

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REGOBERTO YBEAS, ACCUSED-APPELLANT.

G.R. No. 98062. September 11, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the aftermath of the killing of Enrique Villarojo at sitio Pinoso-an, Barangay Silab, in the Municipality of Amlan, Negros Oriental in the afternoon of 5 September 1981, a criminal complaint for Murder was filed on 21 September 1981 against accused Regoberto (also Rigoberto) Ybeas and one Alberto Quisel by the Sub-Station Commander of the Integrated National Police with the then Municipal Circuit Court of San Jose-Amlan-Pamplona, Negros Oriental.[1]

The Municipal Circuit Court conducted a preliminary investigation; thereafter, finding prima facie evidence to hold the accused and Alberto Quisel for trial, it forwarded the records of the case to the then Court of First Instance (now Regional Trial Court) of Negros Oriental.[2]

On 24 March 1982, 4th Assistant Provincial Fiscal Epifanio S. Betinol filed an Information[3] for Murder against both the accused and Alberto Quisel. The accusatory portion thereof reads:

"That on or about 5:30 o'clock in the afternoon of September 5, 1981 at Sitio Panosoan (sic), Barangay Silab, Municipality of Amlan, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating and acting in common accord and purpose, with intent to kill, and with treachery, did then and there, willfully, unlawfully and feloniously attack, assault and stab ENRIQUE VILLAROJO, inflicting upon the latter, stab (sic) wound 6 cm. x 10 cm., epigastric region, directed inward hitting the stomach and exposing part of a (sic) small intestine and stab (sic) wound 4 cm. x 8 cm. posterior thoracic wall 2 cm. from middle lateral border of scapula, left, which wounds directly caused the death of Enrique Villarojo, immediately thereafter.

Contrary to Article 248 of the Revised Penal Code."

During his arraignment on 4 August 1982, the accused entered a plea of not guilty.[4] In the case of Alberto Quisel, the original records reveal that his arraignment was last set for 5 January 1983; however, no certificate of his arraignment can be found therein.

Trial on the merits began on 5 January 1985 and ended in February of 1988. As its evidence in chief, the prosecution presented Pablo Ybañez, Vicente Orillan, Rufina Villarojo, Dr. Amando Santelicis and Macaria Villarojo; Gregorio Aniñon and Francisco Bigtasin were presented as rebuttal witnesses. Accused claimed self-defense. He presented Dr. Rodolfo Jandoc and Marcelino Quisel as his witnesses.

Promulgation of the decision[5] was set for 21 March 1991. Since only the accused appeared on that date, the trial court promulgated the decision only as to him. The dispositive portion thereof reads as follows:

"WHEREFORE, the Court finds accused Rigoberto Ybeas guilty beyond reasonable doubt of the offense of

Murder defined and penalized in Article 248 of the Revised Penal Code, and Alberto Quisel guilty beyond reasonable doubt of the offense of Homicide defined and penalized in Article 249 of the Revised Penal Code, and in the absence of modifying circumstances, they are hereby sentenced to suffer the following penalties (a) Rigoberto Ybeas -- the penalty of Reclusion Perpetua, and (b) Alberto Quisel -- imprisonment from Eight (8) years and One (1) day of prision mayor as minimum to Seventeen (17) years and Four (4) months of reclusion temporal as maximum, both Accused to jointly and severally indemnify the heirs of Enrique Villarojo in the amount of Thirty Thousand (P30,000.00) Pesos, and to pay the costs jointly and severally."[6]

The records do not disclose when the decision was eventually promulgated for Alberto Quisel.

The conviction of the accused is anchored on the evidence for the prosecution which is summarized by the trial court as follows:

"In the afternoon of September 5, 1981 a volleyball game was being played at the place of Exequiel Ybeas at Pinoso-an, Silab, Amlan, Negros Oriental, the players being the brothers Eduardo (Wardo) Quisel and Marcelo (Marsing) Quisel against the brothers Serafin Esparcia and Aster Esparcia, with Vicente Orillan as the umpire. At about 5:30 that afternoon a heated argument arose when Alberto Quisel, a cousin of the Quisel brothers, angrily chided Vicente Orillan for being bias (sic) in his decisions in favor of the Esparcia brothers as a result of which Vicente Orillan was chased by Alberto Quisel who by then was already carrying a bolo. Alberto Quisel was not able to catch up with Vicente Orillan. When Alberto Quisel returned to the volleyball court he was approached by Pablo Ybañez and asked why he chased Vicente Orillan and he answered that the latter was unfair in his rulings by always favoring the Esparcia brothers. Then Enrique Villarojo came near and advised the two not to bring the incident to greater proportions but he was brushed aside by Pablo Ybañez and told not to interfere. When Enrique Villarojo stepped back he was immediately stabbed at the back by Rigoberto Ybeas with a small knife known in the locality as 'plamingo' (sic). Rufina Villarojo, Enrique's daughter, then shouted for help. Enrique Villarojo slumped to the ground, the knife still sticking on (sic) his back, and he was caught by his daughter Rufina who cradled his head on her arms. Then Alberto Quisel approached Enrique Villarojo and stabbed the latter on (sic) the stomach despite Rufina's plea to spare her father.

In the meantime, seeing that his uncle was being assaulted Francisco Bigtasin stabbed Rigoberto Ybeas on (sic) the side of the abdomen after which he ran home. He later surrendered to Pat. Gregorio Aniñon on September 5, 1981 (Exhibit "E") and handed to said policeman the knife he used in stabbing Rigoberto Ybeas. He then executed an Affidavit (Exhibit "F") reiterating his admission of responsibility for the stabbing of Accused.

Enrique Villarojo died on the spot where he was stabbed and his dead body was later examined by Dr. Amado Santelicis, Municipal Health Officer of Amlan, Negros Oriental who found thereon the following injuries: '(1) stab wound 6 cm. x 10 cm., epigastric region wound is directed inwards hitting the stomach and exposing part of small (sic) intestines.' (Exhibit "D-3") and (2) stab wound 4 cm. x 8 cm., posterior thoracic wall 2 cm. from the middle lateral border of scapula, left, wound directed inwards hitting the lungs' (Exhibit "D-4"). Dr. Santelicis recorded his findings in a Post Mortem Examination dated September 6, 1981 (Exhibit "D").

Enrique Villarojo was 44 years old when he died leaving a widow and nine children, 5 of whom were minors and dependent upon him for support. He had an income of P400.00 a year. His widow, Macaria Villarojo, spent P700.00 for his burial and for the traditional 9-days prayer."[7]

Upon the other hand, the accused's version is summarized by the trial court as follows:

"Accused Rigoberto Ybeas claims self-defense and, thru his testimony and those of his witnesses, presented the following version: There was indeed a volleyball game in the afternoon of September 5, 1981 within the premises of the place of Exequiel Ybeas at sitio Pinoso-an, Barangay Silab, Amlan, Negros Oriental. The players were the brothers Marcelo Quisel and Eduardo Quisel on one side and the brothers Erasto Esparcia and Serafin Esparcia on the other side with one, Vicente Orillan, as the umpire. While the game was in progress,

Alberto Quisel, a cousin of Marcelo and Eduardo, complained at (sic) what he perceived as partiality (sic) of umpire Vicente Orillan in favor of the Esparcia brothers. Orillan resented the accusation and challenged Alberto Quisel to a fist fight. When Alberto Quisel approached Orillan to accept the challenge, the latter said 'wait here' and then ran away. So Alberto Quisel went home instead, passing by the house of Exequiel Ybeas, about 30 meters from the volleyball court.

Meanwhile, Enrique Villarojo, another spectator, shouted angrily, saying: 'Who are these persons causing trouble here?' He was facing Pablo Ybañez who answered him: 'Do not interfere Equing as you have no participation here.' Accused intervened also by saying: 'Why are you interfering Equing; you have no part here,' to which Enrique Villarojo snarled back saying: 'Why, do you feel offended?' at the same time pulling out a hunting knife and thrusting it at accused, hitting the latter on (sic) the right side of his abdomen. Accused held the hand holding the knife and twisted it towards the abdomen of Enrique Villarojo. Villarojo took hold of the head of Accused and twisted it so the latter pulled out the knife and thrust it at the neck of Villarojo. Then both of them slumped with accused then losing consciousness. Upon regaining consciousness Accused crawled away until he was helped by his brother Elpidio and friends among whom were Marcelino Quisel, Eddie Cerna and Eduardo Quisel who brought him to the Siliman University Medical Center. He was operated on by Dr. Rodolfo V. Jandoc, (Exhibit "I") and was confined in said hospital for 19 days."[8]

The trial court found the accused guilty of murder because of the qualifying circumstance of treachery, thus:

"There is no doubt that the attack by Rigoberto Ybeas on Enrique Villarojo was sudden and treacherous, affording his victim no opportunity to avoid the attack or to fight back in defense. While it may probably be true that Enrique Villarojo and Rigoberto Ybeas had been facing each other during their verbal exchange, it would appear that thereafter Enrique Villarojo turned away and it was at this unguarded moment when Rigoberto Ybeas stabbed Villarojo on (sic) the back with such terrible force that left the knife stuck on (sic) Villarojo's back causing him to slump and fall into his daughter's arms."[9]

Insisting on his innocence, accused filed his Notice of Appeal on 1 April 1991. On that date, the trial court gave due course to the appeal and ordered the Clerk of Court to forward the records of the case to this Court. The Clerk of Court complied with the order on 3 April 1991.

In his Brief, the accused submits the following assignment of errors:

"I

THE TRIAL COURT A QUO GRAVELY ERRED IN DISREGARDING THE PROVEN FACT THAT THE DECEASED ENRIQUE VILLAROJO WAS HIMSELF THE AGGRESSOR AND THAT THE ACCUSED-APPELLANT WHO WAS SERIOUSLY INJURED BY REASON OF SUCH AGGRESSION WAS LEFT WITH NO OTHER MEANS TO PROTECT HIMSELF THAN (sic) TO STAB THE AFORESAID DECEASED-AGGRESSOR.

II

THE TRIAL COURT GRAVELY ERRED IN ITS CONCLUSION OF TREACHERY WHEN IN FACT THE SAME COURT FOUND THAT THERE WAS A HEATED EXCHANGE OF WORDS BETWEEN THE ACCUSED-APPELLANT AND THE DECEASED WHO WERE FACING EACH OTHER IMMEDIATELY BEFORE THE FIGHT."[10]

In support of the first assigned error, accused capitalizes on the observation of the trial court, to wit:

"It is noted that Accused had a motive to assault Enrique Villarojo when the latter remarked: 'Pest of a devil; People who are not from this place want a duel to the death'.... (Par. 2, page 7, Decision)."

and concludes that such is "in itself an unequivocal (sic) proof that it was Enrique Villarojo (deceased) who challenged the accused-appellant (a non-resident of Sitio Toybo, Pinu-soan) to a duel." He further contends that Bigtasin's rebuttal testimony is nothing but an afterthought considering that the latter's name was not mentioned in any of the affidavits of the other witnesses and in the police blotter of 6 September 1981; moreover, Bigtasin's affidavit was executed only on 28 September 1981.

Anent the second assigned error, accused declares that "[t]he evidence on record as reaffirmed by the findings of trial (sic) court clearly establish (sic) that the fight between the deceased Enrique Villarojo and accused-appellant was immediately preceded by a verbal altercation between both protagonists." [11]

We have taken pains to pore over the transcripts of the stenographic notes of the testimonies of the witnesses and carefully evaluate the same. We find nothing in the trial court's exposition which is unsupported by the evidence or which may raise disturbing thoughts on the culpability of the accused. Its findings of fact merit Our full accord.

By claiming self-defense, the accused accepts the prosecution's evidence and, therefore, admits that he inflicted the "stab wound 4 cm. x 8 cm., posterior thoracic wall 2 cm. from the middle lateral border of scapula, left, wound directed inwards hitting the lungs;" [12] located at the victim's back, this wound was just as fatal as the other wound at the epigastric region. He also agrees with the finding that the cause of death is irreversible shock due to internal and external hemorrhage caused by these two (2) wounds. [13] Accused even went further by admitting that he actually inflicted the two (2) stab wounds sustained by the victim, thereby absolving Alberto Quisel who, according to the prosecution, inflicted the stab wound on the epigastric region. Accused states in his Brief:

"Instinctively, however, to protect himself from further injury/fatal harm accused-appellant grappled with Enrique Villarojo and held the latter's hand (holding the knife) with accused's left hand and thrust/re-directed Villarojo's knife to the latter's own stomach. Villarojo let loose (sic) of his knife and in turn twisted the head of accused-appellant. As the head of the accused-appellant was being twisted by Enrique Villarojo, the former pulled the knife from Villarojo's stomach and pierced the same to (sic) Villarojo's left upper shoulder close to the neck. x x x" [14]

He thus admits full responsibility for the death of Enrique Villarojo. The burden was then shifted to him to prove that the killing was justified and that he incurred no criminal liability therefor. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence [15] for, even if the latter were weak, it would not be disbelieved after his open admission of responsibility for the killing. [16] Being a weak defense which, like alibi, can easily be concocted, [17] the elements of self-defense namely, (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to repel the aggression and (c) lack of sufficient provocation on the part of the accused, [18] must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. [19]

Accused miserably failed to discharge his burden. The prosecution's evidence established beyond any doubt that the victim, Enrique Villarojo, who was unarmed and on a mission of peace -- to placate both Pablo Ybañez and Alberto Quisel and advise them to desist from "bringing the incident to greater proportions" -- was deliberately, suddenly and unexpectedly stabbed in the back by the accused. The latter's version, earlier quoted from his Brief, is hopelessly flawed because of its incredibility and inconsistency with the nature and respective locations of the injuries sustained by both him and the victim. The disquisitions of the trial court on this point, with which We agree, are herein quoted:

"As Accused Ybeas is claiming self-defense, the burden is on him to prove such defense by clear and convincing evidence, relying on the strength of such evidence and not on the weakness of that for the prosecution. (People vs. Montejo, 167 SCRA 506).

The evidence of Accused tended to show that he and Enrique Villarojo were facing each other when they were engaged in a verbal tussle; that Villarojo suddenly pulled out a hunting knife from his waistband with his right hand, lunged at Accused and plunged the knife on (sic) the latter's right hip (Exhibits "1" and "2"). At the trial, Accused demonstrated how Villarojo held the knife with his right hand and it was made to show (sic) that Villarojo held the handle of the knife in such a way that the blade was protruding from the lower end of his fist and the outer tip of the handle was at the upper end such that the knife had to be brought up first, and then down in order to bury the blade into its object. It is thus improbable that in such a position, the knife would find its mark on the RIGHT HIP of Accused since he and Villarojo were facing each other, according to him. Instead of the knife easily hitting anywhere on the front portion of the body of Accused, it hit his right hip according to Accused. Yet no evidence was presented to show that Villarojo twisted his hand and purposely sought Accused's right hip as his object.

And then Accused further testified that he was able to take hold of Villarojo's hand, twisted it and thrust the knife it was holding into his abdomen, after which Accused pulled out the knife and plunged it to (sic) Villarojo's neck. The medical officer's findings, however, show that Enrique Villarojo sustained stab wounds on the epigastric region (in front) and on the posterior thoracic wall (at the back) (Exhibits "D", "D-2" and "D-3"), thus exposing the falsity of Accused's testimony.

Neither is defense witness Marcelino Quisel of any help. His testimony about the actual confrontation between Enrique Villarojo and Accused do (sic) not jibe with that of Accused. While he claims to have been at a distance of only three fathoms from the protagonists he cannot inform the Court by demonstration on certain important details, like how Accused stabbed Enrique Villarojo or whether Villarojo rushed towards Accused in order to stab the latter, or the position of Accused when he was stabbed by Villarojo, or how accused 'confiscated' the knife, or how Accused stabbed Villarojo on (sic) the breast. And to make matters worst (sic), this witness first declared on direct examination that after stabbing Villarojo on (sic) the abdomen, the Accused stabbed Villarojo yet on (sic) the shoulder. But on cross-examination he emphatically declared at least twice that the second thrust was on the left breast. Later during the same cross-examination, this witness reverted to the 'left shoulder of Villarojo' testimony he gave on direct examination. But whether on (sic) the 'left shoulder' or on (sic) the 'left breast', both do not corroborate Accused's testimony that the second thrust made by him on Villarojo was on (sic) the 'neck'. And both testimonies appear to be false because the medical officer found the second wound to be at the 'back' of Villarojo, (Exhibit "D-4"). The implication of such discrepancies could be no other than that Marcelino Quisel was not present at the place of the incident and has therefore perjured himself, and that even Accused also perjured himself. At least, the finding of the medical officer, a disinterested witness, has not corroborated the testimony of Accused and of Marcelino Quisel as to the location of the second injury of Enrique Villarojo. Their testimonies, therefore, cannot be accepted for the purpose of proving unlawful aggression, a primal element of self-defense.

It is noted that Accused had a motive to assault Enrique Villarojo when the latter remarked: 'Pest of a devil; People who are not from this place want a duel to the death,' because Accused said he felt alluded to with that remark as he is from the town of San Jose. In fact, he invited himself to the discussion by telling Villarojo: 'Why would you look for a duel to the death when you are not a participant in the game?' He said he was hurt by Villarojo's remark. It is not at all difficult then to believe that Accused was sufficiently angered into killing Villarojo, as if picking up the gauntlet thrown by the latter's remarks.

'Where the evidence of self-defense is of doubtful veracity, the defense must fail. The quintessence of various decisions on this point is to the effect that evidence of self-defense must be clear and convincing.' (People vs. Espenilla, 62 Phil. 264; People vs. Cardinas, 118 SCRA 458).

Besides, the testimonies of the Prosecution witnesses were sufficiently corroborated by the physical evidence. Indeed, Enrique Villarojo sustained a stab wound at the back (Exhibit "D-4") which according to the medical officer was '4 cm. x 8 cm.' in size, located specifically, at the 'posterior thoracic wall 2 cm. from the middle lateral border of scapula, left, wound directed inwards hitting the lungs' (Exhibit "D"). And prosecution

witnesses declared that Accused first stabbed Enrique Villarojo on (sic) the back where the knife remained stuck. That the lungs of Villarojo was (sic) hit as found by the medical officer shows that the knife was thrust deeply and with considerable force that it remained on (sic) the back of the deceased. Understandably, Villarojo immediately became weak so that as testified to he slumped and fell into the arms of his daughter Rufina."[20]

Further, as correctly observed by the Solicitor General in the Brief for the Appellee, accused's claim that he inflicted the two (2) wounds on the victim with the latter's own knife is belied by the dissimilarity in the widths of said wounds which, as testified to by the medico-legal officer, clearly indicates that two (2) instruments were used. Thus:

"ATTY. REMOLLO:

x x x

Q. Now, can you also inform us that the weapon used can be a sharp object and a bolo or a knife could be possibly used and these two wounds can be inflicted by only one instrument, is it possible?

A. Based on the measurement I think, there were two instruments used.

COURT:

Q. What is the width of Wound No. 1?

A. Wound No. 1 is 6 cms. and the other one is 4 cms."[21]

The deadliest blow to the accused's defense which reduced the same to shambles is, of course, the testimony of Francisco Bigtasin who admitted having inflicted the injury on the accused. As also correctly asserted by the Solicitor General, this admission "exposes as one big lie" appellant's contention that it was the deceased Villarojo who was the unlawful aggressor in this case. The ferocity with which accused attacks the credibility of Bigtasin is futile. In the first place, the cross-examination of this witness failed to dent his testimony; on the contrary, it even strengthened the same and afforded him the opportunity to explain his delay in submitting himself to the police authorities. In the second place, accused can summon nothing to support his speculation that Bigtasin's confession is "a clear case of an afterthought." Accused could not, even if lamely, suggest that Bigtasin was coerced or intimidated or bribed into making a false confession or concocting a story unfavorable to the former.

Finally, that accused did not file a case against Bigtasin is no proof that the latter did not stab the former. If accused indeed filed a case, he would have fried himself in his own lard for the same would have exposed the lie in his claim that the victim was the one who stabbed him.

The second assigned error must likewise fail. As earlier stated, the prosecution's evidence proved beyond cavil that accused suddenly and unexpectedly stabbed the victim in the back. There is no evidence on record to show that the victim knew that the accused was armed; on the contrary, the latter wanted to convince both the trial court and this Court that he was unarmed and merely used the victim's knife. There was as well no prior act or conduct on the part of the accused which could have put the victim on notice that something untoward could befall on him. The victim then was totally unaware of the impending attack and, with his back towards the accused, was in no position to defend himself against it. Doubtless, the accused consciously adopted this method or form of attack to insure the accomplishment of his criminal purpose without risk to himself arising from the defense which the victim might offer. The position he took, the deliberate choice of the spot wherein to land the deadly weapon and the direction of the thrust are unequivocal manifestations of accused's intent to inflict a fatal injury and guarantee complete absence of resistance from the victim. Thus, all the elements of treachery are present. According to paragraph 16, Article 14 of the Revised Penal Code, there is treachery when the offender commits any of the

crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. It is a qualifying circumstance in murder under Article 248 of the Revised Penal Code, which the Information in the instant case expressly alleges. In the said Article, the penalty for murder is reclusion temporal in its maximum period to death. There being no other modifying circumstances in this case, the penalty should be imposed in its medium period and, following the doctrine laid down in *People vs. Muñoz*,^[22] the proper penalty imposable is reclusion perpetua.

In the light of recent jurisprudence,^[23] the indemnity for the death of Enrique Villarojo should be raised to P50,000.00.

It should be clearly understood that only the liability of accused is involved in this decision since the original records forwarded to this Court do not reflect that the trial court's decision was promulgated for co-accused Alberto Quisel.

WHEREFORE, except as modified above in respect to the indemnity, which is hereby increased from P30,000.00 to P50,000.00, the decision appealed from is, insofar as accused REGOBERTO (or RIGOBERTO) YBEAS is concerned, **AFFIRMED**.

Costs against the accused.

SO ORDERED.

Bidin and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

Melo, J., no part.

[1] Original Records, 3.

[2] Id., 3.

[3] Original Records, 253.

[4] Id., 261.

[5] Original Records, 657-669. Per Judge Enrique C. Garrovillo.

[6] Id., 669.

[7] Original Records, 658-659.

[8] Original Records, 659-661.

[9] Id., 668.

[10] Rollo, 57.

[11] Rollo, 61.

[12] Exhibit "D", Original Records, 5.

[13] TSN, 28 June 1983, 8.

[14] Rollo, 56.

[15] *Ortega vs. Sandiganbayan*, 170 SCRA 38 [1989]; *People vs. Uribe*, 182 SCRA 624 [1990]; *People vs. Sazon*, 189 SCRA 700 [1990].

[16] *People vs. Rey*, 172 SCRA 149 [1989].

[17] *People vs. Pay-an*, 84 SCRA 353 [1978].

[18] Article 11(1), Revised Penal Code.

[19] AQUINO, R.C., *The Revised Penal Code*, Vol. I, 1987 ed., 132, citing a host of cases.

[20] Original Records, 661-664.

[21] TSN, 28 June 1983, 11.

[22] 170 SCRA 107 [1989].

[23] *People vs. Sison* 189 SCRA 643 [1990]; *People vs. Sazon*, 189 SCRA 700 [1990]; *People vs. Barba*, 203 SCRA 436 [1991]; *People vs. Lee*, 204 SCRA 900 [1991].

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