

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO BIGCAS Y AMUNCIO AND QUILIANO BUTRON Y PEROCHO, ACCUSED-APPELLANTS.

G.R. No. 94534. July 20, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Finding accused-appellants Rodrigo Bigcas and Quiliano Butron guilty beyond reasonable doubt of killing one Ambrocio Palapar, the Regional Trial Court of Bohol, Branch IV in Tabilaran City[1] imposed on them the penalty of "reclusion perpetua or life imprisonment" and to solidarily pay the heirs of the victim "legal indemnity" of P30,000.00, actual damages in the amount of P11,150.00, loss of earnings of P20,000.00 and the costs.[2]

In an information dated October 13, 1988, appellants Butron and Bigcas were charged with murder allegedly committed as follows:

"That on or about the 25th day of July, 1988 at barangay Poblacion, municipality of Pilar, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with (sic) each other, with intent to kill, abuse of superior strength, and with treachery, by suddenly attacking the victim without giving him the opportunity to defend himself and without justifiable cause, did then and there wilfully, unlawfully, and feloniously attack, assault and stab one Ambrocio Palapar y Macarayan with the use of a sharp-pointed bolo and a piece of wood thereby inflicting upon the vital parts of the body of the victim mortal wounds or injuries which resulted directly to the immediate death of the victim Ambrocio Palapar y Macarayan, to the damage and prejudice of the heirs of the said victim.

"Acts committed contrary to the provisions of Article 248 of the Revised Penal Code with the aggravating circumstance of nighttime being purposely sought for (sic) or taken advantage of by the accused to facilitate the commission of the crime."[3]

Appellants pleaded not guilty when arraigned and, thereafter, trial on the merits ensued wherein, predictably, the prosecution and the defense presented different versions of the circumstances which gave rise to the alleged killing.

The version of the prosecution revolved basically around the testimonies of the two eyewitnesses, Rosito Doydoy and Jesus Calape, with corroborative and supplementary testimonies on other aspects furnished by Pfc. Ponciano Butron of the Integrated National Police Station at Pilar, Bohol and Dr. Lourdes Atop-Tan, municipal health officer of the same town.

Rosito Doydoy testified that after attending the last prayers for his uncle which ended at 8:30 in the evening of July 25, 1988, he went home with his son, Rodel, to his house some two kilometers away. On the way and at a distance of about twelve meters, Doydoy saw three persons involved in a commotion. It was not so dark then as the moon was shining brightly. From behind tall cogon grass, he saw appellant Butron strike Ambrocio Palapar

two times with a piece of wood on the latter's back. In his attempt to flee from his aggressor, Palapar passed beside witness Doydoy who was then trying to hide himself and his son behind the bushes. Palapar was chased by appellant Bigcas who, upon catching up with the former stabbed him twice with a bolo at the back. The chase continued until Bigcas was able to stab the victim again at the back of the latter's right knee. The victim fell on the ground, after which he uttered, "Long, stop because I will die of these wounds." Butron shouted at him saying, "I will kill you, Boyax." He then approached Palapar and hit him twice with a piece of wood on the right jaw. Bigcas, on his part, stabbed the supine victim several times. Thereafter, both appellants left the victim, with Butron telling Bigcas. "You own the killing and these two bolos and I will be with you anywhere." [4]

Jesus Calape, testified on essentially the same facts. He declared that he left his house at 9:00 o'clock that same night to go to the house of his "kumpadre Imo," whose real name is Maximo Tiro, to borrow the latter's carabao as he wanted to haul posts for his house. He purposely went there that night because Tiro is usually out of his house during daytime. While on his way, he saw the victim Palapar being attacked by the two appellants. Butron hit Palapar twice with a piece of wood at his back. Bigcas told the victim to fight but the latter refused. Palapar pleaded for his life but appellant Bigcas instead stabbed him twice, also at the back. Due to his fear after seeing Bigcas stab the victim, Calape ran home and told his wife what he witnessed. The next morning, he heard that the victim died. [5]

The defense, as expected, presented a version based principally on the testimonies of the two appellants, Butron and Bigcas, which are hereunder summarized.

It is claimed that on July 28, 1988, at around 2:30 in the afternoon, Rodrigo Bigcas was at the store of a certain Efren Butron at Buyong, Pilar. At about 6:30 P.M., Quiliano Butron arrived at the same store. A few minutes later, Ambrocio Palapar, who was apparently already intoxicated, arrived and drank 'tuba' with the group of Bigcas and Butron. Palapar requested for more drinks but Quiliano Butron refused as he had no more money. Palapar got angry and called Butron stingy. He challenged Butron to fight but the latter remonstrated with him. Palapar then placed his hand on Butron's shoulders and told him not to worry. He thereafter held the waist of Butron, grabbed the knife that was hanging from the latter's waist and challenged everybody to fight. Someone reported the incident to the police and, later on, Pfc. Ponciano Butron responded together with another policeman. Pfc. Butron took the knife from Palapar and ordered the latter to go home, but he required Bigcas and Butron to stay a while and let Palapar leave ahead. Around fifteen minutes after Palapar had left, Bigcas and Butron left together with some other persons. Butron walked ahead as he was bringing something for his family. [6]

Later, on their way Bigcas and a certain Anasco met appellant Butron running and already wounded. Out of fear, Anasco ran away. Bigcas brought Butron to surrender to the police at the municipal building of Pilar, Bohol. Butron reported to the police that he was waylaid by Palapar on his way home. Bigcas later accompanied Butron to the Simeon Toribio Hospital in Carmen, Bohol where Butron was confined. [7] Butron complemented the foregoing testimony by narrating that, on his way home, he saw Palapar standing in the middle of the road. He greeted Palapar by his nickname "Boyax" but received no answer. As he was passing by Palapar, the latter suddenly stabbed him with a bolo, hitting his stomach. He backtracked but the victim followed him and gave him three stab thrusts which he parried. He was able to take hold of the victim's hand holding the bolo and wrestled the same from him. Butron then repeatedly stabbed Palapar until the latter fell. When he went to the police, he also surrendered the bolo used in the alleged killing. Butron was brought by Bigcas and the police to the hospital where he was treated and confined for four days. [8]

After trial, the trial court rendered the assailed judgment. Not satisfied therewith, Butron and Bigcas interposed the present appeal wherein they filed separate briefs through their respective counsel.

Appellant Butron, for his part, argues that the court a quo erred (1) in failing to duly consider the material evidence presented by the prosecution and the defense; (2) in disregarding the evidence of self-defense which evidence constituted his defense; and (3) in finding him guilty of the crime of murder.[9]

Appellant Bigcas, on the other hand, contends that the trial court erred (1) in failing to give full credence to the declaration of appellant Quiliano Butron, against his penal interest, that he alone killed the victim, Ambrocio Palapar; (2) in convicting appellant Rodrigo Bigcas of murder despite the failure of the prosecution to establish the presence of any of the qualifying circumstances; and (3) in appreciating the aggravating circumstance of nocturnity.[10]

The separate assignments of errors raised by both appellants are congruent in material points, hence the same shall be jointly discussed in conjunction with each other.

A careful evaluation of the records of the case shows that appellants were correctly found guilty by the court below for the death of Ambrosio Palapar and we see no reason for departing from the factual findings of the trial court which resulted in its verdict of guilt.

We have perforce to state once again that this Court, in a long line of cases, has consistently held that the findings of fact of a trial judge who has seen the witness testify and who has observed his demeanor and conduct while on the witness stand are not disturbed on appeal, unless certain facts of substance and value have been overlooked which, if considered, may affect the outcome of the case.[11] We do not perceive any of such exceptive instances of oversight in the findings of fact of the lower court in this case.

As found by said court and reflected by the transcripts of their testimonies, the witnesses for the prosecution not only testified in a straightforward manner but the substance of their testimonies inspire credence and are confirmed by the physical evidence. If there be some inconsistencies in their declarations, the same refer only to a minor matters which do not at all affect their credibility. As we ruled in *People vs. Mangalino*,[12] minor inconsistencies in the testimonies of the witnesses are but natural and even enhance their credibility, as these discrepancies indicate that the responses given were honest and unrehearsed. This is especially true in the case at bar where said witnesses had no motive whatsoever to prevaricate and enmesh appellants in a fabricated charge.

Appellant Butron interposed self-defense in order to disclaim criminal liability. He, however, disregarded the rule that self-defense must be established by clear and convincing evidence.[13] Where an accused claims self-defense, the burden of proof is shifted to him. He must rely on the strength of his own evidence and not on the weakness of the prosecution.[14] This is both a logical and inevitable consequence dictated by the fact that, having admitted the killing, he has to justify the taking of the victim's life by the requisites and standards of the law for such absolution.

It is elementary that for self-defense to prosper the accused must prove that there was unlawful aggression by the victim, that he employed reasonable means to prevent or repel such aggression, and that there was lack of sufficient provocation on his part.[15] Just as fundamental is the overriding necessity to prove unlawful aggression on the part of the victim, absent which there is no call to expound upon any consideration of self-defense in a case where a life has been taken.

Now, even granting arguendo some degree of truth to appellant Butron's allegations that he was not armed when he left the store and that it was the victim who had the opportunity to secure a weapon,[16] the same does not necessarily relieve him of liability. Appellant Butron himself admitted that he was able to wrench the alleged weapon away from Palapar. Thereafter, the victim fled, signifying thereby his intention not to fight and, from that moment, any supposed unlawful aggression had already ceased. But, instead of letting the victim go, as the

prosecution witnesses testified and this is not seriously contested by the defense, appellants pursued Palapar, immobilized him and stabbed him to death.

The theory of self-defense is based on the necessity on the part of the person attacked to prevent or repel the unlawful aggression. When said danger or risk ceased to exist, appellants had no justification in law or in fact to attack the erstwhile aggressor. Thus, as early as the case of *People vs. Alviar*,^[17] we held that when the accused, who had been attacked by the deceased, succeeded in snatching the bolo away from the latter, and the deceased already manifested a refusal to fight, the accused was definitely not justified in killing him. As more recently reiterated, the claim of self-defense is not credible where the accused narrated that he had succeeded in disarming the victim of the piece of wood (allegedly, a bolo in the case at bar) which the latter was carrying, hence the act of the accused in thereafter stabbing the victim with frequency, frenzy and force can no longer be considered as reasonably necessary.^[18]

Moreover, the results of the autopsy conducted by Dr. Lourdes Atop-Tan on the victim showed that the latter sustained more or less thirteen wounds, as follows:

- "1. Stab wound on the anterior chest wall, 2 inches below the right nipple, 2 inches diameter, 4 inches deep, sharp edge posteriorly, round edge anteriorly penetrating the anterior chest wall, penetrating the heart.
2. Stab wound on the anterior chest wall 3 inches above the right nipple, 2 inches diameter, 3 1/2 inches deep, sharp edge posteriorly, round edge anteriorly penetrating the anterior chest wall, penetrating the heart.
3. Stab wound on the anterior abdomen at the epigastric region 2 inches diameter, 3 inches deep, posterior edge sharp, anterior edge round penetrating the anterior abdomen, perforating the stomach.
4. Stab wound on the right lumbar region, 2 inches diameter, 3 inches deep, anterior edge round, posterior edge sharp, penetrating the right kidney.
5. Stab wound on the anterior abdominal region 1 inch below the umbilicus - 2 inches diameter, 1/2 inch deep, anterior edge round, posterior edge sharp, non-penetrating.
6. Stab wound on the right forearm 4 inches diameter, 1/2 inch deep.
7. Stab wound on the right arm 4 inches diameter, 1/2 inch deep.
8. Lacerated wound on the left arm, 4 inches diameter, 1 inch deep.
9. Lacerated wound on the left forearm 4 inches diameter, posteriorly.
10. Stab wound on the left palm, 2 inches diameter, 1 inch deep, round edge anteriorly, sharp edge posteriorly.
11. Stab wound on the left lumbar region, 3 inches diameter, 1 inch anterior edge round, posterior edge sharp and non-penetrating.
12. Stab wound on the posterior chest wall 3 inches diameter, 1/2 inch deep, 2 inches below the left scapula.
13. Stab wound on the right foot, 2 inches diameter, 1/2 inch deep.
14. Hematoma and fracture of bone on the neck posterior 3 inches diameter reddish bluish."^[19]

Appellant Butron claims that he himself was wounded while he was wresting the knife away from the victim. His own doctor, however, testified that his wounds in the stomach and on his neck were merely superficial and admit of the possibility of having been self-inflicted.^[20] As the trial court observed, it is incredible that the victim who was supposedly wielding a bolo could only inflict two small skin-deep wounds on the allegedly defenseless Butron.

The foregoing incontrovertible physical evidence, and a comparison of the wounds sustained by appellant Butron and those inflicted on the victim, clearly and undoubtedly belie appellant's pretension of self-defense. For, to be consistent with existing jurisprudence, the nature and number of wounds inflicted by an assailant are constantly and unremittingly considered important indicia which disprove a plea of self-defense.[21] It is an affront on credulity to yield acceptance to appellant's incredible theory that he had to inflict such number of lethal wounds while acting in legitimate self-defense against an ironically defenseless person.

Appellants further contend that the act of eyewitnesses Doydoy and Calape of immediately going home after having seen such a horrible crime is contrary to the natural and logical course of things. We do not agree. In *People vs. Caringal*,[22] we stressed that the natural reluctance of many, if not most, witnesses to volunteer information to the police authorities in a criminal investigation is a matter of judicial notice. Such reticence is not uncommon, especially when the same arises out of fear or apprehensions of reprisal from the perpetrators of the crime being investigated. Also, the fact that a witness may have given his account of the incident only at the trial below and not sooner neither necessarily impairs his credibility nor discredits his testimony. Witness Doydoy's hesitancy, to inform his wife of the incident was further justifiedly explained by the fact that his wife and appellant Bigcas' wife are sisters.

The trial court's holding that treachery cannot be appreciated as a qualifying circumstance against appellants is correct, since there is no evidence that in the commission of the crime they deliberately adopted means, methods or forms considered in law as treacherous. Its acceptance of nocturnity as an aggravating circumstance, however, is erroneous. Even the prosecution witnesses testified that, during the incident, the moon was shining brightly. The light was bright enough to see what was going on and to recognize the assailants. Moreover, nocturnity neither facilitated the commission of the crime nor was it purposely sought by appellants in order to afford impunity. It, therefore, does not qualify as an aggravating circumstance under either the subjective or objective tests laid down by this Court for it to be considered as such.[23]

We are likewise not convinced that the crime was committed by appellants with abuse or by taking advantage of superior strength. Regrettably, we can neither determine nor deduce from the prosecution's sketchy evidence thereon what transpired before the "commotion" involving the victims and appellants. The two eyewitnesses, Doydoy and Calape testified only on the fight when it was already in progress but not as to the actuations of the parties proximately and immediately before the altercation. On the other hand, following the version of the defense which was partly confirmed by Pfc. Ponciano Butron, the victim was ordered by said policeman to leave the store of Efren Butron ahead of the others, with appellants directed to stay behind for about fifteen minutes, so that the parties would not encounter each other again shortly after the incident at said store.

It cannot, therefore, be said that when the fight took place more than fifteen minutes later, because the victim instead of going straight home obviously waited for appellants to catch up with him, appellants could have anticipated such an unexpected contingency and had accordingly conceived of taking advantage of their combined strength and weapons.

For this qualifying circumstance to be considered, it is not sufficient that there be superiority in number or strength; it is necessary that the accused must have cooperated and intended to use or secure advantage from such superior strength.[24] As we also emphasized in *People vs. Cabiling*,[25] abuse of superior strength may be considered not only when there is an inequality of force between the victim and the aggressor but there must be a situation of superiority of strength notoriously selected or taken advantage of by him in the commission of the crime. We find that the prosecution has fallen short of proof that appellants had specifically contrived or deliberately intended and prepared to take advantage of superior strength in a projected assault against the victim. This requisite cannot be drawn from mere assumptions or conjectures, for qualifying circumstances must be

proved as conclusively as the crime itself.[26]

Appellant Bigcas' disclaimer of liability, on the other hand, is likewise unavailing. There were two eyewitnesses to the incident who testified that appellants Bigcas and Butron did act in a concerted manner in bringing about the death of victim Palapar. This indicates the existence of conspiracy between them, although such concurrence of wills arose and was adopted by appellants just momentarily before attacking the victim.

Conspiracy already exists the moment two or more persons come to an agreement concerning the commission of a felony and decide to commit it,[27] unlike the qualifying circumstances of treachery and taking advantage of superior strength which require at least some prior deliberation and adoption of a specific mode of commission. To establish conspiracy, prior agreement between both accused to kill the victim is not essential for the same may be inferred from their own acts showing a joint purpose or design, which was illustrated in this case, by the concerted acts of appellants.[28]

All told, it is our considered view that appellants have committed only the felony of homicide, since treachery was not proved and abuse of superior strength cannot be considered against them. Neither is the aggravating circumstance of nocturnity attendant in this case. On the contrary, what has been completely overlooked is the fact that appellant Butron and, resolving the doubt in his favor, appellant Bigcas are, as we hereby find them to be, entitled to the mitigating circumstance of voluntary surrender which was established by their testimonies[29] and substantiated by Pfc. Ponciano Butron.[30]

WHEREFORE, the judgment appealed from is MODIFIED, with accused-appellants being hereby DECLARED guilty of homicide, with due extenuation by voluntary surrender, and each of them is hereby SENTENCED to serve an indeterminate sentence of ten (10) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. The death indemnity is hereby increased to P50,000.00 in accordance with current case law.[31] In all other respects, the judgment of the court a quo is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

[1] Judge Fernando S. Ruiz, presiding.

[2] Rollo, 29.

[3] Original Record, 38.

[4] TSN, March 13, 1989, 12-16; March 14, 1989, 1-5.

[5] TSN, March 15, 1989, 5-10.

[6] TSN, November 9, 1989, 2-6; November 10, 1989, 2-6.

[7] TSN, November 9, 1989, 6-9.

[8] TSN, November 10, 1989, 7-12.

[9] Brief for Appellant Quiliano Butron, 1; Rollo, 50.

[10] Brief for Appellant Rodrigo Bigcas, 4; Rollo, 106.

[11] People vs. Cruz, Sr., 151 SCRA 609 (1987); People vs. Mauryao, G.R. No. 84525, April 6, 1992; People vs. Hatague, et al., G.R. No. 97308, April 7, 1992.

[12] 182 SCRA 329 (1990).

- [13] Araneta, Jr. vs. Court of Appeals, et al., 187 SCRA 123 (1990).
- [14] People vs. Uribe, 182 SCRA 624 (1990).
- [15] Art. 11, par. 1, Revised Penal Code.
- [16] Brief for Appellant Butron, 6; Rollo, 55.
- [17] 56 Phil. 98 (1931).
- [18] People vs. Masangkay, et al., 155 SCRA 113 (1987).
- [19] Exh. G; Original Record, 3.
- [20] TSN, February 5, 1990, 1-2.
- [21] People vs. Cuadra, 85 SCRA 576 (1978); People vs. Legaspi, 151 SCRA 670 (1987); Guevarra vs. Court of Appeals, et al., 187 SCRA 484 (1990).

[22] 176 SCRA 404 (1989).

- [23] People vs. Garcia, et al., 94 SCRA 14 (1979); People vs. Coderes, et al., 104 SCRA 255 (1981); People vs. Palon, 127 SCRA 529 (1984).
- [24] People vs. Pajarillo, et al., 94 SCRA 828 (1979); People vs. Casey, et al., 103 SCRA 21 (1981); People vs. Basas, 111 SCRA 288 (1982); People vs. Karunsiang Guiapar, et al., 129 SCRA 539 (1984).

[25] 74 SCRA 285 (1976).

- [26] People vs. Tiongson, 130 SCRA 614 (1984); People vs. Atienza, 148 SCRA 147 (1987).
- [27] Art. 8, Revised Penal Code.
- [28] People vs. Tachado, et al., 170 SCRA 611 (1989); People vs. Arroyo, et al., 201 SCRA 616 (1991); People vs. Moreno, et al., G.R. No. 94755, April 10, 1992.
- [29] TSN, Nov. 9, 1989, 7; Nov. 10, 1989, 10-11.
- [30] TSN, Mar. 13, 1989, 2-3.
- [31] People vs. Sazon, 189 SCRA 700 (1990).

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