

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO BUELA, MANUEL BUELA AND BONIFACIO BUELA, ACCUSED-APPELLANTS.

G.R. No. 92536. November 08, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 15, Tabaco, Albay, finding Ricardo, Manuel and Bonifacio, all surnamed Buela, guilty beyond reasonable doubt of Murder.

The information filed against appellants reads as follows:

INFORMATION

"That on about the 27th day of December, 1988 at about 2:00 o'clock (sic) in the afternoon, more or less, at Purok 9, Barangay San Antonio, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, taking advantage of superior strength, with evident premeditation and treachery, and with intent to kill, did then and there willfully, unlawfully and feloniously attack, stab, hack and hit BIENVENIDO BODINO Y BORLAGDAN with a bolo and hardwood (bahi), thereby inflicting upon the latter fatal wounds on the forehead, neck and other parts of his body which caused his direct and immediate death, to the damage and prejudice of the heirs of BIENVENIDO BODINO y BORLAGDAN" (Rollo, p. 19).

At their arraignment, the appellants pleaded not guilty.

According to the court a quo, on December 27, 1988 at around 7:00 A.M., Bienvenido Bodino was having breakfast at his house when Ricardo Buela arrived and invited him for a drink. Bodino accepted the invitation and the two repaired to the house of Bodino's sister, Adalia Maduro.

After consuming two bottles of gin and while in an inebriated state, Bodino and Ricardo began to dance with each other. At about lunchtime, Salvacion, Bodino's wife, came to fetch him. Bodino told her to wait a while since he was still enjoying his cavort with Ricardo. While they were dancing, the pair accidentally tripped and fell on the cement floor causing Ricardo's right eyebrow to bleed. After this incident, Bodino went home with his wife.

At around 1:00 P.M., while Bodino was in his front yard, he was suddenly attacked by Ricardo and his two brothers, Manuel and Bonifacio. The first to attack was Bonifacio, who hit Bodino with a wooden club, locally called "bahi." Then, Ricardo hacked Bodino with a bolo, followed by Manuel, who also struck the victim with a wooden club.

Salvacion tried to embrace her husband but Ricardo pushed her away. She then shouted for help, and was heard by Bodino's sister, Adalia Maduro, who rushed to the yard of the Bodinos. Adalia saw Bodino lying prostrate on the ground with the three assailants still taking turns in hitting him with their weapons.

Appellants then left. After having walked a distance of about three meters, Ricardo returned to where the prostrate body of Bodino laid and hacked him again.

According to the defense, on December 27, 1988, Ricardo went to the house of Bodino to collect a P10.00 debt. After paying Ricardo, Bodino invited him to have a drink at the house of Adalia Maduro. Ricardo accepted the invitation.

Bodino and Ricardo were former members of the New People's Army, who surrendered on December 31, 1987. While they were drinking, Bodino tried to proselytize Ricardo back to the movement but the latter rebuffed him. Afterwards, while they were dancing, they tripped and fell on the floor. One of Ricardo's eyebrows sustained a wound and bled. Bodino invited Ricardo for lunch but he declined and instead went home. After lunch, Ricardo realized that he had left his bolo at the house of Adalia Maduro; so he went back for it. On his way home, Ricardo met Bodino, who tried to block his path. Bodino asked him to rejoin the New People's Army and when he refused, Bodino got angry. At this juncture, Aurora Buena, Ricardo's mother, arrived together with his two brothers, Bonifacio and Manuel.

Upon seeing them, Bodino went to the house of Adalia Maduro and came back armed with a wooden club. He confronted the Buenas and even taunted them to a fight. Then Bodino struck Ricardo with his club. The latter was able to duck and evade the blow, which instead landed on Aurora Buena's forehead. She fell on the ground unconscious. Upon seeing what happened to his mother, Bonifacio immediately grappled with Bodino and was able to wrest the wooden club from him. Bonifacio used the same club to strike Bodino at the back of his head.

Manuel and Bonifacio Buena carried their mother home, leaving Ricardo and Bodino behind.

The trial court convicted appellants and sentenced them to suffer the penalty of reclusion perpetua (Rollo, p. 155).

Hence, this appeal.

Appellants contend that the trial court erred in rejecting their version that Bodino was the aggressor and in finding that their mother was not even present at the crime scene (Rollo, p. 135). Appellants also question the finding of the trial court that Manuel Buena participated in killing Bodino (Rollo, p. 134).

While admitting that they hacked and beat Bodino, Ricardo and Bonifacio claimed that they acted in self-defense and in the defense of their mother. They insisted that when they saw their mother collapse and the blood spurting from her forehead, "they lost control of their actions xxx" (Rollo, pp. 134-135).

On rebuttal, Salvacion Bodino, the widow of Bodino, testified that appellants' mother was not at the crime scene at all and that the only person thereat, aside from her and her children was Adalia Maduro, the sister of the victim (Rollo, p. 148).

Appellants did not rebut the testimony of Salvacion Bodino that Aurora Buena was not with them when they intruded into her front yard. The center piece of appellants' defense was that Bodino was the first to deliver a blow directed at Ricardo, but, which instead, landed on the forehead of appellants' mother. The presentation of sur-rebuttal evidence to neutralize the evidence of the prosecution on this regard, was crucial. Appellants assert that they waived the presentation of the sur-rebuttal evidence "to expedite the trial so that they can avail of their constitutional right to a speedy trial" (Rollo, p. 134). We are not persuaded and are inclined to agree with the observation of the Solicitor General that the version on the presence of appellants' mother at the crime scene was "nothing more than a concocted story devoid of any semblance of credibility" (Rollo, p. 80). The reason for the presence of appellant's mother was not shown. For that matter, the sudden appearance of Bonifacio and Manuel at the crime scene was not explained.

The participation of Manuel was established by a clear and convincing evidence.

Salvacion Bodino testified as follows:

xxx xxx xxx

"Q - While he was walking around your yard, was there anything that happened according to your observation not ordinary (sic)?

A - Yes, there was.

Q - What was that incident that you observed?

A - While my husband was taking a walk in the yard suddenly these Ricardo Buena, Manuel Buena, Bonifacio Buena and Francisco Buena arrived and hit my husband.

Q - Who struck your husband firstly (sic)?

A - Bonifacio was the one who struck my husband.

xxx xxx xxx

Q - What about Manuel, what did he do?

A - Manuel Buena also struck him. (Rollo, pp. 77-78; underlining ours)

The testimony of Salvacion Bodino was corroborated by Adalia Maduro and Adela Brito, a neighbor of the Bodinos (TSN, June 29, 1989, pp. 15-16).

Abuse of superior strength, treachery and evident premeditation were alleged as qualifying circumstances in the information filed against appellants.

Abuse of superior strength is a relative factor and depends upon circumstances other than mere numerical superiority of the aggressors. Such factor may be correctly appreciated by the trial court only after a searching inquiry (*People v. Flores*, 40 SCRA 230 [1971]). There is no evidence to show that the three appellants assaulted Bodino in such a way as to secure advantage from their combined strength (*People v. Ybañez*, 56 SCRA 210 [1974]).

Neither was there evidence to establish treachery. Before treachery can be appreciated correctly, there must be a clear and positive showing that the victim was completely defenseless when killed by his assailants or was unaware of the assault on his person (*People v. Muñoz*, 170 SCRA 107 [1989]; *People v. Molato*, 170 SCRA 640 [1989]).

There is no way to conclude that treachery attended the killing of Bodino. The fact that the attack was sudden as found by the trial court is not enough to establish treachery (*People v. Sabanal*, 172 SCRA 430 [1989]). How sudden was "sudden"? What is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate (*People v. Bustos*, 171 SCRA 243 [1989]).

The record is bereft of evidence showing the methods or the means employed by appellants in order to ensure their safety from any retaliation that could be put up by their victim.

Likewise, there was no evidence to establish evident premeditation. When there is no showing as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist (*People v. Narit*, 197 SCRA 334 [1991]). To show premeditation, it is required that the criminal intent be evidenced by notorious acts evincing determination to commit the same. The criminal intent

must be evident, not merely suspected, or merely thought of or contemplated mentally without an externalized act (People v. Legarto, 196 SCRA 611 [1991]).

There was no substantial interval of time sufficient to afford appellants a full opportunity for reflection, between the wounding of Ricardo which happened at noon (assuming that such wounding was the provocation that triggered the aggression of appellants) and the killing, which took place an hour or two later (People v. Tachado, 170 SCRA 611 [1989]).

The crime committed by appellants is Homicide as defined under Article 249 of the Revised Penal Code and penalized by reclusion temporal. There being no mitigating nor aggravating circumstance present, the penalty of reclusion temporal shall be imposed in its medium period or an imprisonment of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. While the crime was committed by three persons who were all armed, the aggravating circumstance of the crime having been committed with the aid of armed men under Article 14(8) of the Revised Penal Code cannot be appreciated in this case because the three accused acted under the same plan and for the same purpose (People v. Pring, 63 Phil. 546 [1936]; People v. Candado, 84 SCRA 508 [1978]).

Applying the Indeterminate Sentence Law, the minimum term that can be imposed on appellants shall be within the range of six (6) years and one (1) day to twelve (12) years.

The civil indemnity ordered by the trial court to be paid by the appellants to the legal heirs of the deceased in the amount of P30,000.00 is increased to P50,000.00, conformably with the present policy of this Court (People v. Yeban, 190 SCRA 409 [1990]).

WHEREFORE, this Court finds appellants guilty only of Homicide and sentences them to suffer the indeterminate penalty of seven (7) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal; and to indemnify jointly and severally, the heirs of Bienvenido Bodino in the amount of P50,000.00. As thus MODIFIED, the judgment of the trial court is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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