

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CANCELLER Y BAHIA, ACCUSED-APPELLANT.

G.R. No. 97296. March 04, 1992

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Pedro Canciller alias "Dionie", "John-John", "Johnny" and "Boyet", together with Ed Diola were charged with the crime of MURDER in an information which reads:

"That on or about the 7th day of January, 1990, in the municipality of Taguig, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one John Doe, whose true identity and present whereabouts is still unknown, and mutually helping and aiding with one another, with intent to kill and taking advantage of their superior strength, did, then and there willfully, unlawfully and feloniously stab with a deadly weapon one Wilfredo Mendoza y Castillar on the vital parts of his body, thereby inflicting upon the latter stab wounds which directly caused his death." [1]

The other accused, Ed Diola, is at large and only Pedro Canciller was arraigned, who with the assistance of his counsel, pleaded not guilty to the charge. Trial proceeded and a judgment of conviction was rendered against him on December 13, 1990 by the RTC of Pasig, Branch 164, in Criminal Case No. 82643. The pertinent portion of the decision reads:

"So it is that this Court, based on the sole eye-witness account of Jose Redoblado finds that the offense of murder was committed upon the victim Wilfredo Mendoza by the accused herein in conspiracy with the other accused Ed Diola who is still at large and a certain person who answered by the alias 'Jucol'.

"From the sole testimony likewise of said prosecution witness, it was also established that there was treachery and concert of design as between the three assailants above-named.

"ACCORDINGLY, the Court finds the accused Pedro Canciller y Bahia GUILTY beyond reasonable doubt of the criminal offense of murder presently charged against him; and therefore, hereby imposed upon him to suffer the penalty of reclusion perpetua; and to reimburse the mother of the deceased Leonarda Mendoza the sum of P16,500 which she spent for the funeral services and the burial plot for her deceased son; as well as to indemnify the heirs of the said deceased the amount of P50,000.00 as damages." [2]

The antecedent facts as summarized by the Office of the Solicitor General in its brief are as follows:

"At about 1:00 o'clock in the morning of January 7, 1990, Jose Redoblado, then residing at Daang Hari, Taguig, Bicutan, Metro Manila and his nephew were at a dance party held at a place about twenty (20) meters away from his residence (pp. 11, 24 tsn, August 26, 1990). Near the place where the dance party was held was a store where appellant Pedro Canciller and his co-accused were drinking (p. 24, supra). When Redoblado's nephew passed by said store, appellant and his companions took fancy on the latter which would have resulted in a stabbing incident were it not for the timely intercession of Redoblado and subsequently by his 'kumpadre' who pacified them. Thereafter, Redoblado was advised by his 'kumpadre' to go home. Redoblado heeded the advice (pp. 8, 9, 24, supra). Later on, at about 2:00 o'clock in the morning, Redoblado heard a shout from

across his house (p. 14, tsn, August 28, 1990). Redoblado went down from his house and went towards an adjacent small street where at a distance of about five (5) to fifteen (15) meters, he saw appellant and his two co-accused ganging up on Wilfredo Mendoza. When Mendoza fell to the ground, appellant stabbed him with a knife. Redoblado knew appellant and his companions as they used to hang around near Redoblado's residence. Subsequently, appellant and his companions ran away. Redoblado similarly, went home. The following morning, Redoblado learned that Wilfredo Mendoza died (pp. 4, 5, 10, supra).

"Informed by Redoblado's neighbor on the threats to his life by appellant and his companions, Redoblado, assisted by his brother-in-law went to the CAPCOM precinct and had said threats blotted. Subsequently, Redoblado transferred his residence to Tanyag. When Redoblado learned of the arrest of appellant and that his two companions were in hiding to avoid arrest in connection with the death of Mendoza, Redoblado reported the incident to the police authorities. (pp. 19-23, supra)

"On due request, (Exh. "E") an autopsy was conducted on the cadaver of Wilfredo Mendoza by Dr. Emmanuel L. Aranas, PC/INP Crime Laboratory Service, Camp Crame, Quezon City. Dr. Aranas' testimony relative to injuries suffered by the victim is summarized by the trial court in this wise:

"That there were 10 injuries noted on the body of the cadaver, the most fatal was Injury or wound No. 6 which is a stab wound. The other injuries are Injury No. 1 which is the abrasion located at the right side of the forehead which could have been caused by an object with a hard and rough surface and possibly, the relative position of the person who inflicted the injury was in front of the victim; Injury No. 2 which is located near the lower portion of the right eye; Injury No. 3 which is located at the nose on the right side; Injury No. 4 which is located at the right side of the face and could have been caused by a piece of wood; Injury No. 5 which is located immediately below the chin and possibly the person who inflicted this wound could be at the front or from one side of the victim; Injury No. 6 which is the stab wound located at the right side of the breast caused by a bladed weapon, the trajectory of which is downward towards the back and the victim could be lying down; Injury No. 7 which is an abrasion located at the frontal side of the right shoulder caused by an object which has a hard and rough surface; Injury No. 8 which is a lacerated wound located at the right shoulder; Injury No. 9 which is located at the middle segment of the right fore-finger caused by a bladed or sharp weapon; and Injury No. 10 which is located at the left knee.'[3]

The accused-appellant, in denying the unlawful act interposed the defense of alibi, in that:

"x x x at the time of the stabbing incident, he was sleeping soundly at the house where he was residing which is located near the place of incident.

He even presented a certain Mila Ajo who was allegedly a house-mate and boarder where he also resides. This witness corroborated the allegation of the accused in that at around 2:00 o'clock in the morning the latter was asleep because at that time, she woke up to urinate and she saw the accused in repose. They are staying together with the owners in a one room house so they sleep all together in this one room."[4]

In seeking appellate review, accused-appellant averred that the court a quo erred in giving full credence to the sole and uncorroborated testimony of Jose Redoblado the only eye-witness, and in finding the existence of the qualifying circumstance of treachery.

Appellant contends that serious doubt in the credibility of sole prosecution witness Jose Redoblado's testimony arises by his failure to report immediately to the authorities the stabbing incident of the victim Wilfredo Mendoza.

We do not agree.

The initial reluctance of Redoblado to volunteer information about a criminal case and his unwillingness to be involved in or dragged into a criminal investigation is common and has been judicially declared not to affect

credibility.[5] As correctly stated by the trial court in the appealed decision:

"But then, this delay cannot reduce his credibility because it was sufficiently explained by him in that of his fear of possible reprisal coming from the accused as to compel him to hold his silence for the intervening period. Because of such fear for his life, he even moved out of his residence a few weeks after the occurrence. This explanation is not unusual because it is of judicial notice for people to refrain from getting involved in crimes and/or police matters specially so when the personalities involved are known notorious killers in the neighborhood. (People vs. Lagman y Macalinao, G.R. No. 79387, August 31, 1989; see also the case of Rodriguez vs. Sandiganbayan, G.R. No. 63118, September 1, 1989)"[6]

The appellant's contention that it is unusual or strange for Redoblado, who had professed fear for his life, after having an earlier misunderstanding with the accused, to leave the safety of his house to investigate the cause of the scream he heard and thereby unnecessarily exposing himself to being discovered and noticed by the accused, is unmeritorious. As correctly stated by the Solicitor General:

"There is nothing unusual or strange in Redoblado's act of going out of his house to investigate the reason or cause of the scream he heard, despite appellant's earlier threat to break into his house.

Obviously, Redoblado, from within the confines of his house, could not see who screamed and the reason therefor. Hence, the need for a vantage point in small street very near his house (p. 13, tsn, August 28, 1990). Redoblado, therefore, did not expose himself to any unnecessary danger from appellant, for in the remote possibility of his detection, he could easily run to and seek the safety of his house."[7]

As to appellant's contention that Redoblado has a motive to testify falsely against him in view of their "verbal confrontation" before the stabbing incident when appellant and his companions took a fancy on Redoblado's nephew is baseless to say the least, since they were already pacified by Redoblado's compadre and made to settle their differences right after said confrontation.[8]

The trial court's rejection of appellant's defense of alibi is in accordance with the facts and the law.[9] Alibi, being the weakest of defenses and the easiest to fabricate, must be proved by evidence that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[10] In the instant case, it has been established that the house of the accused and the scene of the crime were only a short distance apart.[11] It was not, therefore, impossible for the accused to have been at the scene of the crime at the time of its commission. At any rate, the defense of alibi raised by the accused is unavailing in the light of his positive identification by prosecution witness Jose Redoblado.[12]

The circumstance that appellant took advantage of their superior strength, which was alleged as a qualifying circumstance in the information, is justified by the evidence on record. To take advantage of superior strength means to use purposely excessive force out of proportion to the means of defense available to the person attacked.[13] For superior strength to qualify a crime, the aggressor's strength must exceed that of the victim and they should have taken advantage of their strength. It is necessary to show that the appellant and his companions cooperated in such a way as to secure advantage from their superiority in strength, which is present in this case. Thus, Jose Redoblado testified as follows:

"FISCAL:

Q By the way, Mr. Witness, do you know who were the persons who were ganging up on this Wilfredo Mendoza when you saw them?

A Pedro Canciller, Ed Diola and one alias 'Jucul'.

Q All in all how many persons ganging up on Wilfredo Mendoza?

A There were three of them, Sir.

Q And you said these three persons ganged up on Wilfredo Mendoza. How did they gang up Wilfredo Mendoza?

A He was hit or beaten up and stabbed also, Sir.

Q And who stabbed Wilfredo Mendoza among the three persons you identified?

A Pedro Canciller, Sir.

Q With what weapon did he use in stabbing Wilfredo Mendoza?

A 'Kutsilyo', or kitchen knife.

Q How about this Ed Diola what was he holding at the time?

A He was not holding anything. He seems to be a look out, Sir.

Q How about this Jucul, what was he holding at the time?

A He was the one who beat up the victim, Sir.

Q With regards to Pedro Canciller, how many times did he stab Wilfredo Mendoza?

A Twice, Sir,

Q How about this Jucul, how many times did he hit Wilfredo Mendoza with what he is holding?

A I saw that Jucul hit Wilfredo Mendoza and when he fell on the ground that was the time when Pedro Canciller stabbed him." (Aug. 28, 1990, Tsn, p. 4)

From said testimony, it can clearly be gleaned that the attackers deliberately took advantage of their combined strength to inflict the fatal wounds on the victim. While Jucul beat the victim and hit him with a hard object, the appellant stabbed him twice after the latter fell on the ground. It does not appear that the victim was armed. Evidently, appellant and his companions cooperated in such a way as to derive advantage from their combined strength and to ensure the victim's death, hence, abuse of superior strength did attend the commission of the instant offense.[14]

Dr. Aranas testified that the victim suffered ten (10) injuries, eight of which were caused by a hard rough-surfaced object, possibly a piece of wood.[15]

The information did not allege the qualifying circumstance of treachery. What was alleged therein is "taking advantage of their superior strength." Consequently, the trial court's finding that the crime committed is murder qualified by treachery, is in error.

The crime committed is murder qualified by taking advantage of superior strength on the part of the accused.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, the guilt of accused-appellant having been proven with that degree of proof that produces conviction in an unprejudiced mind. Costs against accused-appellant.

SO ORDERED.

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

- [1] Rollo, p. 4
- [2] RTC Decision, p. 11; Rollo, p. 23.
- [3] Appellee's Brief, pp. 2-5; Rollo, pp. 84-87.
- [4] Decision, p. 9; Rollo, p. 21.
- [5] *People vs. Baysa*, G.R. No. 76391-92, 172 SCRA 706 (1989).
- [6] RTC Decision, p. 10, rollo.
- [7] Appellee's Brief, p. 8; Rollo, p. 90.
- [8] TSN, August 28-1990, p. 24.
- [9] *People vs. Eswan*, 186 SCRA 174.
- [10] *People vs. Gupo*, 190 SCRA 7 (1990).
- [11] TSN, October 26, 1990, p. 8.
- [12] TSN, August 28, 1990, pp. 2-4.
- [13] Reyes, *The Revised Penal Code*, 11th Ed., Book I, p. 398.
- [14] *People vs. Elizaga*, 86 Phil. 364, cited in *People vs. Yu*, 80 SCRA 383.
- [15] TSN, Oct. 5, 1990, p. 7.

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