

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CECILIO BINONDO, ACCUSED-APPELLANT.

G.R. No. 97227. October 20, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

On May 25, 1990, the Honorable Godardo A. Jacinto, Presiding Judge of Branch 16, Regional Trial Court, Cebu City rendered a decision in Criminal Case No. CBU-9795, entitled "People of the Philippines vs. Cecilio Binondo, Rosendo Binondo, Valentina Binondo, Nicolasa Binondo, Severino Dinopol, and Damian Soriano", finding Cecilio Binondo guilty of murder and acquitting the rest of his co?accused as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused Cecilio Binondo guilty beyond reasonable doubt of the crime of murder, for which he is hereby sentenced to suffer the penalty of reclusion perpetua, and to further indemnify the Heirs of Domiciano Dinopol in the sum of P30,000.

"On the ground of reasonable doubt, a verdict of acquittal is hereby entered for the accused Rosendo Binondo, Valentina Binondo, Nicolasa Binondo, Damian Soriano and Severino Dinopol, and their bail bonds are therefore cancelled.

"Costs against Cecilio Binondo.

"SO ORDERED."[1]

On appeal, the accused-appellant raised the following errors:

I

THE TRIAL COURT ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S PLEA OF SELF-DEFENSE AND FINDING HIM GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE TRIAL COURT ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES IN FAVOR OF THE ACCUSED APPELLANT.

The facts as may be gathered from the records of the case are as follows:

At about 10:00 or 11:00 o'clock in the evening of February 23, 1986, prosecution witnesses Maximo Dinopol and his wife Pablita, who were neighbors of the accused-appellant Cecilio, saw accused-appellant with seven other persons carrying a naked body of a dead person into his (Cecilio) yard. The aforesaid witnesses alleged having heard accused-appellant tell his companions that they should have nothing to worry about because he will take sole responsibility for the death of the victim.

On that same evening, accused-appellant brought the head of the decapitated victim to the police station at the municipal building. This was received by Pat. Esmeraldo dela Peña who was at the station during that time although his tour of duty would yet start at 8:00 o'clock in the morning of the following day. He asked preliminary questions to the accused-appellant. When the Station Commander arrived, the latter took over the investigation. After a brief interview with the accused-appellant, he sent Pat. Franklin Aniñon and CHDF Boy Padilla to retrieve the body of the victim from the house of the accused-appellant. The Station Commander ordered Rosendo and Valentina, companions of the accused-appellant to bring the air rifle (esoopta) and bolo used by accused-appellant to the Municipal building.

Dr. Ferraren, Municipal Health Officer of Ginatilan Cebu, conducted the autopsy examination and issued the Medical Certificate which reads as follows:

“This certifies that at about 1:45 o'clock p.m. of February 24, 1986, a human head, severed from its body, identified by Pfc. Rotillo Sifieres of the Simboan Police Force as that of Pat. Domiciano Dinopol of same force, had been examined by the undersigned at the Municipal building, Simboan, Cebu, and findings were as follows:

- a) eyes half closed;
- b) wound incised, about 4 inches long, lower jaw, with underlying bone cracked;
- c) wound, lacerated about 1/2 inch parietal, left;
- d) wound, lacerated about 1/2 inch parietal, right.

“On the same day, at about 2:20 in the afternoon, a beheaded human body had also been examined at the residence of the parents of Pat. Domiciano Dinopol in Samboan and the significant findings are as follows:

- a) Wound, incised, 4-1/2” x 1” anterior, thorax, right;
- b) wound, incised about 4” x 1” at the level of the Xphoid, right;
- c) wound, incised about 4-1/2” x 1/2”, left lateral side of the body;
- d) wound, incised about 4” x 1/2” deltoid, left;
- e) wound, incised about 4 inches supraeliao, left;
- f) wound, incised about 8 inches, abdomen, some intestines exposed and some portions severed.

“Sgd. TRIFANA M. FERRAREN, M.D.

March 6, 1986.”[2]

The accused-appellant Cecilio Binondo declared that he killed Pat. Domiciano Dinopol in self-defense and presented his version of what transpired, as follows:

At about 8:00 o'clock in the evening of February 23, 1986, he, together with his wife, Valentina Binondo, his son, Rosendo, and Brgy. Councilman Severino Dinopol went to the house of the spouses Bilanghilot to drink tuba thereat. They left said house at about 11:00 o'clock in the evening. When they were near the Barangay Health Center of Basak, the victim, carrying a gun with the left hand and a bolo in his right hand, suddenly emerged from under the mango tree and approached him in an angry mood at the same time brandishing his bolo as if in an act of charging him, saying: “Why are you looking for me? What is your purpose?”[3] Valentina interceded and tried to pacify Domiciano. To avoid getting into trouble with the enraged victim, he opted to walk away from him and proceeded home with his son Rosendo. Severino also went home ahead of Valentina.

About five minutes after he and Rosendo arrived at their house, Valentina came gasping for breath telling him to close all windows and doors because Domiciano was following her and he said he would kill Cecilia and Rosendo. Right away he secured the front door, shut off all the lights and got his air gun and bolo to defend himself and his companions should Domiciano carry out his threat. He also asked Rosendo to go upstairs to take care of his (Rosendo) wife and children on the second storey.

Pat. Domiciano Dinopol finally arrived and he tried to force open the main door but failed. He asked Cecilio to come out, shouting: "Cilio, come out I will break your head." [4] Domiciano went towards the kitchen door. Cecilio, on the other hand, positioned himself in the dark, close to the kitchen door, awaiting the attack by Domiciano.

Domiciano forced open the kitchen door. When he was about to enter with his head protruding inside the kitchen, Cecilia aimed his rifle at the head of Domiciano. From a distance of about one and one half (1-1/2) feet, he fired the rifle. When this happened, Domiciano was still holding his firearm and his bolo.

After a single shot from the air gun, Domiciano turned his head towards him and aimed his gun at him. Before Domiciano could fire his gun, Cecilio attacked him with his bolo, his purpose being to let the latter loosen his hold on his weapons. This was followed by five or six more strokes on the neck and body to be sure that Domiciano would drop his weapons. Domiciano finally dropped his weapons and fell to the floor. Except for the skin on the nape, the head was almost severed from the body. Knowing Domiciano of having an amulet which could revive him if his body is doused with water, he finally decided to cut off his head completely. Immediately thereafter, he carried the victim's body to the municipal building and surrendered to the police authorities.

The trial court refused to give credit to his plea of self-defense and convicted him of murder on the basis of his admission of killing Domiciano Dinopol.

We find this appeal to be without merit and find the defendant's plea of self-defense as completely incredible.

Well entrenched in this jurisdiction is the doctrine that when the accused admits having killed the victim, but invokes self-defense, the burden of proving the elements of that defense by clear and convincing evidence lies with the accused. To do that, he must rely on the strength of his evidence and not on the weakness of the prosecution. For even if the evidence of the prosecution were weak, it may not be disbelieved after the accused admitted responsibility for the killing. [5]

Whether or not appellant acted in self-defense is essentially a question of fact. Being so and in the absence of any showing that the court a quo failed to appreciate facts and circumstances of weight and substance that would have altered its conclusion, the court below, having seen and heard the witness during the trial, was in a better position to evaluate their testimonies. No compelling reason, therefore, existed for this Court to disturb the trial court's findings that appellant did not act in self-defense. [6]

The accused-appellant did not present clear and convincing evidence for the court to sustain the claim of self-defense. The trial court refused to give credence to accused-appellant's story that the deceased went to his house purposely to kill him. There were no findings that the victim was guilty of unlawful aggression or unjust provocation.

Even assuming that his story were true, the oral threat made by Domiciano to kill him unaccompanied by any other unequivocal act clearly showing his intent to carry out his threat does not constitute unlawful aggression. Mere shouting threats and poundings on the door of the accused-appellant's house were not held by this Court to constitute unlawful aggression. [7] Furthermore, as the accused-appellant himself testified that he extinguished all sources of light inside the house, there could not have possibly been any form of attack which may be said to be

immediate and imminent from the victim upon the person of the accused-appellant. Putting out the lights inside the house threw the house in total darkness that the victim could not be in a position to locate him physically.

Not only was there an absence of unlawful aggression in the case at bar, but the claim of self-defense is likewise negated by the physical evidence. The accused-appellant suffered no harm or injury physically. The number and nature of the wounds inflicted on the victim proved that if at all, the attack came from the accused-appellant. The victim had no chance to defend himself even if armed. The medico-legal certificate issued by the municipal health officer attests to a total of seven wounds all of which were located on the vital parts of the body. The means employed becomes unreasonable and unnecessary when after the aggression had ceased and the victim no longer posed any threat of further attack, the accused-appellant continued inflicting injuries on the victim who fell to the ground helpless. From his testimony it was evident that when he delivered the blows with his bolo, he was aiming at his victim's body and not simply on the victim's hand which he claimed was aiming the gun at him.[8] It was also clear that he was aware that his blows were hitting the victim;[9] that his victim was profusely bleeding;[10] and that even before his victim fell to his kitchen floor, the victim's weapons had already dropped and he was defenseless.[11] What absolutely negated the existence of a "reasonable necessity of the means employed in repelling the attack" was the fact that the appellant decapitated the victim. The claim that the victim possessed an amulet which could revive him did not justify that, last and final act of cutting off the victim's head. A dead man could not have possibly posed any further resistance or launch an attack, be it imminent or remote.

Having found the absence of self-defense, what is incumbent upon us is to determine whether or not there was any attending circumstance which will qualify the killing to murder.

We hold that the crime committed was murder.

The presence of the qualifying circumstance of treachery was evident from the testimony of the accused-appellant himself. According to him, his wife arrived ahead of the victim and he was apprised of the fact that the victim was on his way to their house and was threatening to kill him and his son. He had enough time to prepare himself, his weapons and surroundings in a way that he would have the advantage of position and could deliver the first blow without risk to himself from his unwary victim. This he accomplished by putting off all the lights inside the house and by positioning himself near the kitchen door where he could not be seen at once. The accused-appellant employed means, methods or forms in the execution of the offense which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. These facts established by evidence on record clearly constitute treachery, which raised the crime to murder.

Furthermore, when the killing was done with cruelty, by deliberately or inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse,[12] it was likewise qualified to murder. (Underlining supplied). No greater outrage, insult or abuse can a person commit upon a corpse than to sever the head therefrom. The head represents the dignity of the person and any violence directed towards it cannot be interpreted in any other manner than an outrage to his corpse.

As regards the mitigating circumstances claimed by the accused-appellant, We hold that the trial court erred in not appreciating voluntary surrender in favor of the accused. This may be off-set by the aggravating circumstance of treachery under Article 14 of the Revised Penal Code. The accused-appellant could not, however, claim incomplete self-defense as there was no unlawful aggression on the part of the victim.

However, the killing was accompanied by the qualifying circumstance of outraging at the corpse of the victim, thus constituting the crime into murder. Treachery may be considered as a mere aggravating circumstance which may be set off by the mitigating circumstance of voluntary surrender.

For reasons indicated, and in the light of the applicable law and jurisprudence on the matter, We hold that the evidence was sufficient to sustain the verdict finding the defendant guilty of the crime of murder as charged. The judgment of conviction is affirmed subject to the modification that the defendant is ordered to indemnify the heirs of the victim the amount of P50,000.00, with costs against the accused-appellant.

SO ORDERED.

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

[1] Records, p. 672.

[2] Exhibit "B", Records, p. 13.

[3] T.S.N., May 5, 1989, p. 12.

[4] T.S.N., August 23, 1989, p. 21.

[5] *People vs. Ansoyon*, 75 Phil. 772 (1946); *People vs. Libed*, 14 SCRA 410, (1965); *People vs. Canial*, 46 SCRA 634 (1972); *People vs. Kindo*, 98 SCRA 553 (1980); *People vs. Bayocot*, 174 SCRA 285 (1989); *People vs. Maceda*, 197 SCRA 499 (1991).

[6] *People vs. Maceda*, *supra*.

[7] *People vs. Masangkay*, 157 SCRA 320 (1988).

[8] T.S.N., August 23, 1989, p. 27.

[9] *Ibid.*, pp. 27-28.

[10] *Ibid.*, p. 29

[11] *Ibid.*, p. 30.

[12] Revised Penal Code, Article 248, par. 6. See also Article 14, paragraph 16.

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