence show that the incident was completely unplanned. There was no showing of prior preparation of the accused to take advantage of the darkness of the night to prevent his being recognized and to ensure the consummation of the offense.

Nocturnity will not be considered to aggravate the crime where the prosecution failed to show that the accused purposely sought to commit the crime at nighttime in order to facilitate the achievement of his objectives, prevent discovery or evade capture (*People v. Salcedo*, G.R. No. 78774, 12 April 1989).

In this case the darkness of the night was merely incidental to the collision between the two vehicles which caused the heated argument and the eventual stabbing of the victim. We, therefore, cannot appreciate nighttime as an aggravating circumstance.

In the absence of the qualifying circumstance of treachery, the crime committed by accused-appellant is plain homicide. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There is no mitigating and no aggravating circumstance. Applying the Indeterminate Sentence Law, the accused-appellant is sentenced to an indeterminate penalty ranging from twelve (12) years of prison mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

In line with the new policy of his court to grant an increased indemnity to the heirs of the deceased, the total award is hereby fixed at P50,000.00 (*People v. Daniel Sison*, G.R. No. 86455, September 14, 1990).

WHEREFORE, the appealed judgment is MODIFIED accordingly.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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