

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PIAMONTE, ACCUSED-APPELLANT.

G.R. No. 91999. February 25, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated December 26, 1989, of the Regional Trial Court (Branch 47) in Puerto Princesa City, Palawan, finding accused-appellant Antonio Piamonte guilty of murder and sentencing him to reclusion perpetua and to pay the heirs of the victim Benjamin Sarmiento P30,000.00 as civil indemnity and the costs.

The information alleged

That on or about the 17th day of September, 1988, at Barangay Pagkakaisa, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and while armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously assault, attack and stab therewith one BENJAMIN SARMIENTO, hitting him on the different parts of his body, thereby inflicting upon him multiple stab wounds, which were the direct and immediate cause of his death.

CONTRARY TO LAW.[2]

Two alleged eyewitnesses and the doctor who performed the autopsy on the deceased were presented by the prosecution in support of its case.

First to testify was David Morte, first cousin of the deceased Benjamin Sarmiento.[3] Morte testified that he is a resident of Barangay Pagkakaisa, Cuyito, Puerto Princesa City; that in the evening of September 17, 1988, he asked the deceased to accompany him to the latter's cumpadre, Conrado Aryo, who owned a fishing boat; that between 8:30 and 9:00 that evening, while he, the deceased, and a certain Antonio were on their way to the house of Aryo, accused-appellant Antonio Piamonte suddenly appeared and attacked the deceased, stabbing him on the chest with a one-foot knife; that they were so shocked by what they saw that he and Antonio ran; that although it was "somewhat dark," he was able to see the stabbing because of the light coming from the place they were going to; that he had known both accused-appellant and the deceased for a long time; that accused-appellant was alone when he stabbed the deceased; and that he did not know of any quarrel between the deceased and accused-appellant.[4] On cross-examination, Morte said that his brother, Elinio Morte, had been convicted of killing the brother of accused-appellant, although he claimed he bore accused-appellant and the latter's family no ill will.[5]

On re-direct examination, Morte said that at the time of the incident, he and his companions were on their way to the house of the deceased's cumpadre, Conrado Aryo, when accused-appellant suddenly appeared "on the bridge coming from the house." [6] On re-cross, [7] Morte testified that when he and his companions saw accused-appellant for the first time, the latter was not yet actually holding the knife. [8]

The other prosecution witness, Antonio Nito, claimed that in the evening of September 17, 1988, he and David Morte went to see the deceased to ask him to recommend them to Aryo for a job as a pumpboat operator; that they were not able to reach Aryo's house because on their way Benjamin Sarmiento was stabbed; that while he saw the assailant, he did not recognize him because it was dark and the deceased did not call out the name of accused-appellant; and that in his sworn statement (Exh. A)[9] he identified accused-appellant as the assailant based on "the shape of his body." [10]

On cross-examination, Antonio Nito testified that he did not report the incident to the police "[b]ecause I have my work to do [food processing of marine products];" that the stabbing took place at an alley between two houses with no light from the houses; and that he did not know accused-appellant's motive in stabbing the deceased. [11]

Dr. Rudolph Baladad, Medical Officer II of the Puerto Princesa City Health Department, also testified. He said he performed an autopsy on the deceased on September 18, 1988 and found that he had suffered two fatal stab wounds, one of which penetrated the lungs and the other, the spleen; and that in his opinion, both wounds were inflicted by the assailant while facing the deceased. He explained that there was only one knife used judging from the fact that the two wounds had the "same measurement and clean edges" and that the knife must be a double-bladed one because the edges of the wounds were cleancut, and that it must be two inches wide, and at least more than five inches long because it was able to penetrate the abdominal wall and anterior chest. [12] The autopsy report (Exh. B) prepared by him described the fatal wounds, thus:

POST MORTEM FINDINGS

- STAB WOUND, Clean-Cut Edges Measuring, about 2 inches located over the 4th intercostal space right, anterior chest wall, parallel to right nipple.
- STAB WOUND, Measuring about 2 inches, located over the left abdomen, between the right hypochondriac region and umbilicus. [13]

Dr. Baladad issued a death certificate (Exh. C) stating the cause of death to be "Shock 2[o] to Hemorrhage due to Multiple Stab wounds." [14]

Accused-appellant Antonio Piamonte testified in his defense. He admitted stabbing the deceased twice but claimed that it was the deceased Benjamin Sarmiento and his two companions who attacked him and he merely acted in self-defense after wresting the knife from the deceased. Accused-appellant claimed that at around six in the evening of September 17, 1988, while he was home in Barangay Pagkakaisa making arrows, Benjamin Sarmiento, David Morte, and another man whose name he did not know, came and beat him up; that the three were drunk; that the deceased warned him, "Hindi kita patatagalin, papatayin kita" ("I won't let you live long, I'll kill you"); and that the three then left, but, at around nine that evening, they returned and called on him to come out; that as he refused, they dragged him out of his house and beat him, while telling him that he had only until midnight to live. Then, according to accused-appellant, the deceased drew his knife and lunged at him, but he was able to avoid the thrust and seize the knife from the deceased, and to stab the latter. Accused-appellant said he was not able to surrender the knife to the police because he threw it away. As he felt dizzy, he did not notice where he had thrown it and that he "could no longer find [the knife] because there are many seaweeds in the sea where [he] threw it." [15] Accused-appellant admitted that bad blood existed between his family and that of the deceased as a result of the killing of his (accused-appellant's) brother by David Morte's brother, a first cousin of the deceased. He claimed he was not able to file a case against David Morte for the alleged attack on him because he had been put in jail.

On cross-examination, accused-appellant testified that David Morte, though shorter, was bigger than he, and that

the third man was also bigger; that when the three men first attacked him, Benjamin Sarmiento did not have a knife but when they returned, Sarmiento already had a knife which he tried to use against him (accused-appellant). Accused-appellant claimed he was able to get the knife from the deceased and that he only used it against the latter because he had already been badly hurt. Accused-appellant admitted, however, that he did not report the incident to the authorities or tell the inquest fiscal that he killed the deceased in self-defense. He said he did not run when the deceased and his companions returned because "[t]hat's already my house." [16]

Accused-appellant's testimony was corroborated by Juanito Araneta, whose house is just two arm lengths from that of the deceased. [17] He testified that in the evening of September 17, 1988, just after supper, he heard a commotion outside his house; that when he checked, he saw accused-appellant being attacked by the deceased, David Morte, and another person whom he did not know but whose face was familiar; that he shouted at the assailants to stop but was told to shut up and mind his own business ("Huwag kang makialam dito"); that the three then went away only to come back later and call on accused-appellant to come out; that when accused-appellant came out from his house he was again beaten up; that he then saw the deceased pull out a five-inch knife, but accused-appellant was able to wrest it from the deceased; that after seeing accused-appellant get the knife, he (the witness) "was not interested anymore" in seeing what would happen next and so he went inside his house and slept; that the place where the incident took place was a walk or a bridge; and that while there were people in the neighborhood, they were asleep and it was only he who saw the incident. [18]

On cross-examination, Juanito Araneta said that the first attack preceded the stabbing incident by three hours; that each of the men who assaulted accused-appellant was bigger than he; that despite this and the fact that one was holding accused-appellant while the others were boxing him, accused-appellant was nevertheless able to wrest the knife from the deceased; that he (Juanito Araneta) volunteered to testify in accused-appellant's behalf; and that accused-appellant was badly hurt in the first attack. [19]

Dr. Rudolph Baladad, who testified for the prosecution, also testified for the defense. He treated accused-appellant on September 20, 1988 for the following injuries stated in the medical certificate (Exh. 1) he issued:

- Abrasion, right madibular region
- Pain & tenderness, neck, right side
- Pain & tenderness

Hypogastric region and testicular region. [20]

Dr. Baladad opined that the injuries could have been caused "by a fall, by a mauling incident, or by a vehicular accident"; that he noticed no external injuries, hematoma, successive blows on the body of accused-appellant but "just pain and tenderness" and "abrasion or a scratch"; that the said abrasion could be caused by one or two persons; and that accused-appellant was not limping when he came to see him. [21]

On the basis of the foregoing testimonies, the trial court held that, initially, the deceased and his companions were the aggressors. One of them subjected him to fist blows, as shown by an abrasion on his neck and tenderness in other parts of his body. In retaliation for what had been done to him, he waited for the group to pass by his house again. When he saw them three hours later, accused-appellant attacked Benjamin Sarmiento with a knife. Hence, the trial court found accused-appellant guilty of murder qualified by evident premeditation and treachery. Its analysis of the testimonies of the witnesses is as follows:

It appears to the Court that there is more truth to the version that the accused was first boxed or mauled by the victim or by one of his companions at about 6:00 o'clock that afternoon of September 17, 1998, and that

explains why he suffered mere abrasions in his neck which, according to Dr. Rudolph V. Baladad, Sr. could have been caused by falling, or he could have been mauled by a person. Three persons mauling him would have been too much; he could have suffered extensive and more serious bodily injuries than mere abrasions. The defense exaggerated and blew up his defense clearly beyond believable proportion.

To the mind of the Court, the accused had entertained ill-feeling and grudge against the victim when the latter assaulted him earlier that day, or at about 6:00 o'clock in the afternoon of September 17, 1988, evidenced by his Medical Certificate (Exhibits "1" and "1-A") which conclusively proves that he was indeed hurt. With the injury and wounded feelings he nursed, he decided and planned to retaliate, so he armed himself with a sharp-bladed weapon and prepared for an occasion where he could vent his ire and hit back at the victim, for he could not tackle him in a frontal or face-to-face fist fight. Since he has an impelling motive to revenge and as premeditated and perfected laid out by him, which is in accord with the testimonies of the prosecution eyewitnesses, the accused waited for the victim to pass by his house that same night or any day thereafter and when the opportunity presented itself, he grabbed it by treacherously, deliberately, suddenly and unexpectedly stabbing the victim in his chest and abdomen. He hit the delicate parts of the victim's body to insure that he gets killed without being able to defend him from the assault. The accused really intended to kill the victim as shown by the deadly weapon he used, the fatal area he hit and the repetition by which he struck him.[22]

Accordingly, the trial court held:

WHEREFORE, viewed from the foregoing facts, reasons and considerations and with the accused's voluntary admission that he stabbed the victim, Benjamin Sarmiento in the manner and method hereinabove described that caused his death, the Court holds and finds the herein accused, Antonio Piamonte, guilty beyond reasonable doubt of the crime of Murder charged against him by the prosecution as defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA: to pay the family or heirs of the victim civil indemnity amounting to P30,000.00; and to pay the costs.[23]

Hence, this appeal. Accused-appellant contends:

- THE LOWER COURT ERRED IN NOT HOLDING THAT THE APPELLANT ACTED IN LAWFUL SELF-DEFENSE.
- THE LOWER COURT ERRED IN DECLARING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND BY IMPOSING HIM TO SUFFER AN IMPRISONMENT OF RECLUSION PERPETUA.[24]

Accused-appellant's contentions are without merit.

I.

Having admitted killing the deceased, accused-appellant has the burden of proving that he acted in self-defense by showing (1) unlawful aggression on the part of the deceased; (2) reasonable necessity of the means employed by him to prevent or repel the aggression; and (3) lack of sufficient provocation on his part in defending himself. Accused-appellant has failed to discharge this burden.

A. His version of how he was able to wrest the knife from the deceased is incredible. He alleges that he fought three men, all of whom were bigger than he, with one (the deceased Benjamin Sarmiento) even armed with a knife. How despite these odds he was able to parry the knife thrust of the deceased and eventually wrest the knife from him is hard to understand. How he was able to wound his adversary not just once but twice, hitting him in vital portions of the body, although he was allegedly down,[25] is even harder to fathom. The location and the nature of the wounds (deep with clean edges) suggest that accused-appellant was not just defending himself but was actually attacking his victim with intent to kill.[26] Moreover, as held in *People v. Jotoy*,[27] the fact that he

threw the knife away instead of surrendering it to the authorities and reporting the incident negates the claim of self-defense.

B. The defense presented a witness, Juanito Araneta, whose testimony was, if not contradictory, ridiculous. His testimony raises serious doubts as to whether he really saw the incident.

Accused-appellant claims that the deceased and his companions came back at around nine in the evening in order to carry out their earlier threat to kill him[28] and dragged him out of his house because he refused to come out. Juanito Araneta's version is that "the deceased and his companions told Antonio Piamonte to come down and when he went down, they again helped each [other] in mauling [him]."[29]

In his attempt to show that accused-appellant was the victim, not the aggressor, Araneta only succeeded in making his testimony incredible. Araneta testified that after seeing accused-appellant succeed in wresting the knife from the deceased he (Araneta) lost further interest in watching the fight and so went inside his house and slept.[30] Later, on cross-examination,[31] he testified that he did not go to sleep; he actually went fishing.

Araneta also claimed he saw the incident because he had been drawn to it by a commotion. Yet, only he heard the commotion and went out of the house to see what was going on. His neighbors, according to him, were all asleep.[32] How could only he, and not his neighbors, have heard the commotion?

Thus, having failed to show that he acted in self-defense, accused-appellant must be adjudged guilty of the killing of Benjamin Sarmiento.

II.

As already stated, the trial court found that accused-appellant had been beaten up by Benjamin Sarmiento and his group and that, in revenge, he waited for the group to pass by his house again and, upon seeing them, he assaulted Sarmiento and stabbed him twice. On the basis of this finding, the trial court held the killing to be murder, qualified by evident premeditation and treachery.

It is now settled that qualifying and aggravating circumstances, which are taken into consideration for the purpose of increasing the degree of penalty to be imposed, must be proven with equal certainty as the commission of the act charged as criminal offense.[33]

With respect to the qualifying circumstance of evident premeditation, the following must be shown: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[34]

In this case, evident premeditation cannot be appreciated because there is no direct proof showing when accused-appellant conceived the plan to kill the deceased, that he clung to his determination to kill the deceased, and that sufficient time had elapsed between the determination and execution of the crime to allow his conscience to overcome the resolution of his will.

In *People v. Sol*,[35] it was held that a finding of evident premeditation cannot be based on mere lapse of time.

In *People v. Timblor*,[36] where the accused had a fistfight with the victim and after an hour, he came back with a bolo and killed his adversary, it was held that proof that after the fistfight the accused came back with a bolo cannot be considered proof that he had determined to kill his adversary. Nor could it be inferred from this circumstance that the accused had sought revenge. All that the evidence showed was that he sought his antagonist after their earlier fight. The Court reiterated earlier rulings that a qualifying circumstance like evident

premeditation must be clearly shown just as the crime itself. Every element of the qualifying circumstance must be shown beyond reasonable doubt and cannot be left to speculation.

On the other hand, treachery requires proof of the following: (1) the employment of means of execution which gives the person attacked no opportunity to defend or to retaliate; and (2) that said means of execution were deliberately or consciously adopted.[37]

In this case, while the main prosecution witness David Morte testified during his direct examination that accused-appellant "suddenly appeared and suddenly stabbed" the deceased, on cross-examination he admitted that they saw accused-appellant when they were "still very far" although they did not then recognize him. We are not prepared to say that the stabbing of the deceased was sudden, unexpected, and unforeseen.[38] Nor is there proof that he employed such means as would ensure the commission of the crime without risk to himself since he knew that the deceased had two companions with him, both of whom were bigger than he (accused-appellant) while all he had was a knife.

There was thus no qualifying circumstance, so that the crime committed was homicide, the penalty for which under Art. 249 of the Revised Penal Code is reclusion temporal. As there was no modifying circumstance (either aggravating or mitigating), the penalty should be fixed in its medium period.

In accordance with current jurisprudence, the death indemnity should be raised from P30,000 to P50,000.00.[39]

WHEREFORE, the decision of the Regional Trial Court of Puerto Princesa City (Branch 47) is MODIFIED and accused-appellant Antonio Piamonte is hereby found guilty of homicide and sentenced to suffer a prison term of 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, and to pay the heirs of the victim Benjamin Sarmiento P50,000.00 as death indemnity and the costs.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Judge Eustaquio Z. Gacott, Jr., Rollo, pp. 28-45.

[2] Rollo, p. 5.

[3] TSN, p. 18, June 23, 1989.

[4] TSN, pp. 4-17, June 23, 1989.

[5] TSN, p. 4, Oct. 23, 1989.

[6] Id., pp. 5-12.

[7] Id., pp. 12-14.

[8] Id., p. 14.

[9] Records, p. 101.

[10] TSN, pp. 5-20, Oct. 2, 1989.

[11] Id., pp. 21-34.

[12] TSN, pp. 3-14, Oct. 27, 1989.

- [13] Records, p. 102.
- [14] Id., p. 103.
- [15] TSN, pp. 3-9, Dec. 18, 1989.
- [16] Id., pp. 9-23.
- [17] SN, p. 3, Dec. 7, 1989.
- [18] TSN, pp. 3-12, Dec. 7, 1989.
- [19] TSN, pp. 2-11, Dec. 20, 1989.
- [20] Records, p. 130.
- [21] TSN, pp. 4-9, Dec. 21, 1989.
- [22] RTC Decision, pp. 10-11; Rollo, pp. 37-38.
- [23] Id., p. 16; id., p. 43.
- [24] Brief for the Appellant, p. 1; Rollo, p. 114.
- [25] TSN, p. 21, Dec. 18, 1989.
- [26] Cf. *People v. Albao*, G.R. No. 117481, March 6, 1998; *People v. Timblor*, 285 SCRA 64 (1998).

[27] 222 SCRA 801, 806 (1993).

- [28] TSN, p. 5, Dec. 18, 1989.
- [29] TSN, p. 6, Dec. 7, 1989.
- [30] Id., p. 10.
- [31] TSN, p. 9, Dec. 20, 1989.
- [32] Ibid.
- [33] *People v. Derilo*, 271 SCRA 633 (1997).
- [34] E.g., *People v. Sol*, 272 SCRA 392 (1997); *People v. Derilo*, 271 SCRA 633 (1997); *People v. Quinao*, 269 SCRA 495 (1997).
- [35] *People v. Sol*, 272 SCRA 392 (1997).

[36] 285 SCRA 64 (1998).

- [37] E.g., *People v. Gatchalian*, G.R. No. 90301, Dec. 10, 1998.
- [38] See *People v. Jotoy*, 222 SCRA 801, 807-808 (1993).
- [39] *People v. Espanola*, 271 SCRA 689 (1997).

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