

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO NEMERIA Y DAGOPAN ALIAS "NICK";
ACCUSED-APPELLANT.**

G.R. No. 96288, March 20, 1995

Ponente: VITUG, J.

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VITUG, J.:

Appellant Ricardo Nemeria y Dagopan, a.k.a. "Nick," was charged with the crime of murder in Criminal Case No. 8790 before the Regional Trial Court of Dumaguete, Branch XXXVI. [1] The information, dated 07 August 1989, averred:

"That on or about the 8th day of December, 1988, at Sitio Sacsac, Barangay Gomentoc, Municipality of Ayungon, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack several times Alberto Cadayuna, with the use of a long bolo (locally known as 'pinuti') which said accused was then armed and provided, thereby inflicting upon the body of Alberto Cadayuna the following injuries to wit:

"1. Multiple hacked wounds:

- From mandibular area (L) side extending to the neck (L) side 11 cm long x 4.5 cm deep
- From the neck (L) side extending to the shoulder (L) side 15 cm long x 5 cm deep
- Supra scapular region (L) 9 cm long x 3 cm deep
- Supra scapular area (L) 4 cm long x 2 cm deep
- Deltoid area (R) 9 cm long x 4 cm deep
- Infra scapular area (L) 11 cm long x 2 cm deep
- Infra scapular area (R) 7 cm long x 2 cm deep
- Inguinal area (R) 7 cm long x 4 cm deep
- Hand, radial aspect (R) 4 cm long x 2 cm deep
- Thumb proximal (L) with complete fracture of underlying bone
- Index finger proximal (L) with complete fracture of underlying bone

which directly caused the death of Alberto Cadayuna shortly thereafter.

"Contrary to Article 248 of the Revised Penal Code." [2]

Upon arraignment, the accused, assisted by counsel de oficio, pleaded "not guilty" to the charge.

At the trial, the prosecution adduced its evidence briefly narrated hereunder:

At around six o'clock in the evening of 08 December 1988, eye-witness Henry Montelibano, his wife Perla and their two children, together with Jose Calijam, Jr., Enar Nemeria (appellant's father), and appellant Ricardo Nemeria were on their way home from a "fiesta" celebration making their way along a small trail in sitio Sacsac, barangay Tampokon I, in Ayungon, Negros Oriental. Walking about three meters behind was appellant sporting an unsheathed "bolo." [3] At a distance of approximately 200 meters, Henry noticed Alberto Cadayuna, alone and unarmed, at the crossing of the feeder road and the foot trail. [4] Once the group set foot on the feeder road, Enar suddenly ran westward. Cadayuna was then heard to call out for Calijan, exclaiming that someone was about to "ambush" him. [5] Henry instantly looked back, and he saw appellant already in the act of striking Cadayuna with a "bolo," initially from behind and then on the latter's chest, the waist and foot. [6] Henry was only about ten meters away. [7] Like the rest of the group, Henry immediately scampered away from the scene.

Another prosecution witness, Lorimer Devero, testified that she was walking behind Cadayuna. Just as Cadayuna was about to catch up with Calijan, appellant Nemeria, coming from the side of the road, suddenly hit Cadayuna with a "bolo" from behind. [8] After seeing Cadayuna struck down twice, Lorimer hastily retreated. She later informed Cadayuna's sons and relatives about the incident.

Cadayuna's body was autopsied by Dr. Fe Herrera at the Bindoy District Hospital. She submitted an autopsy report showing the multiple hack wounds inflicted upon Cadayuna. [9] At the witness stand, Dr. Herrera testified that she did not smell any trace of alcohol from the body of Cadayuna which was by then in rigor mortis. [10]

The defense interposed self-defense. Appellant, who was then 25 years old, [11] had known 66-year-old Cadayuna [12] since childhood. [13] He had no quarrel or grudge against Cadayuna but admitted having had a quarrel with Cadayuna's son hours before the incident which resulted in a fist fight. [14]

Appellant narrated that he caught up with the group of Henry Montelibano on their way home from the feast day celebration just before they were about to cross a creek. Soon, they saw Alberto Cadayuna. The latter shouted challengingly at the group and began to advance menacingly towards them. Cadayuna threw a stone at appellant prompting the group to disperse, leaving behind appellant who could not catch up because of an appendix ailment. [15] When Cadayuna, then holding two stones, was about to be only one and a half meters away from appellant, the latter pulled his bolo from its scabbard and warned Cadayuna not to come any closer. Since Cadayuna kept on drawing near, appellant hacked him with his bolo several times. Cadayuna sustained fatal wounds. Appellant sought refuge at the municipal building, fearing that Cadayuna's sons would take revenge. He surrendered his bolo to Sgt. Erlanger Germudo. [16]

Apolinario Nemeria corroborated the story of his son. According to him, when the party had reached the crossing, Cadayuna chased them. Cadayuna was seen holding a stone which he threw at appellant. Afraid, the witness ran away with the rest of the group. [17]

Not impressed with the self-defense version, the trial court, on 02 August 1990, rendered a Decision finding appellant guilty beyond reasonable doubt of murder for killing Cadayuna and imposing on him the penalty of reclusion perpetua. He also ordered appellant to indemnify the heirs of Cadayuna in the amount of P30,000.00.

In the instant appeal, appellant assails the trial court's findings, firstly, for discrediting his claim of self-defense and, secondly, for appreciating treachery to have attended the commission of the crime.

Appellant's appeal still boils down to a question of credibility and relative weight of the evidence, mainly testimonial, adduced by the prosecution and the defense on the surrounding circumstances of the killing. This determination, by and large, is a function of a trial court, which is best equipped to make that assessment, and its

factual findings are generally not disturbed on appeal. It is only when the trial court is clearly perceived to have overlooked, misunderstood or misapplied certain facts or circumstances of weight which, if considered, might affect the result of the case that could warrant a reversal of such findings. [18] There is, in this case at bench, no cogent reason for the Court to depart from the rule.

Appellant's claim of self-defense is bereft of merit. Under the first paragraph of Article 11 of the Revised Penal Code, a plea of self-defense can prosper only when, besides an unlawful aggression by the victim and lack of sufficient provocation on the part of the person defending himself, there is reasonable necessity of the means employed to repel the unlawful aggression. [19] The accused has the burden of proof to show the existence of all the elements of this defense. [20] Here, assuming that the victim has given provocation, the latter's response by repeatedly hacking the victim to death can by no account be considered justified. The nature and number of wounds inflicted on the victim, without, in turn, any injury on appellant, betray the claim of self-defense; on the contrary, the facts and circumstances sufficiently indicate to us a determined effort by appellant at the time to kill the victim. [21]

Anent the claim that the prosecution has not shown any motive on the part of appellant to commit the crime, well-settled is the rule that motive can be essential to conviction only when there is doubt on the identity of the culprit, or when the evidence on the commission of the crime is purely circumstantial or inconclusive. [22] Not only has appellant been positively identified but he himself has admitted to his having inflicted the fatal wounds on the victim.

We agree with appellant, however, that the trial court has erred in finding that evident premeditation and treachery have qualified the killing. There is no strong evidence adduced to prove evident premeditation. The incident evidently has happened all too suddenly, not unlikely because of the aggressive stance of both the aggressor and the victim whose son figured in a fistfight with the appellant earlier in the day. [23] Treachery, upon the other hand, exists only when the offender adopts means, methods or forms in the execution of the felony without risk to himself arising from the defense which the offended party might make. [24] The incident has occurred at about six o'clock in the late afternoon when people could still be recognized at a distance. [25] The victim, in fact, appears not to have been totally unaware of the attack. [26] The appellant has perpetrated the crime in the presence of other people in the area who, if willing, could have lent support. [27] Considering the rule that treachery, like any other qualifying circumstance, may not simply be inferred but must be proven as fully and convincingly as the crime itself, [28] we must resolve the doubt in favor of the accused.

The crime committed, given the factual settings; is homicide and not murder. The Solicitor General has correctly observed that voluntary surrender should be considered in appellant's favor in view of the presence of its following elements: (a) the offender has not been actually arrested; (b) the offender has surrendered himself to a person in authority, and (c) the surrender is voluntary. [29]

Article 249 of the Revised Penal Code prescribes reclusion temporal for the crime of homicide. Considering the mitigating circumstance of voluntary surrender, the penalty should be imposed in its minimum period. [30] Applying, furthermore, the Indeterminate Sentence Law, the range of the penalty that can be imposed could be anywhere within the range of prision mayor of from six (6) years and one (1) day to twelve (12) years, as minimum, to reclusion temporal in its minimum period of from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, as maximum.

WHEREFORE, the judgment of the trial court convicting appellant Ricardo Nemeria y Dagopan for the killing of Alberto Cadayuna is hereby MODIFIED, as follows: (a) appellant is found guilty of homicide, instead of murder, under Article 249 of the Revised Penal Code; (b) he is, accordingly, sentenced to an indeterminate imprisonment

term of from eight (8) years and one (1) day of prision mayor, as minimum, to thirteen (13) years, nine (9) months and ten (10) days of reclusion temporal, as maximum, and (c) he shall, pursuant to current jurisprudence, indemnify the heirs of Alberto Cadayuna in the amount of fifty thousand pesos (P50,000.00). Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Presided by Judge Constancio E. Jaugan.

[2] Rollo , p. 6.

[3] TSN, February 6, 1990, pp. 12-16.

[4] TSN, February 6, 1990 (p.m.), p. 10.

[5] Ibid., pp. 12 & 13.

[6] Ibid., pp. 16 & 21; TSN, February 6, 1990 (a.m.) pp. 4 & 5.

[7] TSN, February 6, 1990 (p.m.), p. 24.

[8] TSN, April 16, 1990, pp. 8-10.

[9] Exh. A.

[10] TSN, April 17, 1990, p. 10.

[11] Exh. 2.

[12] Exh. C; TSN, April 17, 1990, p. 19.

[13] TSN, April 25, 1990, p. 25.

[14] TSN, July 20, 1990, pp. 16-18.

[15] Appellant had an appendectomy in 1989 or after the incident (TSN, July 20, 1990, p. 6).

[16] TSN, June 19, 1990, pp. 4-14.

[17] TSN, April 24, 1990, pp. 8-24.

[18] People vs. Tidong, 225 SCRA 324; People vs. Simbulan, 214 SCRA 537; People vs. Saulo, 211 SCRA 888; People vs. Nunez, 208 SCRA 34; People vs. Vocente, 188 SCRA 100; Tan Hang vs. Paredes, 157 SCRA 694; People vs. Ligon, 152 SCRA 419.

[19] People vs. Llabres, 225 SCRA 86; People vs. Molina, 213 SCRA 52; People vs. Pletado, 210 SCRA 634; People vs. Bayocot, 174 SCRA 285.

[20] People vs. Gundran, 228 SCRA 583; People vs. Curaraton, 224 SCRA 372; People vs. Binondo, 214 SCRA 764.

[21] People vs. Manalo, 229 SCRA 479; People vs. Sagadsad, 215 SCRA 641, 642; People vs. Bigcas, 211 SCRA 631.

[22] *People vs. Villalobos*, 209 SCRA 304; *People vs. Competente*, 207 SCRA 591; *People vs. Aguiluz*, 207 SCRA 187; *People vs. Devaras*, 205 SCRA 676.

[23] TSN, July 20, 1990, pp. 16-18.

[24] *People vs. Hubilo*, 220 SCRA 389; *People vs. Suitos*, 220 SCRA 419; *People vs. Tinampay*, 207 SCRA 425; *People vs. Balatucan*, 206 SCRA 81; *People vs. Lubreo*, 200 SCRA 11; *People vs. Cuyo*, 196 SCRA 447; *People vs. Cempron*, 187 SCRA 248.

[25] TSN, February 6, 1990, p. 8.

[26] *People vs. Pajarit*, 214 SCRA 678.

[27] *People vs. Amaguin*, 229 SCRA 166.

[28] *People vs. Sarense*, 214 SCRA 780.

[29] *People vs. Amaguin*, *supra*, citing *People vs. Canamo*, 138 SCRA 141; *People vs. Liston*, 179 SCRA 415; *Quial vs. Court of Appeals*, 126 SCRA 28.

[30] Art. 64 (2), Revised Penal Code.

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