

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLINARIO ALIAS “DODOY” SARENSE AND WILFREDO ALIAS
“WILLY” SARENSE, DEFENDANTS-APPELLANTS.**

G.R. No. 97433. October 20, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal of the decision of the Regional Trial Court, Branch 30, Dumaguete City wherein accused--appellants Apolinario Sarence alias “Dodoy” and Wilfredo Sarence alias “Willy” were charged with the crime of murder under an information[1] which reads:

“That on January 22, 1988 at about 3:00 o'clock in the afternoon, more or less, at Sitio Jumao-as, Barangay Malongcay Diot, Zamboanguita, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and acting under the same accord and purpose, mutually helping each other, with evident premeditation, treachery and taking advantage of superior strength and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hack ANTONIO CAFINO with bolos with which the accused were then armed and provided, thereby inflicting upon the victim the following injuries, to wit:

1. Hacked wound parietal area measuring approx. 4 3/4 inches length with fractured bone and brain tissues was noted.
2. Hacked wound occipital area measuring approx. 3 inches length with fractured bone and brain tissues was noted.
3. Hacked wound temporal area (R) measuring approx. 2 3/4 inches length, 3/4 inch width & 3/4 inch depth.
4. Hacked wound maxillary area (L) measuring approx. 4 inches length.
5. Deep hacked wound antero-lateral aspect neck (R) extending to shoulder (R) measuring approx. 4 inches length.
6. Hacked wound scapular area (R) measuring approx. 3 inches length.
7. Hacked wound middle 3rd dorsal aspect forearm (L) extending at the base of thumb measuring approximately 6 inches length.
8. Lacerated wound deltoid area (R) measuring approx. 1/2 inch length.
9. Lacerated wound distal 3rd lateral aspect of arm (R) measuring approx. 1 1/2 inches length.

said injuries caused the immediate death of the victim.

Contrary to Article 248 of the Revised Penal Code.”

Upon arraignment, the accused-appellants pleaded not guilty to the crime charged.

Thereafter, trial proceeded on the merits and on December 21, 1990 a decision[2] was rendered by the Regional Trial Court of Dumaguete, the dispositive portion of which reads:

“In view of all the foregoing the Court finds accused Apolinario Sarense and Wilfredo Sarense guilty beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code, appreciating however, in favor of Apolinario Sarense the mitigating circumstance of voluntary surrender.

“Wherefore the Court hereby sentences accused Apolinario Sarense to suffer an indeterminate penalty of imprisonment from Seventeen (17) Years, Four (4) Months and One (1) day of Reclusion Temporal as minimum to Reclusion Perpetua as maximum and accused Wilfredo Sarense to suffer the penalty of Reclusion Perpetua, with all the accessories provided by law, to jointly and severally indemnify the heirs of Antonio Cafino in the amount of Thirty Thousand (P30,000.00) Pesos, and to pay the costs.

“The bolo of Apolinario Sarense used in the commission of the offense is ordered confiscated in favor of the government. The air gun (Exhibit “3”), however, not being an instrument in the commission of the crime and belonging instead to the victim, Antonio Cafino, is ordered returned to the heirs of said victim.”

The facts of the case are as follows:

It was about 3:00 o'clock in the afternoon of January 22, 1988, when Pablo Partosa was on his way to his farm that he noticed accused-appellants Apolinario “Dodoy” Sarense and Wilfredo “Willy” Sarense, father and son respectively, standing at the roadside both with 31-inch long bolos tied to their respective waists. Upon reaching his farm which is about fifteen (15) meters away from where the appellants were standing, he began weeding off the grass. After about four minutes, he stretched his back to relax a little and it was at this moment that he saw Antonio Cafino carrying his air gun on his shoulder at the place where appellants were standing. Partosa then saw Dodoy hack Antonio with a bolo on the left wrist. Willy, who was standing behind Antonio followed suit by hacking the latter at the back, below the right shoulder. It was at this point that Antonio fell and rolled to the ground but appellants continued attacking him by taking turns in hacking Antonio. Noticing Antonio to be motionless, appellants ran away carrying with them Antonio's air gun.

Pablo Partosa ran towards the house of Antonio where he was met by the latter's daughter, Imelda. He informed her of what happened and they went to where Antonio was. Upon reaching the scene of the crime, they found Antonio Cafino beyond recognition, dead and bathed with his own blood.

The dead body of Antonio was brought to their house and was examined[3] by Dr. Jocelyn Elnar the following day at the municipal hall.

Accused-appellant Apolinario “Dodoy” Sarense claims self-defense while accused-appellant Wilfredo “Willy” Sarense denies participation in the killing of Antonio Cafino.

Having admitted the killing, the burden of proof is on the accused that he did so in self-defense by clear and convincing evidence that excludes any vestige of criminal aggression on his part, otherwise conviction would follow.[4] Accused must rely on the strength of his own evidence, and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused admitted the killing.[5]

Apolinario Sarense alias “Dodoy” claims that when he met Antonio Cafino, the latter fired at him four times with an air gun, but strangely enough, not one of the discharged pellets hit him.[6] The fourth shot was fired so close to him but Antonio allegedly missed, thereupon the latter pulled out his bolo and delivered a hacking blow on Apolinario.[7] Then ensued a duel between them in the course of which said accused fell to the ground after his foot got caught with a vine.[8] And even when said accused was down Antonio kept on delivering hacking blows at him but which failed to find their mark as they were successfully parried by the accused. Meanwhile, the

accused was able to pull out his scythe with his left hand which he used in fighting back and hitting Antonio[9] nine (9) times inflicting on the latter serious wounds that caused his death.

From the account of Dodoy Sarense, We are made to believe that Antonio Cafino was so inept and clumsy as a fighter that from a distance of around 10 meters not only did he fail to hit said accused with any one of his four shots but in spite of several hacking blows of his bolo he was only able to hit Dodoy twice and only while said accused was still standing and facing Antonio. Dodoy's story is hard to believe. He did not even seek cover when the deceased was allegedly firing at him. Such is not the ordinary and logical reaction of a man faced with a threat to his life.

The tale given by accused Dodoy is not only unbelievable but incredible given the positions in which he and the victim Antonio found themselves during the incident. The Court cannot believe that despite the decidedly advantageous position of Antonio he was able to inflict only two slight physical injuries on Dodoy which required seven (7) days of medical attendance (Exhibit 1), while Dodoy, who was clearly in disadvantageous position, was yet able to inflict seven (7) hacking wounds and two (2) lacerated wounds on Antonio, five of which were fatal.[10]

Unlawful aggression by the deceased Antonio Cafino was, therefore, never convincingly established by the evidence offered by the accused Apolinario "Dodoy" Sarense.

For self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the defendant's life in danger and forced him to inflict more or less severe wounds upon his assailant employing therefore reasonable means to resist the said attack.[11]

Appellant's claim of self-defense is belied and negated by the number of wounds on the body of the deceased and their location as shown in the autopsy report. Such wounds are indicative of aggression and confirms the theory of the prosecution that accused assaulted the deceased.[12]

Since unlawful aggression was not proven by the evidence, the claim of self-defense by accused Apolinario Sarense cannot be accepted and must necessarily fail.

As to whether the deceased Antonio Cafino had a bolo with him on the day of the incident in question, defense witness Silverio Parao testified, among other things, that when he and Antonio Cafino were walking together until they separated ways, Antonio was not carrying a bolo with him.[13] Such testimony of Parao finds corroboration in the fact that although accused Apolinario Sarense delivered Antonio Cafino's air gun to the police, he never surrendered any bolo belonging to Antonio Cafino. His explanation for such failure that his two hands were full holding his bolo and the air gun[14] is a lame and flimsy excuse, contrary to ordinary human experience. One more bolo would not have presented a difficulty to Apolinario Sarense since, he was able, according to him, to return his bolo to its scabbard while walking away from the scene of the crime. He could have ordered his son Wilfredo to bring along with him Antonio's bolo, if there was one. This only shows that Antonio Cafino could not have probably inflicted the injuries sustained by accused Apolinario Sarense nor wage an aggression against him for which he had to defend himself.

As for accused-appellant Wilfredo Sarense, he denied having harmed, or participated in the assault on Antonio Cafino.[15] However, witnesses Pablo Partosa and Jacinto Cafino categorically declared seeing Wilfredo hack Antonio Cafino and when the latter fell to the ground both Apolinario Sarense and Wilfredo Sarense continued hacking the deceased.

Bare denial by Wilfredo cannot prevail over the positive evidence of the prosecution.[16] His denial, bare as it is, was not corroborated even by his father, Apolinario. There is therefore, no reason to exclude him from

responsibility for the death of Antonio Cafino.

The crime charged against the accused is Murder by reason of the alleged qualifying circumstance of evident premeditation, treachery and superior strength. The prosecution however, has not successfully established the presence of the circumstance of evident premeditation, for while it has been shown that the two accused were seen at the side of the trail before the incident no further evidence was presented to prove that they were there in pursuance of a plan to assault and kill Antonio Cafino. A qualifying circumstance must be proven as convincingly as the crime itself.

Even the circumstance of treachery has not been clearly shown to be present although there is testimony from two prosecution eyewitnesses that Antonio Cafino was hacked by accused Wilfredo Sarense at the back "below the right shoulder." Such hacking, however, was executed after Antonio Cafino was hacked by accused Dodoy Sarense and there was movement and changes of position between them. It may not be said then that the hacking of Antonio Cafino at the back by Wilfredo Sarense was adopted and deliberately sought to insure its unobstructed execution when no evidence was presented to prove that it was so. Likewise, like any qualifying circumstance, treachery must be proven as fully and as convincingly as the crime itself and may not simply be inferred from presumptions.

There is however, present in the commission of the crime the qualifying circumstance of abuse of superior strength as shown by the fact that the two accused, who were both armed with bolos, were simultaneously hacking Antonio Cafino, inflicting on him nine (9) wounds, five of which were fatal, thus giving Antonio no quarters and affording him no chance to fight back. After the incident Wilfredo Sarense came out unscathed while Apolinario Sarense sustained only two minor injuries, one of which was on his index finger and the other below his right shoulder which may have been caused by one of Wilfredo's hacking blows according to witness Jacinto Cafino considering that the two accused, according to him, simultaneously delivered about 13 hacking blows, some of which missed their marks. The infliction alone of nine wounds of Antonio Cafino indicates the superior strength employed by the two accused on their victim and which they took advantage of to ensure that they would not suffer any harm in retaliation.

That the two accused conspired in the killing of Antonio Cafino is well shown by their concerted acts in simultaneously hacking their victim with their bolos, hitting the latter on vital parts of his body, with a common object and purpose of killing him, as Apolinario Sarense believed that the deceased was the cause of the dislocation of his family and the transfer of his residence from Jumao-as in Malungkay, Zamboanguita to Calangog, Bacong.

Conspiracy has been convincingly proven; both accused are equally liable for the death of Antonio Cafino.

There is evidence to show that Apolinario Sarense surrendered to the police authorities of Zamboanguita, Negros Oriental at dawn of January 23, 1988.[17] None is presented, however, with respect to Wilfredo Sarense. It would seem that Apolinario Sarense is attempting to assume full responsibility for the crime in order to save his son, Wilfredo. The evidence, however, presented facts contrary to his version of the incident in question and he cannot be allowed to succeed in his attempt.

WHEREFORE, there being no reversible error in the decision appealed from, the same is hereby **AFFIRMED** with the modification that the penalty to be imposed upon Apolinario Sarense is **TEN (10) YEARS and One (1) DAY** of Prision Mayor maximum as the minimum penalty to **SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY** of Reclusion Temporal maximum as the maximum penalty.[18] Wilfredo Sarense on the other hand is made to suffer the penalty of Reclusion Perpetua, with all the accessories provided by law. The death indemnity to be paid by each of the accused-appellants to the heirs of the deceased is hereby increased to

P50,000.[19]

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Rollo, pp. 8-9.

[2] Rollo, pp. 28-47.

[3] Records, p. 9.

[4] G.R. No. 43527, Araneta, Jr. vs. Court of Appeals, 187 SCRA 123, (1990).

[5] G.R. No. 41061, Guevarra vs. Court of Appeals, 187 SCRA 484, (1990).

[6] T.S.N., November 18, 1988, pp. 7-8.

[7] Id., at p. 11.

[8] Id., at pp. 12-13.

[9] Ibid.

[10] Exhibit "A", Records; p. 9.

[11] G.R. Nos. 67803-04, People vs. Madali, 188 SCRA 69, (1990).

[12] People vs. Estocada, G.R. L-31024, Feb. 28, 1977; G.R. No. 41061, Guevarra vs. Court of Appeals, 187 SCRA 484 (1990).

[13] T.S.N., February 5, 1990, p. 7.

[14] T.S.N., January 30, 1989, p. 25.

[15] T.S.N., October 18, 1989, p. 13.

[16] Nos. L-56741-42, Mejia vs. Pamaran, 160 SCRA 457, (1988).

[17] Exhibit "2", Records, p. 177.

[18] G.R. Nos. 67803-04, People vs. Madali, 188 SCRA 69, (1990), citing People vs. Aguilar, 88 Phil. 693.

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

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