

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO SOLIS @ NARDING, CARLITO SOLIS, ALFREDO SOLIS @
ADO AND GENEROSO SOLIS @ IROY, DEFENDANTS-APPELLANTS.**

G.R. No. 93629, March 18, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Dagupan City, Branch 44, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Leonardo Solis @ Narding, Carlito Solis, Alfredo Solis @ Ado and Generoso Solis @ Iroy guilty beyond reasonable doubt of the crime of Murder, and in view of the attendance of the generic circumstances of cruelty insofar as all the accused are concerned, and recidivism against accused Leonardo Solis only, which are not offset by any of the mitigating circumstances, each of the accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties provided by law, to indemnify, jointly and severally, the heirs of the deceased Benjamin Bao-ingan in the sum of P30,000.00, and to pay the corresponding costs." (Rollo, p. 45)

The second amended information filed against the accused reads:

"That on or about March 4, 1988 at 12:00 midnight at barangay Bindow, Municipality of San Fabian, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, armed with a dagger, a bolo and stones, with treachery and evident premeditation and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously assault and attack Benjamin Bao-ingan y Rollog, inflicting upon him the following injuries, to wit:

- contusion over the right supra-orbital area superimposed abrasions
- abrasions (R) facial area
- stab wound, chest pointing downward, 3/4 inch in size at (R) lateral mid-clavicular line between 9-10 ICS, 2.5-3 inches in depth, hitting the diaphragm and the liver, but 2 inches wound inside.
- stab wound, chest at the level of 6-7 intercostal space mid-clavicular line (L), 1 2/4 inches in size, 8 1/2 inches in depth, hitting the heart and left lobes of the lungs, pointing upward

which injuries directly caused the instantaneous death of said Benjamin Bao-ingan y Rollog, to the damage and prejudice of his heirs, with aggravating circumstance of recidivism against accused Leonardo Solis only. Contrary to Art. 248 of the Revised Penal Code (Records, pp. 81-82)

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

Alejandro Ternida, 24 years old, married, farmer and a resident of Bindow, San Fabian, Pangasinan, testified

that he knows accused Leonardo Solis, Carlito Solis, Alfredo Solis and Generoso Solis. He identified accused Leonardo Solis, Carlito Solis, Alfredo Solis and Generoso Solis. On March 4, 1988 at around 12:00 o'clock midnight he was in the dancing hall in front of the house of Jose Bao-ingan at Bindow, San Fabian, Pangasinan. The parties in the wedding are Betty Bao-ingan and a certain man named Paeng. He knows Benjamin Bao-ingan, the brother of the bride. While thereat, people stoned the dancing hall and saw a stone on the ground. As the people were about to scamper away from the dancing hall, Benjamin Bao-ingan took hold of the microphone making an announcement, telling them that they should not take the matter seriously because somebody must have been joking. The dance continued. After three minutes, he saw several stones thrown again in the dancing hall. Benjamin Bao-ingan said "come and we will see those people throwing stones." So, he followed Benjamin Bao-ingan who was proceeding westward from the dancing hall. While behind him, Ado Solis and Generoso Solis met him. Generoso Solis hit the right portion of the head of Benjamin Bao-ingan with a stone and Ado Solis boxed him. After Benjamin Bao-ingan was boxed and stoned, Carlito Solis drew out a weapon and stabbed the breast of Benjamin Bao-ingan. At this juncture, Benjamin Bao-ingan tried to run away but Leonardo Solis met him and thrust a bolo upon Benjamin Bao-ingan. After that, he and Lando Bao-ingan lifted the body of the victim, brought him to a jeep and took the victim to Catalan's Hospital in San Fabian, where he died. (2-7 December 26, 1988).

Alejandro Ternida declared that Leonardo Solis, Alfredo Solis and Carlito Solis are brothers. Generoso Solis is their cousin. He was able to identify the accused because it was bright. The light from the dancing hall and the light coming in front of the house of Rollog illumined the place. (Ibid, p. 8)

Rolando Bao-ingan, 32 years old, married, farmer and a resident of Bitong-Galimuyod, Ilocos Sur, testified that the victim in this case Benjamin Bao-ingan is his younger brother. He knows the accused and pointed to the men sitting inside the courtroom, who when asked their names, answered Leonardo, Carlito, Alfredo and Generoso. He knows Palos, the brother of Leonardo, Alfredo and Carlito and cousin of Generoso. On December 12, 1986, he and Palos fought each other because in a bet in a basketball game Palos lost but refused to pay and instead, boxed him. He also boxed him. At the time of the incident between him and Palos, he was residing in Bindow. As Narding, Carlito, Iroy, Alfredo and Generoso were hunting him he changed his residence from Bindow to Galimuyod. (2-8 TSN, January 23, 1989)

Continuing with his testimony Rolando Bao-ingan declared that he was in Bindow on March 4, 1988 in the evening because it was the wedding of his sister. At around 12:00 o'clock midnight stones were thrown. He knows that stones were thrown because he picked up the stones that fell. After the throwing of stones, he went out and followed Benjamin Bao-ingan. While at a distance of five meters from his brother Benjamin, Ado boxed him with his right fist. Iroy also boxed the left face of Benjamin with his right fist. As Benjamin Bao-ingan was about to run Carlito stabbed him with a dagger followed by Narding or Leonardo who stabbed him with a bolo. After Leonardo Solis had stabbed Benjamin the four accused ran away going westward. He saw the boxing and stabbing because he was five meters from them and the electric light in the house of Raymundo Rollog and light from the dancing hall illumined the place. The dancing hall was about twenty meters from the place of the incident and five meters from the house of Raymundo Rollog. He knows the persons of Ado, Iroy, Narding and Carlito because he has long mingled with them for a period of more than thirty years. Their barrios are adjacent. (Ibid, pp. 9-15)

After he was stabbed, Benjamin Bao-ingan was brought to the Provincial Hospital. The hospital refused to admit him because he was already dead. (Ibid p. 11)

The same witness declared that Narding, Carlito and Ado are brothers. Generoso is their cousin because Generoso's father and the father of the three accused are brothers. (Ibid, p. 16)

Dr. Leopoldo Manalo, the Rural Health Physician in San Fabian, Pangasinan, testified that he is the Rural Health Officer in San Fabian since 1985 up to the present. During the month of March, 1988, he performed an autopsy at San Fabian on Benjamin Bao-ingan. His findings were reduced in writing evidenced by Exhibit "A".

The autopsy report is quoted as follows:

'3/7/88

To Whom It May Concern:

This is to certify that I have seen and performed an autopsy on the cadaver of one Benjamin R. Bao-ingan at Funeraria Ulanday on March 5, 1988 and found the following pertinent findings:

- (1) contusion over the right supra-orbital area superimposed abrasions
- (2) abrasions (R) facial area
- (3) stab wd. chest pointing downwards 3/4 inch in size at (R) lateral-mid-clavicular line bet, 9-10 ICS, 2.5 - 3 inches in depth, hitting the diaphragm and the liver, but 2 inches wound inside
- (4) stab wd. chest at the level of 6-7 inter-costal space, mid clavicular line (L), 1 3/4 inches in size, 8 1/2 inches in depth hitting the heart & left lobes of the lungs, pointing upwards.

(SGD) LEOPOLDO N. MANALO, MD.

RHP - San Fabian

The contusion over the right (sic) is found on the forehead right side just above the right eye. A hard object such as hard fist blow, a piece of stone, a piece of metal or wood was used. The abrasions facial area were on the right face. The third finding was inflicted just below the right breast. This is a fatal wound because the liver and diaphragm were hit. Wound no. 3 could have been caused by a pointed object such as knife, bolo or chisel. The edges looked clean. The fourth wound is just below the nipple. Considering the nature or character of the wound it is fatal. A sharp pointed instrument could have caused this wound. The lung was hit. (2-7 TSN December 14, 1988)

The doctor declared that the cause of death was cardio respiratory arrest due to cardiac tempore and shock due to internal hemorrhage due to stab wounds on the chest (Ibid p. 7)

Jose Bao-ingan declared that the deceased Benjamin Bao-ingan is his son. He knows defendants Alfredo Solis, Generoso Solis, Leonardo Solis and Carlito Solis. Palos Solis is the brother of Leonardo, Alfredo and Carlito Solis. Rolando Bao-ingan is his son. Before March 4, 1988 Rolando Bao-ingan and Palos Solis had a fight, with Rolando hitting Palos with a stone. The matter was settled and he paid the hospitalization bills of Palos. (3-5 TSN December 29, 1988).

Elena Rollog-Bao-ingan, mother of the deceased Benjamin Bao-ingan, testified that they have paid more or less P2,000.00 for the settlement of the case between Palos Solis and her son Rolando Bao-ingan. (13-14 TSN December 29, 1988).

The prosecution presented the decision in Criminal Case No. D-6942, entitled People versus Leonardo Solis y Ronda. In that case, the Court found Leonardo Solis guilty beyond reasonable doubt of the crime of Homicide and imposed an indeterminate penalty of ten years of prision mayor as minimum to fourteen years and eight months of imprisonment of reclusion temporal as maximum and to indemnify the heirs of the deceased Santiago Grieta, the sum of P30,000.00 and to pay the cost. (Exhibit "D") (Rollo, pp. 34-37)

The version of the defense is summarized as follows:

On the night of March 4, 1988, the accused Generoso Carlito and Leonardo, all surnamed Solis, attended the pre-wedding dance of Letty Bao-ingan, sister of the deceased Benjamin Bao-ingan. After some time, Leonardo left the party and went to a vigil. Generoso and Carlito, on the other hand, proceeded to the house of Angelina

Zabala.

While the dance was going on, stones began to fall on the dancing hall. Benjamin advised the people to keep calm and to stay on as someone might just be joking. Benjamin went to look for the culprits and saw Generoso and Carlito. He accused the two but both denied such accusation.

Benjamin went back to the dance hall but after a lapse of three minutes, stones started to fall again. Benjamin went to the house of Angelina and pointed to Carlito and insisted that he was the perpetrator of the stoning. An altercation then ensued and Benjamin lunged at Carlito with a knife. Carlito was able to evade the stabbing blow. In the process of the struggle, Carlito succeeded in wresting from Benjamin the possession of the knife and thereupon, stabbed Benjamin.

The defense version is that there was only one assailant, Carlito Solis and he acted in self-defense. Alfredo Solis stated that he was at home during the night of the killing, attending to tobacco leaves for moisturing. Generoso Solis denied having boxed the victim. His statement indicates that only Carlito engaged Benjamin Bao-ingan in the struggle for the knife. Leonardo Solis interposed the alibi of being absent from the scene of the crime. He claimed that he was at a vigil for the late grandson of a certain Onofre Imbat at a house near the irrigation canal and that he was still at the vigil, when policemen arrived to arrest him. Leonardo insisted that he had no knowledge of the killing.

The appellants raise the following assignment of errors, to wit:

I

"THAT THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE ENTRY IN THE POLICE BLOTTER. (EXH. "1" for Accused) OF THE SAN FABIAN POLICE STATION OF SAN FABIAN, PANGASINAN WHEREBY PROSECUTION WITNESS ALEJANDRO (ALEX) TERNIDA POINTED TO LEONARDO SOLIS AS THE ONLY ASSAILANT OF THE DECEASED BENJAMIN BAO-INGAN

II

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED CARLITO SOLIS, ALFREDO SOLIS AND GENEROSO SOLIS

III

THAT THE TRIAL COURT ERRED IN IMPOSING THE SAME DEGREE OF PENALTY FOR ALL THE ACCUSED WITHOUT CONSIDERING VOLUNTARY SURRENDER FOR ACCUSED CARLITO SOLIS, ALFREDO SOLIS AND GENEROSO SOLIS

IV

THAT THE TRIAL COURT ERRED IN CONSIDERING THE CRIME AS MURDER AND NOT SIMPLE HOMICIDE CONSIDERING THAT THE DECEASED DIED AS A RESULT OF A FIGHT." (Rollo, p. 58)

In the first two assigned errors, the appellants contend that the entry in the police blotter (Exh. "1" for Accused) is the true version of what happened on the night Benjamin Bao-ingan was killed. Thus, the trial court should not have given credence to the subsequent testimony of Alejandro Ternida implicating Alfredo, Carlito, and Generoso.

This contention is without merit.

The fact that the entry in the police blotter mentions only appellant Leonardo Solis does not negate the participation of the three other appellants. An entry in the police blotter, like an affidavit is taken ex-parte. Hence,

in the same manner, it could be just as incomplete and inaccurate, due to either partial suggestions or for want of suggestion or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertains to the subject. (Ford v. Court of Appeals, G.R. Nos. 51171-72, June 4, 1990)

In this light, the entry in the police blotter is inferior to the testimony of Alejandro Ternida given in open court. (See Ford v. Court of Appeals, supra)

Moreover, the testimonies of the appellants themselves debunk their claim that the entry in the police blotter is the true version. Carlito himself admitted that he stabbed Benjamin (TSN, August 14, 1989, p. 6) and Generoso stated that there was a struggle between Carlito and Benjamin (TSN, July 12, 1989, p. 8) showing that Leonardo was not the only assailant of Benjamin.

The four appellants were positively identified by the two prosecution witnesses, Alejandro Ternida and Rolando Bao-ingan. There can be no case of mistaken identity as the witnesses knew the assailants long before the incident (TSN, December 26, 1988, p. 9; TSN, January 23, 1989, pp. 13-14) Also, the identification of the appellants was not difficult as there was enough illumination coming from the dance hall which was 20 meters away from the crime scene and from the house of Raymundo Rollog which was 5 meters away (TSN, January 23, 1989, p. 13). The witnesses were only three to five meters away in relation to the place of the stabbing. (TSN, December 26, 1988, pp. 8-9; TSN, January 23, 1989, p. 12)

In view of the positive identification of the appellants as the culprits, the defenses of Generoso, Leonardo, and Alfredo cannot be appreciated. The mere denial of Generoso that he did not box Benjamin (TSN, July 12, 1989, p. 22) and the statement of Leonardo that he had no knowledge of the killing (TSN, September 25, 1989, p. 10) cannot prevail over the positive identification by the prosecution witnesses of the appellants. (People v. Calixtro, G.R. No. 92355, January 24, 1991) Although, Angelina Zabala, a defense witness supports Generoso's denial (TSN, April 26, 1989, p. 13) in the same breath, she also admitted that she did not know of any unusual incident that happened aside from the stoning incident. (TSN, April 26, p. 10,13,17-18) As for Leonardo, his allegation that he was in a vigil at the time the killing occurred (TSN, September 25, 1989, p. 8) cannot be given credence. Such a statement is not only self-serving but easily fabricated, more so when it is not corroborated by testimonies of other impartial witnesses. Leonardo could have had his testimony corroborated by presenting the people who attended the vigil.

Alfredo's defense of alibi likewise cannot prevail over his positive identification. (People v. Kyamko, G.R. No. 95263, December 18, 1990) Alfredo states that on the night of March 4, 1988, he was at his house placing tobacco leaves for moisturing. (TSN, April 26, 1989, pp. 3-4) While waiting for the leaves to be ready, he plowed his field from 11:00 p.m. to 2:00 a.m. (TSN, April 26, 1989, pp. 5-6) Narciso Ballilo, another defense witness, confirms Alfredo's assertion. He states that he was with Alfredo from 8:00 p.m. of March 4, 1988 up to 5:00 a.m. of the next day. (TSN, May 23, 1989, p. 27)

It has been held in People v. Riego, G.R. No. 90256, September 12, 1990:

"For alibi to prosper, the requisites of time and place must be strictly met. It must be established by clear and convincing evidence that the accused was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed."

In the instant case, it was not convincingly established that Alfredo was indeed in his house and not at the scene of the crime when the incident happened or that he was plowing his field at such an unholy hour. Ballilo's testimony instead of strengthening Alfredo's defense, made it even more doubtful. Ballilo's testimony did not coincide with that of Alfredo's. For example, Ballilo insisted that he and Alfredo were spreading the tobacco leaves for

moisturing from 8:00 p.m. to 5:00 a.m. (TSN, May 23, 1989, p. 27) but Alfredo himself said that he was plowing his field from 11:00 p.m. to 2:00 a.m. Ballilo also stated that it was only he and Alfredo who fixed the moisturing of the tobacco leaves (May 23, 1989, p. 17) while Alfredo stated that it was his wife who helped him. (TSN, April 26, 1989, p. 4)

In addition, Ballilo cannot be considered an impartial witness. He is the husband of the sister of Alfredo (TSN, May 23, 1989, p. 25) and it is his belief that both Benjamin and Rolando Bao-ingan were abusive men (TSN, May 23, 1989 pp. 8-9). The defense of alibi is weak if it is established mainly by the accused himself and his relatives and not by credible persons. (See *People v. Beringuel*, G.R. Nos. 63753-54, December 21, 1990)

For his part, Carlito claims that he acted in self-defense. Carlito states that Benjamin accused him of stoning the dance hall and then came at him with a knife. He was able to evade Benjamin's stabbing blow and wrest the knife from Benjamin. He then, stabbed Benjamin (TSN, August 14, 1989, p. 6)

The claim of self-defense 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.

Carlito contends that the victim was the unlawful aggressor. This contention is negated by the physical evidence. The supposed aggressor suffered a contusion, abrasions, and two penetrating stab wounds while the supposed victim survived the "struggle" without even a scratch. Likewise, the fact that Carlito fled after stabbing Benjamin and did not surrender to the police authorities the weapon he used but instead threw it away, help negate the claim of self-defense.

As held in the case of *People v. Delgado*, 182 SCRA 343, 349 [1990] citing the case of *People v. Batas*, 176 SCRA 46 [1989]:

"A person who seeks justifications for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstance for having admitted 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 appellant did not present clear and convincing evidence for the Court to sustain the claim of self-defense. The trial court gave more credence to the testimonies of the prosecution witnesses that there was no unlawful aggression on the victim's part. Well-settled is the rule that conclusions and findings of fact are entitled to great weight on appeal and should not be disturbed, unless for strong and valid reasons, because the trial court is in a better position to examine and observe the demeanor of witnesses while testifying in the case. (*People v. Tasarra*, G.R. No. 85531, December 10, 1990; *People v. Mañago*, G.R. No. 90669, November 21, 1990) We see no reason from the records why we should reverse this finding.

As the justifying circumstance of self-defense was not clearly and convincingly proved in the case at bar, the allegation of the appellants in the fourth assigned error that there is no treachery must, therefore, fail. The appellants maintain that since it was Benjamin who provoked the fight, then treachery cannot be considered as a qualifying circumstance.

We agree with the trial court that treachery attended the killing. The trial court stated:

"The victim Benjamin Bao-ingan was attacked by Leonardo Solis, Carlito Solis, Alfredo Solis and Generoso Solis without warning. The victim was unarmed and defenseless when attacked by the accused who were armed with a stone, knife, and bolo. There was a deliberate, sudden and unexpected attack to insure the execution of the crime." (Decision, p. 13)

However, we find that there is no generic aggravating circumstance of cruelty. There is no showing that the appellants deliberately and inhumanly increased the suffering of their victim. The number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty. (*People v. Curiano*, 9 SCRA 323, 348 [1963])

In the third assigned error, Alfredo, Generoso, and Carlito maintain that the mitigating circumstance of voluntary surrender should be appreciated in their case as they surrendered voluntarily to the police as evidenced by the entries in the police blotter. (Exh. "2" and "3" for the Accused)

The surrender of Alfredo on July 7, 1988 and of Generoso and Carlito on July 6, 1988 do not constitute voluntary surrender. In order that voluntary surrender may be appreciated, it is necessary that the same be spontaneous in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture. (*People v. Ablao*, 183 SCRA 658, 669 [1990])

There is no spontaneous surrender in this case for the three appellants.

Carlito fled right after the stabbing incident. He knew that the policemen were already after him (TSN, August 14, 1989, p. 22) but it was only after a lapse of a period of four months that he surrendered to the police. Alfredo, on the other hand, knew in May that he was one of the suspects (TSN, April 26, 1989, p. 27) but he did not take any steps to go to the Municipal Hall or the police station to inform the authorities of his non-participation in the crime (TSN, April, 26, 1989, pp. 27-28) until July, two months after knowing that he was a suspect.

In the testimony of Pat. Jaime Alvear, he stated that he and his companion went to Baraoas, with a warrant of arrest issued against the accused and it was there when the uncle of Generoso and Carlito presented the two appellants to them. (TSN, April 20, 1989, p. 10)

The concerted acts of the appellants to attain a common criminal objective signify conspiracy. Their respective acts of boxing, beating and stabbing the victim show a unity of action and a singleness of purpose to inflict physical harm. It is not necessary that there be evidence of a previous plan or agreement to commit the assault. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all. (See *People v. Talingdan*, G.R. No. 94339, November 9, 1990; *People v. Gupo*, G.R. No. 75814, September 24, 1990)

In view of the foregoing, the appellants were correctly found guilty beyond reasonable doubt of the crime of murder with the aggravating circumstance of recidivism against Leonardo Solis only. In view of the abolition of the death penalty, the penalty of reclusion perpetua is likewise, applied to Leonardo Solis. The indemnity to the heirs of the deceased is raised to P50,000.00.

WHEREFORE, the appealed decision is hereby **AFFIRMED** with the aforesaid modification as to indemnity.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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