

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVITO CALLAO Y CALLORA, FRUCTUOSO CALLAO, NARIA CALLAO (AT LARGE) AND SEGUNDINA CALLAO (AT LARGE), ACCUSED-APPELLANTS.

G.R. No. 94643. February 21, 1992

Ponente: NOCON, J.

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NOCON, J.:

Subject of this appeal is the decision of the Regional Trial Court, Branch 30, Dumaguete City, in Criminal Case No. 8668 entitled: "People vs. Jovito Callao y Callora, et. al.", convicting appellants, Jovito Callao and Fructuso Callao of the crime of murder under the information which reads:

"That on or about March 28, 1989 at 5:30 o'clock in the afternoon, more or less, at barangay Ilaya-Tayasan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously waylay, assault, attack, stone, stab and wound one VICENTE AMISTOSO, with the use of stones and a "plamingko" with which accused Jovito Callao was then armed and provided, thus inflicting injuries to wit:

1. Contusion measuring 1 cm. wide 3 cm. long located at the right shoulder.
2. Abrasion measuring 1/2 cm. wide x 3 1/2 cm. long located at the left elbow laterally.
3. Abrasion measuring 1/4 cm. wide x 2 cm. long located at the left elbow posteriorly.
4. Abrasion measuring 1 1/2 cm. wide x 2 cm. long located at the left middle portion of the leg anteriorly.
5. Abrasion measuring 1 cm. wide x 3 cm. (sic) long located at the right middle portion of the leg laterally.
6. Abrasion measuring 1 cm. wide x 1 1/2 cm. (sic) long located at the distal portion of the right leg laterally.
7. Stab wound measuring 1 cm. wide x 4 cm. (sic) long located at the left 5th intercostal space along the mid-clavicular line penetrating the thoracic cavity.

which caused victim's death immediately thereafter."[1]

Only Fructuso Callao and Jovito Callao were arraigned during which they entered a plea of "NOT GUILTY". The two other accused-appellants are still at large.

The facts of the case are as follows:

It was election day for barangay officials, March 28, 1989 when Ana Amistoso and husband Vicente Amistoso (now deceased), were in the electoral polling place of barangay Ilaya in the town of Tayasan, Negros Oriental to cast their vote. Accused Fructuso Callao and Jovito Callao, father and son respectively, together with their wives, were there too for the same purpose. Accused Fructuso Callao left the precinct ahead of the Amistoso

couple, who left at around 5:30 that afternoon. Vicente Amistoso and his wife reached a place near the river bank about 16 meters below their house which was on top of a hill, when they were suddenly met by the four accused who immediately pelted Vicente with stones hitting him on various parts of his body, particularly on the legs, on the left arm, on the shoulder, on the right cheek and at the back. Vicente tried to run away but in his attempt, he stumbled to the ground as a result of which he was overtaken and stabbed by accused Jovito Callao with a small bolo (plamingko) on the left chest causing his death. Dr. Julio L. Abella, Municipal Health Officer of Ayungon, Negros Oriental, examined the dead body of Vicente and thereafter submitted his report.[2]

Accused-appellants relying on self-defense and on defense of relative, advanced their own version of the facts which are as follows:

Fructuoso Callao and Jovito Callao together with their respective wives were in the polling place in Ilaya, Tayasan, Negros Oriental at 10:00 o'clock in the morning of March 28, 1989 in order to cast their vote during the election of barangay officials being held on that day. The wives of Fructuoso and Jovito left the polling place at 2:00 o'clock in the afternoon leaving their husbands behind. At about 5:30 that same afternoon, the two accused, father and son left for home. When they reached the portion of the road at the foot of the hill above which the house of Vicente Amistoso was perched, they saw the latter, being held back by his wife running towards them carrying a stainless knife. Upon reaching the two accused, Vicente Amistoso immediately thrust his knife at Jovito Callao which the latter parried, causing the knife to fall to a river nearby. The tip of the knife however, grazed Jovito's abdomen. Fructuoso then picked up the knife and used it in stabbing Vicente Amistoso on the chest which resulted in the latter's death. Fructuoso and Jovito went home and there they were picked up by the police authorities bringing with them the fatal knife.

Finding the version of the prosecution to be more credible, both accused were found guilty beyond reasonable doubt of the crime of murder and each of them sentenced to suffer the penalty of reclusion perpetua with the accessory penalties provided by law, and to jointly and severally indemnify the heirs of Vicente Amistoso in the amount of Thirty Thousand (P30,000.00) Pesos and to pay the costs.

The accused-appellants assigned the following as errors of the lower court:

1. In not giving exculpatory weight to the evidence adduced by the defense.
2. In holding that there was conspiracy on the part of accused-appellants relative to the stabbing of the victim.
3. Assuming that accused-appellants are guilty, the trial court erred in a) convicting them of murder; and b) in not considering the mitigating circumstance of voluntary surrender.

Fructuoso's testimony tried to show, among others, that when he first saw Vicente Amistoso at what he called the "ambush" site or at the scene of the incident, Vicente was being held back by his wife but was able to slip away from his wife's hold causing him to stumble to the ground and roll 5 meters down the incline. When he stopped rolling, Vicente stood up and thrust the knife at Jovito but the latter was able to hold the hand of Vicente and twisted it causing the knife to fall.[3]

Jovito's testimony however is that while he and his father were walking in a column, he saw Vicente Amistoso 8 meters away running towards them, carrying a "hunting knife" shouting, "Here is the Barangay Tanod of the stupid Barangay Captain (sic)." Then Vicente thrust his knife at Jovito, grazing Jovito's abdomen, and the latter took hold with his two hands the hand of Vicente that was holding the knife and twisted it, causing the knife to fall to the river.[4]

It is difficult to ignore the inconsistency in the testimonies of both the accused. The testimony of Fructuoso

concentrated on the claim that Vicente stumbled to the ground after having freed himself from the restraining hold of his wife and rolled down the incline while Jovito claimed that Vicente was running continuously even after freeing himself from his wife's hold.

Fructuoso's testimony shows that at the time of the confrontation with Vicente Amistoso he and co-accused Jovito Callao were following a footpath on the opposite side of a small stream which is three feet wide and the water less than a foot deep. They were between 80 to 100 meters from the house of Vicente Amistoso. He further testified that he saw Vicente running down the incline towards their direction, holding a hunting knife, shouting, "You have the same mind as that crazy Barangay Captain of yours." [5] However, what Jovito heard Vicente was shouting while running towards them was, "Here comes the Barangay Tanod of the stupid Barangay Captain (sic)," contrary to what Fructuoso said. [6]

The foregoing shows that appellants were already alerted to Vicente Amistoso's alleged impending assault while still far (80 meters) from them, and which, naturally, have put them on guard. Ordinarily, since neither of them claimed not to have carried a weapon, they would have run away following the natural instinct of self-preservation, or prepared themselves with any available means with which to successfully thwart the assault considering their numerical superiority over Vicente. That Vicente was able to hit Jovito on the abdomen with the thrust of the knife on the basis of the facts mentioned is an improbable situation, one contrary to ordinary human experience.

Furthermore, Fructuoso alleged that Vicente Amistoso was rolling on the ground up to about a fathom from Jovito when he got up and stabbed Jovito. Considering Fructuoso's own testimony that from the house of Vicente one had to cross a stream, about three feet wide, before reaching the footpath where they were at the time, it is difficult to believe that Vicente had been rolling up to about a fathom from where Jovito was. By no stretch of the imagination could that circumstance be perceived to have happened, even taking into account the shallowness of the water.

Fructuoso's testimony that Jovito twisted Vicente's hand which was holding the knife causing the same to drop two fathoms away into the water of the stream and which Vicente attempted to pick up but was beaten to it by Fructuoso is highly incredible, considering that Fructuoso was two fathoms behind Jovito as testified to by him. How then can Fructuoso have reached for the knife which was four fathoms away from him than Vicente who was just two fathoms from said knife?

Finally, Fructuoso claimed that Vicente had no more weapon after he lost his knife and yet he still stabbed Vicente with the knife hitting the latter on the left breast, and his reason for doing so was in "retaliation" for the injury inflicted by Vicente on Jovito. When the knife fell off the hand of Vicente, following the line of the evidence of the defense, and there was no showing that Vicente had another weapon other than said knife, he was no longer a threat nor a danger to the lives and limbs of the two accused. There was nothing more to repel or prevent by means of a knife. It is precisely the helpless condition of Vicente that Fructuoso took advantage of by stabbing the former on the breast "in retaliation" and therefore, no longer in legitimate defense of his son.

Evidence shows that Vicente Amistoso sustained not only a stab wound on the chest but also six contusions and abrasions on different parts of his body, [7] thus giving sufficient corroboration to the prosecution witnesses' testimony that Vicente and his wife were waylaid and then pelted with stones by Fructuoso Callao and Jovito Callao with the cooperation of their respective wives. That the said wives left the polling place ahead of their respective husbands gave them the opportunity to participate in the ambush of Vicente Amistoso.

It is worthwhile mentioning that the testimonies of father and son only dealt with the stab wound inflicted on the deceased but there was no mention as to the contusions and abrasions found on the body of Vicente. To this, no

valid explanation was given by the defense.

As the evidence would show, the house of the Callaos were only about 750 meters from the polling place towards the northwest while that of Vicente Amistoso was more than a kilometer away towards the east. The incident happened, as the evidence would further show, between 80 to 100 meters from the house of the deceased. That Fructuoso Callao and Jovito Callao were in the vicinity of the house of Vicente Amistoso at the time of the incident when their own house could be reached ahead of that of Vicente is a circumstance indicating that they were possibly waiting for someone for they had no legitimate reason being within the vicinity of Vicente's house.

The information alleges conspiracy among all the accused which allegation has been sufficiently shown by the evidence that Fructuoso Callao participated in pelting Vicente with stones until the latter fell to the ground after which he was stabbed by Jovito on a vital spot of his body.[8] The attack on Vicente was treacherous for upon reaching that place of the incident near their house, Vicente Amistoso was suddenly pelted with stones by Fructuoso and Jovito together with their wives, forcing Vicente to run until he stumbled to the ground and stabbed on the left chest by Jovito Callao.[9] Nothing can be more indicative of treachery than the conduct of the two accused.

Appellants' claim of voluntary surrender as a mitigating circumstance in their favor does not deserve serious consideration. For voluntary surrender to be appreciated, it is necessary that the same, be spontaneous in such manner as to show 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 incident to his search and capture.[10] As found by the court a quo:

“If Fructuoso Callao did in fact act in defense of his son, it is surprising why he did not surrender to the authorities immediately after the incident and spontaneously give that statement to the police. He instead went home with his son, Jovito, only to go to the Police Station upon being apprehended by the police authorities”.[11]

PREMISES considered, the guilt of the appellants, Jovito Callao and Fructuoso Callao of the crime of murder, as charged, has been proved beyond reasonable doubt.

WHEREFORE, the appealed decision is hereby AFFIRMED, and each of the accused-appellants sentenced to suffer the penalty of RECLUSION PERPETUA and, to jointly and severally indemnify the heirs of Vicente Amistoso in the amount of Fifty Thousand Pesos (P50,000.00).[12] Costs against appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] pp. 6-7, Rollo.

[2] pp. 67-70, TSN, September 6, 1989; Exhibit "B".

[3] pp. 5-8, TSN, October 16, 1989.

[4] p. 6-8, TSN, December 19, 1989.

[5] p. 9, TSN, November 14, 1989.

[6] pp. 6, TSN, December 19, 1989.

[7] pp. 67-70, TSN, September 6, 1989.

[8] People vs. Francisco, G.R. No. 69580, 182 SCRA 305 (1990).

[9] People vs. Rey, G.R. No. 80089, 172 SCRA 149 (1989).

[10] People vs. Lingatong, G.R. No. 34019, 181 SCRA 424 (1990).

[11] p. 10, Rollo.

[12] People vs. Sison, G.R. No. 86455, 189 SCRA 643 (1990).

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