

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO SAZON, ALIAS "INSIK," ACCUSED-APPELLANT.*G.R. No. 89684. September 18, 1990*

Ponente: REGALADO, J.

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For the death of Wilfredo Longno, alias "Inday," on September 17, 1983 at Barangay Progreso, Lapuz, La Paz, Iloilo City, herein accused-appellant Gerardo Sazon, alias "Insik," and Cornelio Altejos, alias "Toto," were charged with murder before the Regional Trial Court of Iloilo,[1] in an amended information dated October 18, 1983.[2] However, only herein accused was arraigned, and pleaded not guilty, since Cornelio Altejos was not apprehended and has since remained at large.

After trial, appellant was found guilty and sentenced to serve the penalty of reclusion perpetua. He was further ordered to pay the heirs of the deceased the amount of P16,628.40 representing hospital bills, expenses for the coffin, tomb, wake and attorney's fees, and P30,000.00 as indemnity for the death of the victim.

The antecedent facts which led to the filing of the criminal action below are hereinunder set forth as synthesized by the court a quo from the testimonies of the witnesses,[3] and as clarified and amplified by us from the transcripts of the notes of the hearings.

On September 15, 1983, in the barangay aforementioned, a certain Ernesto Romualdez was accosted by appellant near the barangay hall for allegedly circulating the rumor that appellant and his companions were engaged in stealing. Upon confrontation, appellant boxed Romualdez which caused the latter to fall. Wilfredo Longno, who was then present at the scene, approached and helped the fallen Romualdez and pushed appellant away. This apparently angered appellant who, in his native dialect said, "Andam ka lang Inday kay patyon ta guid," ("Watch out Inday for I will kill you") to which Longno retorted. "Just do it."

Two days later, or on September 17, 1983, at about 8:00 o'clock P.M., appellant and his cousin, Cornelio Altejos, were drinking softdrinks at the store of Gloria Aposaga when Longno passed by. Thereupon, appellant and Altejos left their softdrinks half-consumed and followed Longno.

Longno eventually reached the bench near the public faucet where the group of Massulini Dullete, Samuel Canoso and Nathaniel Ramos were sitting. He joined the group in their conversation by saying, "Upod ako dira," ("I'll go with what you say."). Shortly thereafter, appellant and Altejos arrived and appellant accosted and pointed a gun at Longno, saying, "Maano ka?" ("What are you going to do?"). Longno then faced appellant and said, "Brod, tiruha lang." ("Brod, just shoot.")

Apparently irked by the response, appellant fired the gun, hitting Longno in the left forearm. Dullete, Canoso and Ramos then scampered for safety as appellant and the wounded Longno grappled for the gun. It was while the two were thus struggling that Altejos stabbed Longno in the chest, after which both appellant and Altejos ran away.

Longno then came out of the footwalk shouting, "Tay, tiniro ako ni Insik, binuno ako ni Toto." ("Father, I was

shot by Insik and stabbed by Toto."). He was able to run about thirty (30) meters before he fell. His father, Julio Longno, ran to his son who was then lying sprawled on ground. Rushed to the St. Paul's Hospital, Wilfredo Longno died. Later, it was established that the cause of death was hemorrhage, secondary to stab wound.

Appellant's version of the incident, however, differs. He admits having shot Longno but pleads self-defense. He claims that on September 17, 1983, he left the house of his father-in-law at about 8:00 o'clock P.M. with his cousin, Altejos. The latter had asked for help to have a .22 caliber revolver repaired and appellant was taking the revolver to a policeman friend of his. On their way, appellant saw Longno from a distance. Upon his approach, Longno allegedly said, "Insik, I heard that you are not afraid of me. Maybe you want to be taught a lesson." [4]

Appellant claims that the deceased had a revolver tucked in his waist and was about to draw the same. He, therefore, parried the gun but it fired hitting one of appellant's left fingers which was later amputated. It was then that appellant pulled out his gun and shot Longno in the forearm. Appellant and Longno afterwards grappled for the gun. Altejos allegedly tried to separate appellant and Longno but he was brushed aside by the latter. In the course of their struggle, Altejos then shouted to appellant, "I stabbed Inday, run," and so he and Altejos ran away. [5]

Appellant, in his brief, makes the following assignment of errors:

1. The trial court erred in not acquitting the accused-appellant for having acted in complete self-defense.
2. The trial court erred in convicting the accused-appellant of the crime of murder and in imposing the penalty of reclusion perpetua when the prosecution has not established by competent evidence the existence of conspiracy and the presence of the aggravating circumstances of evident premeditation and abuse of superior strength. [6]

Appellant's version does not inspire credence. Well-entrenched is the rule that where the accused invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. He must rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself had admitted the killing. [7]

It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition sine qua non. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself. [8]

In the present case, the burden of evidence having been shifted, we hold that the defense failed to establish the primary element of unlawful aggression on the part of the victim and, therefore, the plea of self-defense must fail. The narrations of the sequence of events by the accused, and by the lone alleged eyewitness for the defense, Jose Randeria, are unconvincing primarily on account of their inherent inconsistency and conflict with each other.

Appellant on cross-examination testified as follows:

"Q How far were you from Inday Longno when he allegedly fired a shot at you?

A One (1) meter.

Q At one (1) meter distance did (sic) you not able to recognize what kind of a gun was that allegedly used by Inday Longno?

A No, sir, at first I only saw the handle of the gun and I did not see the body of the gun.

Q But you can recognize between a pistol and a revolver?

A Yes, sir.

Q What was that allegedly used by Inday Longno, was that a pistol or a revolver?

A Because immediately after he said those words 'Maybe you want to learn a lesson' he immediately drew his gun and I was able to parry.

x x x

Q When you fired at Inday Longno hitting him on his left arm near the elbow, was he still holding that gun he used in shooting you hitting you at the left palm?

A No, sir, because of too much force the gun fell.

Q Did you not pick up the gun?

A No, sir.”[9]

On the other hand, defense eyewitness Jose Randera stated in his testimony:

"ATTY. SORONGON: (To the witness)

Q While Wilfredo Longno alias Inday was pointing a gun at Gerardo Sazon alias Insik, what was Gerardo Sazon doing?

WITNESS JOSE RANDERA:

A When Inday said something, Insik Sazon brushed aside the gun and the gun fired.

x x x

Q You said, that Wilfredo Longno alias Inday pointed a gun at Gerardo Sazon alias Insik, with what hand was he holding that gun when he was pointing that gun to Gerardo Sazon?

WITNESS JOSE RANDERA:

A His right hand.

ATTY. SORONGON: (To the witness)

Q You said, that Gerardo Sazon brushed aside the gun which was being pointed to him, what hand did Gerardo Sazon used (sic) in brushing that gun?

A His left hand.

Q When Gerardo Sazon brushed aside the gun pointed to him, what else if any did he do?

A Insik also drew a gun and shot Inday.

COURT: (To the witness)

Q What hand?

A Right hand. He drew a gun with his right hand and shot Inday.

x x x

ATTY. SORONGON: (To the witness)

Q You said that there was a brushing who was brushing aside and who was brushed aside?

WITNESS JOSE RANDERA:

A Inday parried Cornelio Artejos (sic).

COURT: (To the witness)

Q And, what happened next?

A Cornelio Artejos (sic) pulled out a knife and stabbed Inday.

Q This happened when Inday was already hit by Sazon?

A Yes, sir.

ATTY. SORONGON: (To the witness)

Q When Cornelio Artejos (sic) stabbed Wilfredo Longno alias Inday, what was Gerardo Sazon and Wilfredo Longno doing if they were doing anything?

A They were grappling of (sic) the weapon.

Q You are referring to whose weapon they were grappling (sic) at that time?

A Inday's weapon."[10]

The testimonies aforequoted reveal an inconsistency on the matter of the gun for which appellant and the victim supposedly grappled. While appellant claimed that the victim's weapon fell to the ground, witness Randera stated that appellant and the victim still grappled for the latter's gun. The latter statement is itself difficult to imagine since appellant at that precise moment was also allegedly holding with his right hand the gun which he used in shooting Longno.

It is necessary to stress that such inconsistency cannot be considered a minor detail since the homogeneity of the answers to the inquiry could very well have established the existence of not only a single gun. Had this prevarication not been exposed, said testimonies could have bolstered the defense theory that the victim himself carried a gun which he used to assault the appellant and thus establish the element of unlawful aggression contrived by the defense.

Furthermore, the credibility of witness Randera is shattered by this finding of the trial court which is sustained by the evidence:

"The testimony of security guard Jose Randera deserves scant consideration not only because he admitted that he was one of those threatened by the deceased Wilfredo Longno but also because he wilfully falsified the truth when he testified that the deceased was shot and hit by the accused on the body and that he saw blood come out just below the right breast of the deceased. The physical evidence in this case showed that there was no wound on the right breast of the deceased nor on any part of his body. The gunshot wound sustained by the deceased was only on his left forearm. Considering that he testified that there were no other persons there during the incident except the accused, the deceased and Cornelio Altejos when the overwhelming weight of evidence is that there were a lot of other people during the incident (this) showed that this witness had small regard for the truth."[11]

Coming back to appellant's representations in court, his vacillation as to what he allegedly did after Altejos stabbed the victim is another instance which renders his version highly suspect. While stating on direct examination that he ran to the main road,[12] he claimed on cross-examination that he only walked a short distance and then went to the hospital upon seeing that his hand was wounded.[13] The latter statement is itself inconsistent with his earlier declaration during the same proceeding that he was brought by a policeman to the

hospital.[14] This irresolution on the part of the appellant was obviously to avoid any imputation of guilt against him arising from his flight.[15]

At any rate, unlawful aggression on the part of the victim is further negated by the physical evidence in the case. Again, we quote the trial court with approval:

"The testimony of the accused Gerardo Sazon that the deceased was armed with a gun and fired at him is not borne out by the physical evidence in this case. The paraffin test conducted on the cadaver of the deceased showed that the hands of the deceased were negative for gunpowder residues indicating that he did not fire a gun during the incident. The other parts of his body like his forearm and his abdomen bore strong traces of gunpowder residues because of the burst of the gun of the accused. The court is convinced beyond reasonable doubt that there was only one gun during the incident and that the gun belonged to and/or was used by the accused Gerardo Sazon. That apart of one of his fingers was blown off at very close range, according to Dr. Ely Canja, strongly indicated that the accused accidentally hit his finger when he and the deceased grappled for the possession of the gun." [16]

In contrast, appellant was found positive for the presence of gunpowder residues (nitrates). While the presence or absence of nitrates cannot indeed be considered conclusive proof that one has or has not fired a gun, the following testimony on direct examination by prosecution witness Zenaida Sinfuego, a forensic chemist whose expertise on the matter was sufficiently established, yields this verification:

"Atty. E. Original:

Q Now, have you conducted also a paraffin examination on the person of Wilfredo Longno?

COURT:

On the cadaver?

Atty. E. Original:

Q On the cadaver?

A Yes, Sir.

Q Have you brought with you the result of that examination?

A Yes, Sir.

Q Now I have here a carbon original of Chemistry Report No. C-200-83, result of the paraffin test on the cadaver of Wilfredo Longno, please compare this carbon original to the original copy in your possession whether it is the same?

A The same.

x x x

Q This report says specimen submitted, one pair of paraffin casts taken from the left and right hands of the cadaver of one Wilfredo Longno, one piece of paraffin cast taken from left forearm of same subject and one piece paraffin cast taken from the left side of the abdomen. Purpose of laboratory examination: to determine the presence of gunpowder residues (nitrates) on the above-mentioned specimens. Findings, cast from hands – negative for the presence of gunpowder residues (nitrates). Cast from forearm - positive for the presence of gunpowder residues (nitrates) in the 1 1/2 in, 2 1/2 in, 3 in, and 4 in radius. Cast from the left side of the abdomen - positive for the presence of gunpowder residues (nitrates) in the center and in the 1 and 2 in radius. In the layman's language Mrs. Sinfuego, will you please explain to the Honorable Court these findings 1, 2 and 3?

A Casts from the hands, negative for the presence of gunpowder residues that means that, no blue specks were found in the hands of the cadaver.

COURT:

Q Before we go on, what is the implication when the finding is negative?

A Probably, the subject never fired a gun.

Q Within what time-span?

A The gunpowder will stay only within three days.

Q When was this examination conducted?

A Last September 18, 1983.

Q Now before we go on, on that Chemistry Report which has been marked as Exhibit 'D' regarding the paraffin test conducted on the right hand of the accused Gerardo Sazon, your finding there states, positive for gunpowder residues, what is the implication?

A The implication states positive, that Sazon have (sic) fired a gun.

Q Within what time-span?

A Within three days.

Q Within three days?

A Within three days.

Q From the examination?

A Three days from the subject firing of a gun.

Q And when was the examination conducted?

A Last September 19, 1983, Your Honor.

Q September?

A Nineteen.

Q So he could have fired a gun on September 17, 1983?

A I think that depends, Your Honor on the requesting party.

Q I am asking you if it was possible that he fired a gun which left the powder burns, was it possible that he fired a gun on September 17?

A Yes, Your Honor."[17]

On cross-examination, Sinfuego further testified as follows:

"Q Is it possible for a person who has not fired a firearm and could be (sic) positive for nitrates?

A Yes, Sir.

Q In what instance?

A For example, if he is near to the person firing a gun it is possible that it was carried by the wind.

Q So that is the only case wherein you find nitrates on the person who has not fired a gun?

A Also from the fertilizer.

Q You mean, a person handling fertilizers could also be positive for nitrates?

A Yes, Sir but we have to consider also the time of reaction, from contamination (sic) for the nitrates will take effect between two to three minutes.

COURT:

Q Can you determine on your examination whether the nitrates found was (sic) the nitrates left by gunpowder residues or by fertilizer can you distinguish that?

A Yes, Sir.

Q And this (sic) nitrates found on the hands of the accused, could you determine where did it (sic) come from?

A Gunpowder residues."[18]

Parenthetically, it is true that the bad moral character of the offended party may be proven in evidence to establish in any reasonable degree the probability of the offense charged,[19] e.g., the quarrelsome nature of the victim may tend to establish that he started the unlawful aggression. Nonetheless, such evidence, seeking to establish as it does only a probability, cannot prevail over facts sufficiently proven by the prosecution during the trial belying such aggression. These observations find application in the instant case where the defense presented and now argue on character evidence consisting of criminal charges involving minor offenses which had been filed against the deceased, but not one of which resulted in conviction and were in fact dismissed, except for one case which was sent to the archives.[20]

Obviously, whether or not appellant acted in self-defense is essentially a question of fact. Being so and in the absence of any showing that the court a quo failed to appreciate facts or circumstances of weight and substance that would have altered its conclusion, the court below, having seen and heard the witnesses during the trial, is in a better position to evaluate their testimonies. No compelling reason, therefore, lies for this Court to disturb the trial court's finding that appellant did not act in self-defense.[21]

The Court, however, holds that appellant, albeit guilty, can only be convicted of homicide and not murder. The trial court correctly held that the killing was not accompanied by treachery. It, however, ruled that there was evident premeditation on the part of appellant. We find the records sorely wanting in evidence to support the latter conclusion.

The fact that appellant told the deceased that he would kill him and that two days later, after the deceased passed by the store where appellant and Altejos were drinking softdrinks the latter followed the former and inflicted the fatal blows, cannot adequately sustain a conclusion of premeditated killing.

To justify its attendance, the prosecution must prove (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination, and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act.[22]

In the case at bar, the first and second elements are lacking. The angry outburst of appellant in that incident of September 15, 1983, warning the victim that the former would kill him, does not convince us that, under the circumstances therein, appellant as of that time had already decided to kill the victim. A homicidal premeditation is studiously conceived and not impulsively adopted just like that and, worse, publicly announced. It was more of a spontaneous expression of resentment or bravado on the part of appellant.

Again, the circumstance that appellant and Altejos were by chance at the store when the victim passed by cannot be taken as manifestly indicating that appellant had clung to his determination to kill the victim. No evidence was presented to show that appellant purposely waited there for the deceased. Nor was there any showing that the deceased frequently passed by the same route as to warrant and explain appellant's waiting for the former at that place. Indeed, that the meeting may have been purely accidental is not a remote possibility. We are more inclined to believe that it was the belligerent and defiant demeanor of the victim when confronted by appellant near the public faucet that precipitated the assault.

Under such considerations and there being no other evidence to prove that the death of the victim was the result of meditation, calculation or reflection, evident premeditation cannot be appreciated to qualify the killing to murder.[23] The circumstances qualifying or aggravating the act must be proved in an evident and incontestable manner. They must be proved as conclusively as the acts constituting the offense.[24] Thus, for the same reason, the aggravating circumstance of abuse of superior strength cannot be appreciated in this case. Superior strength may aggravate or qualify a crime, only if it is clearly shown that there was deliberate intent to take advantage of it.[25] In the absence of any evidence to show that the accused purposely sought to use their superior strength to their advantage in the present case, a finding to that effect by the trial court cannot be sustained.

Finally, the fact that appellant did not inflict the mortal wound upon the deceased is of no moment, since the existence of conspiracy was satisfactorily shown by the evidence. The coordinated acts of appellant and Altejos of immediately following the victim and jointly confronting him thereafter reveal a concordance and unity of thought which resulted in the encounter. The circumstances that after the accused shot the victim in the forearm and, while he and the victim were grappling for appellant's gun, Altejos stabbed the victim to death, indicate closeness and coordination of their action geared towards a common purpose, that is, to kill the victim.[26] Proof of a previous agreement to commit the crime is not absolutely essential to establish a conspiracy. It is sufficient that the accused be shown to have acted in concert pursuant to the same objective,[27] as such circumstance is invariably indicative of a conspiratorial agreement.

It bears mention, at this point, that while we have ruled out evident premeditation in the case, this does not negate the existence of a conspiracy. True, conspiracy generally involves evident premeditation, but this circumstance requires for its *raison d'être* a sufficient time in a juridical sense for the accused to meditate and reflect on the consequences of his intended action. Such time element is not an indispensable requirement for a conspiracy to exist.[28] Consequently, we find that there was a conspiracy between appellant and Altejos although, for lack of conclusive showing, we cannot consider evident premeditation against appellant.

The rule is that where a conspiracy is proven, a showing as to who inflicted the fatal wound is not required to sustain a conviction.[29] The act of one in killing the victim becomes the act of all the accused. Insofar as Cornelio Altejos is concerned, however, the trial court never acquired jurisdiction over him and he can neither be convicted nor exculpated herein. References in this judgment to him are, therefore, obiter and with no binding effect on him.[30]

WHEREFORE, the judgment of the trial court is MODIFIED. Accused-appellant Gerardo Sazon is declared GUILTY beyond reasonable doubt of the crime of homicide and is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal.

The award by the lower court of the items of civil liability to be paid by accused-appellant to the heirs of the deceased is hereby MODIFIED by disallowing the grant of attorney's fees for lack of basis, and increasing the death indemnity to P50,000.00 in accordance with the policy adopted by the Court en banc on August 30, 1990.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.
Paras, J., on leave.

- [1] Judge Sixto R. Guanzon, presiding.
- [2] Original Record, 15.
- [3] Rollo, 32-35.
- [4] Ibid., 38-39.
- [5] Ibid., 39.
- [6] Ibid., 56.
- [7] People vs. Bayocot, G.R. No. 55285, June 28, 1989.
- [8] People vs. Batas, et al., G.R. Nos. 84277-78, August 2, 1989.
- [9] TSN, March 1, 1988, 16-17.
- [10] TSN, September 17, 1985, 10-14.
- [11] Rollo, 40.
- [12] TSN, October 12, 1987, 244.
- [13] TSN, March 1, 1988, 270.
- [14] Ibid., 264.
- [15] See U.S. vs. Alegado, 25 Phil. 510 (1913).
- [16] Rollo, 41-42.
- [17] TSN, February 8, 1984, 30-32.
- [18] Ibid., 34-35,
- [19] Section 51, Rule 130, Rules of Court.
- [20] TSN, February 26, 1988, 231-233.
- [21] People vs. Alvarez, etc., 163 SCRA 745 (1988).
- [22] People vs. Talla, et al., G.R. No. L-44414, January 18, 1990.
- [23] U.S. vs. Balagtas, et al., 19 Phil. 164 (1911).
- [24] People vs. Tiongson, 130 SCRA 614 (1984); People vs. Atienza, 148 SCRA 147 (1987).
- [25] People vs. Salcedo, et al., 172 SCRA 78 (1989).
- [26] People vs. Kindo, et al., 95 SCRA 553 (1980).
- [27] People vs. Abueg, 145 SCRA 622 (1986); People vs. Cantre, et al., G.R. No. 70743, June 4, 1990.

[28] People vs. Custodio, et al., 97 Phil. 698 (1955); People vs. Arcamo, etc., et al., 105 SCRA 707 (1981).

[29] People vs. Tala, et al., 141 SCRA 240 (1986)

[30] People vs. Eswan, et al., G.R. No. 84713, June 4, 1990.

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