

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO CURARATON Y MONINIO, ACCUSED-APPELLANT.

G.R. No. 96765. July 05, 1993

Ponente: MELO, J.

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MELO, J.:

Sergio Curaraton y Moninio was charged with the crime of murder allegedly committed as follows:

That on or about December 12, 1989, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a bolo, with treachery and cruelty and outraging the corpse of the victim, with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and hacked with said bolo one Timoteo Cabagte, thereby inflicting upon the latter mortal wounds which caused his death.

CONTRARY TO LAW.

Davao City, Philippines, December 20, 1989. (p. 13, Rollo.)

After trial on the merits due to a plea of not guilty being entered, the court a quo rendered a decision on December 4, 1990, disposing:

WHEREFORE, the Court finds the accused Sergio Curaraton guilty beyond reasonable doubt of the crime of murder with the attendant circumstances of cruelty and disregard of the age of his victim, Timoteo Cabagte, and hereby sentences him to suffer reclusion perpetua and to indemnify his heirs in the amount of P30,000.00 for his death and P3,000.00 for his burial.

Accused-appellant now seeks reversal on the basis of self-defense, or "on the assumption that his conviction is in order", that he be credited the mitigating circumstance of voluntary surrender.

The factual setting of the case, as depicted by the Solicitor General in his counter-statement of facts, which, after a review of the record, we find to be fully supported by the evidence and which we, therefore, hereby adopt, is as follows:

In the evening of December 12, 1989, Sergio Tonacao was at his house in Kutson, Biao, Guianga, Tugbok, Davao City. At about 10:00 p.m., appellant appeared outside his house armed with a bolo and a big stone and challenged Tonacao to come down and fight. Tonacao advised appellant to go home and that they would just talk about the matter the next day (pp. 3-5, TSN Aug. 28, 1990). Appellant responded that he wanted to settle the matter amicably with Tonacao that same night. Tonacao agreed and he came down from his house. Appellant shook hands with him and also with Timoteo Cabagte, Tonacao's brother-in-law, who joined them after coming from the house of Tonacao's neighbor about 40 meters away. Appellant told Tonacao: "Tocayo (name sake), you are not involved in this." (p. 5). Appellant, who was 37 years old, addressed Cabagte, who was 54 [should be 65] years old, as "Manong" as they shook hands: "Manong, you have nothing to do with this." (p. 5). After they shook hands, Cabagte went back to his neighbor Claudio Capricio's house. Tonacao noticed that appellant followed Cabagte (pp. 4, 5, Id.) and hid behind a coconut tree along the path leading to the house of Capricio about 10 armstrongs from Tonacao's house (p. 6). Tonacao was curious why appellant

was still holding the stone and bolo so he surreptitiously went closer to observe (p. 6). When Tonacao was about two armlength from appellant, Cabagte came walking back along the trail and as Cabagte passed the coconut tree where appellant was hiding, Tonacao saw appellant suddenly strike Cabagte with the rock he was holding. Cabagte fell on the ground and appellant immediately thrust his bolo into Cabagte's body several times. Not satisfied with felling Cabagte, appellant chopped the victim's body with the same bolo, hitting the victim on the left forehead, left portion of the face, and at the back, even as the victim lay motionless and dead (p. 7). Tonacao was afraid that appellant would turn on him, and so he did not go to the victim's aid (p. 7).

Tonacao sought the assistance of Danilo Palad and together they went to the scene of the crime and found only the mutilated corpse of Cabagte. Appellant was no longer at the scene (p. 8).

The Necropsy Report (Exh. G) prepared and signed by Dr. Napoleon de la Peña, District Health Officer at Calinan, Davao City, described the location and severity of the eleven wounds suffered by the victim, to wit: (i) The first wound is a "hack wound, 13 cm. length, 4 cm. depth, occipital, left" located at the back portion of the head, running diagonally; (ii) the second wound is a "hack wound, 4 cm. length, 2 cm. depth, mandibular, left" located at the jaw; (iii) the third wound is a "hack wound, 5 cm. length, 4 cm. depth, mandibulomaxillary left", located at the left temple running down to the jaw; (iv) wound no. 4 is an "incised wound, 2 cm. length, one cm. depth" located on the nose bridge; (v) wound no. 5 is a "lacerated wound, 2 cm. length, scalp depth supraorbital right" located at the eyebrow; (vi) wound no. 6 is a "hack wound, 7 cm. length, 5 cm. depth, lumbar right" at the right side of the body below the ribs; (vii) wound no. 7 is "amputated forearm, distal third right" - the right hand was completely cut off, about 2 inches from the wrist; (viii) wound no. 8 is "lacerated wound, one cm. length 1/2 cm. depth, anterior axillary line, axilla "from front of the right armpit going inside the armpit; (ix) wound no. 9 is a "hack wound, 15 cm. length, 5 cm. depth, scapular, left", at the back just below the left shoulder running down to the anterior axillary line, below armpit; (x) wound no. 10 is a "hack wound, 13 cm. length, 6 cm. depth, suprascapular, right" from just below the right shoulder at the back running horizontally towards the end of the shoulder; and (xi) wound no. 11 is a "hack wound, 7 cm. length, 5 cm. depth, gluteal, left" at the left buttocks (pp. 42-47, TSN 8-30-90).

The cause of death was massive hemorrhage secondary to hack wounds. The wounds could have been caused by a sharp-bladed instrument. The most serious and fatal wound is wound no. 1 (hack wound, 13 cm. length, 4 cm. depth, occipital) because it involved the brain - that wound alone could already have caused death (pp. 47-48, TSN 8-30-90).

At around 11:00 p.m. that same night, Epifanio Cabagte, brother of the victim reported the killing of his brother at the hands of appellant to the Tugbok Patrol Station. Patrolman Limbaco went to the scene of the crime to investigate and thereafter recorded the incident in the blotter. The following morning he received information from the Calinan Patrol Station that appellant had surrendered himself and the bolo (Exhibit "A") at said station where the incident was also entered in the blotter (Exhibit "B"). At 7:30 in the morning of December 13, Pat. Limbaco dispatched three policemen to Calinan to take custody of appellant and the bolo.

Appellant denied that prior to the incident he had gone to the house of Tonacao and shook hands with Tonacao and Cabagte but claimed that he was on his way home, after cleaning his tuba container, when somebody struck him down with a nipa frond. He stood up and hit back, (pp. 4-8, Appellee's Brief.)

Under his first assigned error, accused-appellant contends that the trial court erred in not acquitting him on the ground of self-defense. He must, however, understand that an accused who puts up self-defense bears the burden of establishing the elements of self-defense by clear and convincing evidence to the satisfaction of the court (*Ortega vs. Sandiganbayan*, 170 SCRA 38 [1989]). Should he fail to do so, his conviction follows as a matter of course. Said elements are the following:

1. Unlawful aggression on the part of the victim,
2. Reasonable necessity of the means employed to prevent or repel the aggression, and

3. Lack of sufficient provocation on the part of the person defending himself (*Ortega vs. Sandiganbayan*, supra, p. 42.)

It is essential that the first element of self-defense, unlawful aggression initiated by the victim, must be clearly shown for in its absence, self-defense cannot exist (*Ortega vs. Sandiganbayan*, supra). The evidence shows that, after accused-appellant assured Cabagte, the victim, addressing and telling him, "Manong, you have nothing to do with this", and after they shook hands, Cabagte left to go back to the house of his neighbor. Accused-appellant, however, there-after waited in ambush for Cabagte behind a coconut tree along the path leading to the house of Capricio. When Cabagte passed by the coconut tree behind which accused-appellant was lurking, accused-appellant suddenly sprang out of ambush and struck Cabagte with the rock he was holding, stunning and felling him. Thereupon, accused-appellant immediately thrust his bolo into Cabagte's body several times and hacked the fallen Cabagte repeatedly at several parts of his body as he lay still and motionless.

The claim of accused-appellant that he was attacked by Cabagte with a nipa frond is bereft of credence considering that Cabagte was the first one to leave the house of Sergio Tonacao peacefully winding his way toward the house of his neighbor Claudio Capricio, lulled into a false sense of security that accused-appellant bore him no enmity by accused-appellant's conciliatory but deceitful declaration that "Manong, you have noting to do with this."

Even assuming that Cabagte indeed attacked accused-appellant with a nipa frond, the killing of Cabagte can not be justified for accused-appellant employed unreasonable means to repel the alleged attack. We doubt that a nipa frond can inflict serious injuries much less cause death. Accused-appellant's reaction to this imagined aggression was clearly excessive and unnecessary as shown by the multiple wounds he had inflicted on the victim.

We, therefore, find that accused-appellant has failed to establish that he acted in self-defense when he killed Cabagte. Consequently, it is no longer necessary to discuss the other elements of self-defense.

The crime committed by accused-appellant is murder qualified by treachery as the killing was sudden and unexpected (*People vs. Liston*, 179 SCRA 415 [1989]). The killing, however, was not attended by the aggravating circumstances of cruelty and disregard of age as erroneously found by the trial court. Cruelty is to be taken into consideration where the multiple wounds of the victim were inflicted unnecessarily while he was still alive in order to prolong his physical suffering (*People vs. Curiano*, 9 SCRA 323 [1963]). The evidence in the case at bar shows that, when accused-appellant continued hacking Cabagte, the latter was already dead or at least totally unconscious and could no longer feel or experience additional pain that would prolong his physical suffering. Neither can the aggravating circumstance of age be appreciated because the same is absorbed by treachery (*People vs. Gervacio*, 24 SCRA 960 [1968]).

The mitigating circumstance of voluntary surrender should have been considered by the trial court in the determination of the penalty. The evidence shows that immediately after slaying Cabagte, accused-appellant walked all the way straight to the Calinan Patrol Station in Calinan, Davao City to surrender.

The crime committed is murder qualified by treachery, with the mitigating, circumstance of voluntary surrender and with no aggravating circumstance. The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. Pursuant to Article 64(2) in relation to Article 77 of the Revised Penal Code, the penalty to be imposed should be 17 years, 4 months, and 1 day, as minimum, to 20 years, as maximum, both within the range of reclusion temporal. In accordance with the Indeterminate Sentence Law which applies in this case, the minimum should be within range of the penalty next lower in degree to be fixed in any of its periods in the discretion of the Court. Under Article 61, paragraph 3, of the Revised Penal Code, when the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of

another divisible penalty, as in this case, the penalty next lower in degree shall composed of the medium and minimum periods of the proper divisible penalty and the maximum of that immediately following in the scale of penalties. The penalty next lower in degree, therefore, ranges from the maximum of prision mayor to the medium of reclusion temporal (People vs. Ordiales, 42 SCRA 238 [1971]).

The award of civil indemnity should be increased to P50,000.00 in accordance with the more recent pronouncements of this Court (People vs. Jereza, 189 SCRA 690 [1990]; People vs. Sazon, 189 SCRA 700 [1990]; People vs. Lugto, 190 SCRA 754 [1990]; People vs. Iligan, 191 SCRA 643 [1990]).

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the following modifications:

1. The penalty shall be an imprisonment term of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) and one (1) day of reclusion temporal, as maximum (People vs. Alcantara, 163 SCRA 783 [1988]); and
2. The civil indemnity to be paid by accused-appellant to the heirs of the victim is increased to Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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