

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABELO ALBARICO @ “ODAK,” ACCUSED-APPELLANT.

G.R. Nos. 108596-97. November 17, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

After joint trial on the merits of Criminal Cases Nos. P--0523 and P-0525, both for murder where the victims were Alberto Cabahug and Charles Arevalo, respectively, and of Criminal Cases Nos. P-0524 and P-0526, both for frustrated murder where the victims were Rosita Porquiado and Victoria Escototo, respectively, Branch 17 of the Regional Trial Court at Palompon, Leyte, rendered on 31 August 1992 a joint decision[1] convicting the accused-appellant of the crimes charged. The decretal portion thereof reads:

"WHEREFORE, in view of all the foregoing premises considered, judgment is hereby rendered in the following manner:

1. In Criminal Case No. P-0523, the Court finds accused Abelo Albarico, alias 'Odak', GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer and undergo a penalty of RECLUSION PERPETUA and to indemnify the heirs of the offended party herein the sum of Fifty Thousand (P50,000.00), Pesos;
2. In Criminal Case No. P-0524, the Court finds accused Abelo Albarico, alias 'Odak', GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248, in relation to Article 6 of the Revised Penal Code, and hereby sentences him to suffer and undergo an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor as minimum to FOURTEEN (14) YEARS of Reclusion Temporal as maximum and to indemnify the offended party herein the sum of Fifteen Thousand (P15,000.00), Pesos;
3. In Criminal Case No. P-0525, the Court finds accused Abelo Albarico, alias 'Odak', GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer and undergo a penalty of RECLUSION PERPETUA and to indemnify the heirs of the offended party the sum of Fifty Thousand (P50,000.00), Pesos; and
4. In Criminal Case No. P-0526, the Court finds accused Abelo Albarico, alias 'Odak', GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248, in relation to Article 6 of the Revised Penal Code, and hereby sentences him to suffer and undergo an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor as minimum to FOURTEEN (14) YEARS of Reclusion Temporal as maximum and to indemnify the offended party herein the sum of Fifteen Thousand (P15,000.00), Pesos.

SO ORDERED."[2]

The accused-appellant accepted the judgments in Criminal Cases Nos. P-0524 and P-0526 for frustrated murder,

but appealed to this Court from his convictions of murder in Criminal Cases Nos. P-0523 and P-0525.[3]

The facts established by the prosecution are summarized by the trial court as follows:

"May 22, 1992 was the fiesta of Sitio Vicky, Brgy. Sambulawan, Villaba, Leyte.

On the night of the eve of the fiesta, a benefit dance was held as part of the fiesta celebration. The dance started at around 8:00 o'clock in the evening of May 21, 1992.

The dancing place was about 10 square meters and lighted by two pressure gas lamps called petromax which were placed at the center of the dancing area.

There were many people, coming from different places, who attended the benefit dance.

At around 2:00 o'clock dawn of May 22, 1992, accused Abeló Alvarico was sitting on a bench beside some ladies. It was while he was conversing with the ladies that all of a sudden, said accused was stabbed with an ice-pick at the back. When he turned around, he recognized that his assailant was a certain Alfredo Samante. A fight between the two ensued and people started scampering away.

Being wounded at the back by an ice-pick and his left thumb and left forefinger being amputated in the course of their fight and not being able to retaliate and wound his adversary, accused started a stabbing frenzy using his knife with a pistolized handle.

Celedonio Calosor, the president and manager of the benefit dance, approached accused to pacify the latter, but accused just told him that he (Calosor) was not part of the trouble. Accused stabbed Alfredo Latoy two times using his 'pistolized' knife.

After accused stabbed Alfredo Latoy, accused stabbed Alberto Cabahug who was hit at his back. Cabahug died there almost instantly.

After accused stabbed Alberto Cabahug, he stabbed Rosita Porquiado who was hit at her stomach.

Victoria Escototo, upon whose name Sitio Vicky is named after, was one of those who ran away to seek refuge [sic]; instead, she met accused and when they were face to face with each other, he stabbed her. She tried to parry the stabbing blow but still it hit her right forearm and right side of her body.

When accused went out of the fence of the dancing area, he saw Charles Arevalo near the gate and immediately stabbed the latter at the back. Charles was a boy aged 12 years and 5 days at the time of the incident. Charles later died of his wound.

After stabbing Charles Arevalo accused ran away bringing along with him his 'pistolized' knife.

Alberto Cabahug, on May 22, 1992, was autopsied by Dr. Mario Larrazabal, M.D., of the Ormoc District Hospital. His postmortem report (Exh. "C") states the following findings:

'Cadaver of Alberto Cabahug in rigor mortis, with wound 4 cm. in length located at the 11th and 12th ICS, lateral scapular line, L, wound penetrating with fracture of the 12th rib.' He was 49 years old.

Likewise, Rosita Porquiado was brought to the Ormoc District Hospital on May 22, 1992 for medical treatment. Her medical certificate (Exh. "F") shows the following findings:

'Stab wound RUQ 2.5 cm. length penetrating abdominal cavity perforating the greater curvature of stomach with food spillage to the peritoneal cavity.

Stab wound L flank 2 cm. length penetrating abdominal cavity perforating the descending colon. Hemiperitoneum of about 1,000-1,500 cc.'

She was treated by Dr. Nelson Udtojan, M.D. She was 50 years old at the time of the incident.

Charles Arevalo was brought to the Ormoc District Hospital on May 22, 1992, but he died before he was treated. His death certificate (Exh. "D"), shows the following findings:

'Immediate cause of death - Cardio-respiratory arrest; Antecedent cause - due to irreversible hypovolemic shock; Underlying cause - due to severe blood loss; Other significant conditions contributing to death - due to multiple stab wounds.'

Victoria Escototo was treated and confined at the OSPA - Farmers' Medical Center, Ormoc City, for 2 days and her medical certificate shows the following findings:

= 'Clean cut wound, 3 cm. (R) distal 3rd, Antero lateral

= Clean cut wound, 3 cm. (R) arm (M/3, Medial aspect

= Clean cut wound, 2 cm. 8th ICS (R) Pal.'

She was treated by Dr. Y. Capuyan, M.D. She was 46 years old at the time of the incident."[4]

The accused-appellant was the sole witness for the defense. The trial court summarized his testimony as follows:

"On May 21, 1992, at around 8:00 o'clock in the evening, he and his companion Jomoro Buscagan arrived at the dancing place in Sitio Vicky, Sambulawan, Villaba, Leyte. At around 2:00 o'clock dawn of May 22, 1992, he sat on a bench beside some ladies; namely, Maria Bona, a certain Allison and a certain Cirila. While he was conversing with the ladies, Alfredo Samante stabbed his back with the use of an ice-pick. Then he was embraced by Alfredo Latoy and again, he was stabbed by Samante, but he (accused) held Latoy and made him a shield so that instead of being hit, the stab delivered by Samante hit Latoy on the stomach. Latoy fell down and Samante ran away. Then he (accused) was hacked by Celedonio Calosor with a long bolo hitting his left armpit, cutting his left thumb and left forefinger. While facing each other, he (accused) thrust his 'pistolized' knife towards Calosor, but unfortunately, the thrust hit the child Charles Arevalo who ran and passed between him and Calosor. The child fell down wounded, then Victoria Escototo rushed towards him (accused). At the same time Alberto Cabahug also rushed towards him. Victoria Escototo pointed a gun at him and squeezed the trigger but the gun did not fire, so that he thrust his 'pistolized' knife at Victoria Escototo.

Alberto Cabahug, with the use of a piece of wood, struck him (accused) at the back, so he also stabbed him. Then he ran to his cousin's place and later had himself treated at the Palompon General Hospital in Palompon, Leyte.

His medical certificate (Exh. "3"), issued by the said hospital shows the following findings:

- '1. Amputated 1st and 2nd finger prox. phalanx and middle phalanx, left
2. Incised wound 6 cm. length muscular deep, infra clavicular area (L)
3. Punctured wound mid vertebral area T 10.'

Accused said that he did not remember having wounded Rosita Porquiado."[5]

The trial court gave full faith and credit to the version of the prosecution and disbelieved the testimony of the accused-appellant because it "is full of contradictions, improbabilities and inconsistencies." Thus:

"Firstly, accused denies having inflicted wounds on Rosita Porquiado. On the witness stand, Rosita Porquiado categorically and positively identified accused as the person who stabbed her on the stomach.

It is well settled that an affirmative testimony is stronger than negative testimony (see *People vs. Jose Buligon*,

alias Jose Nicolas, G.R. No. 94338, February 4, 1992). The declaration by Rosita Porquiado that it was accused who stabbed her is more credible than the mere denial by accused that he did not remember inflicting stab wound on Rosita Porquiado.

Secondly, accused's testimony that it was Alfredo Samante who stabbed Alfredo Latoy on the stomach because he used the latter as a shield is more fantastic than real. According to accused, Latoy embraced him and held his left arm while he (accused) was facing Samante. In that position it is improbable that Latoy would be hit on the stomach since he was embracing accused. There was also no showing that Latoy conspired with Samante so that by Latoy's embracing accused, it would create a situation where accused would be defenseless against the attack by Samante.

Thirdly, it was improbable that Victoria Escototo, a woman, would be carrying a gun to shoot accused. According to Escototo, when presented as a rebuttal witness, she could have shot accused if she only had a gun at that time because she already saw that accused was on a stabbing spree, amok style. What Escototo did was to run away from danger since people were already running for their lives and not, as alleged by accused, by rushing towards said accused.

It is said that a testimony to be credible must not only come from a credible witness but must be credible in itself.

Fourthly, the Court finds no plausible reason to believe that it was during the time when accused, while facing Celedonio Calosor and thrusting his 'pistolized' knife at Calosor, that Charles Arevalo passed between them so that instead of hitting Calosor, he hit the child.

The prosecution witnesses were emphatic in their testimony that the child was at the gate outside the dancing area when he was stabbed at the back by accused when the latter was fleeing from the scene of the crime, contrary to what accused said that it was at the center of the dancing area where he stabbed the child Charles.

By his demonstration in Court, it was shown that when the child allegedly passed in between, his left side was towards the accused and his right was towards Calosor. The accused also estimated the height of the child which was up to the level of accused's shoulder. In that position, the child could have been hit at his left side by accused and not at the middle back portion of the body of the child."[6]

The trial court appreciated against the accused-appellant the qualifying circumstances of treachery and abuse of superior strength because the stabbing incident was "sudden and unexpected and the victims, not being enemies of the accused, were not able to defend themselves," and because he "attacked defenseless and innocent women and child." [7]

In his appeal to this Court, the accused-appellant contends that the trial court erred:

"I. X X X IN NOT ACQUITTING [HIM] OF TWO COUNTS OF MURDER ON THE GROUND OF SELF-DEFENSE.

II. X X X IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF THE PROSECUTION WITNESSES AND TOTALLY DISREGARDING THE SELF-DEFENSE THEORY POSITED BY [HIM]."[8]

He claims self-defense under paragraph 1, Article 11 of the Revised Penal Code because he neither started the trouble nor employed any unlawful aggression; in fact, he was the object of the unlawful aggression when Alfredo Samante stabbed him from behind with an ice-pick while he was conversing with some ladies. Samante stabbed him again, but it was Alfredo Latoy who was hit. Having been mistaken for the aggressor, he was attacked by Celedonio Calosor with a bolo. Thereafter, Victoria Escototo poked a gun at him, while Alberto Cabahug used a piece of wood against him. Under the circumstances, he was justified in using a knife to defend himself. He could

not, therefore, be made criminally liable for the injuries he inflicted on Escototo and for the death of Cabahug as the same were done in legitimate self-defense. Nor could he be blamed for the death of Charles Arevalo as the same was an accident.

In the Brief for the Appellee submitted by the Office of the Solicitor General, the People submit that the accused-appellant's criminal authorship of the deaths of Alberto Cabahug and Charles Arevalo had been proved beyond reasonable doubt; however, the qualifying circumstances of treachery and abuse of superior strength cannot be appreciated against him. Hence, it recommends that the accused-appellant be convicted of homicide only on two counts.

We find no merit in this appeal and we disagree with the recommendation of the Office of the Solicitor General.

Having admitted the killing of Alberto Cabahug, allegedly in legitimate self-defense, the accused-appellant had the burden of proving by clear and convincing evidence 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 that of the prosecution for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. It is settled that 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,[9] must be proved with convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[10]

That the accused-appellant miserably failed to discharge his burden is not at all difficult to discern. For one, if the accused-appellant is himself convinced that he had incurred no criminal liability whatsoever because of legitimate self-defense, then we find it hard to understand why he did not appeal his conviction of frustrated murder on two counts where the victims were Rosita Porquiado and Victoria Escototo. The said cases arose out of the same incident as the two murder cases, and he solemnly declared under oath that he did not remember having wounded Rosita and it was Victoria who rushed towards him, pointed a gun at him, and squeezed its trigger; however, and fortunately for him, it did not fire. In defense of his person, he claims that he thrust his knife at Victoria. The acceptance of the convictions of frustrated murder in each of which he was sentenced to an imprisonment penalty ranging from eight years and one day of prison mayor as minimum to fourteen years of reclusion temporal as maximum, and his appeal only in the two other cases for murder cannot but diminish the bona fides of his claim of self-defense.

For another, and independently of the above observations, the trial court stated in the challenged decision that it "does not believe in the validity of [accused's] defense considering that his testimony is full of contradictions, improbabilities and inconsistencies." This conclusion is an assessment of the credibility of the accused-appellant's testimony. Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[11]

Our own evaluation of the evidence in this case supports the conclusion of the trial court. We are convinced that after he was attacked by Alfredo Samante and the aggression of the latter ended, the accused-appellant went on "a stabbing spree, amok style," as the trial court vividly described the scenario.[12] He stabbed Alberto Cabahug at the back, and because of the nature of the injury caused, to wit:

"... wound 4 cm. in length located at the 11th and 12th ICS, lateral scapular line, L, wound penetrating with fracture of the 12th rib,"

the victim died almost instantly.[13] The accused-appellant's claim that Alberto hit him with a "2 x 2 wood" at his back[14] is belied by his medical certificate[15] which does not show at all any injury which could be caused by a piece of wood or any blunt instrument.

As to the death of Charles Arevalo, a 12-year-old child, the accused-appellant claims that he accidentally hit the child with his knife when the child suddenly passed between him and Calosor. On the other hand, the prosecution's evidence proved that "[w]hen accused went out of the fence of the dancing area, he saw Charles Arevalo near the gate and immediately stabbed the latter at the back." [16] If the stabbing were accidental as the accused claimed, Charles Arevalo would have sustained only one wound. The accused-appellant did not testify that he accidentally stabbed the child more than once. The medical certificate[17] of Charles Arevalo, however, shows that he sustained "multiple stab wounds."

The attacks on both Alberto Cabahug and Charles Arevalo were sudden, unprovoked, and unexpected and since these were all directed towards the victims' backs, they were not in a position to defend themselves. Accordingly, the attacks were done in a manner which directly and specifically insured the execution of the acts without any risk to the accused-appellant arising from the defense which the aforesaid victims, then unarmed, might have made.[18] The qualifying circumstance of treachery,[19] which was alleged in the informations, was present.

Also, insofar as the killing of the child Charles Arevalo is concerned, the qualifying circumstance of abuse of superior strength, likewise alleged in the informations, was present. There was, evidently, a deliberate use of excessive force when he inflicted multiple stab wounds upon the innocent and defenseless child. However, treachery absorbed the abuse of superior strength.[20]

WHEREFORE, judgment is hereby rendered DISMISSING the instant appeal and AFFIRMING in toto the decision appealed from. Costs against accused-appellant Abel Albarico alias "Odak."

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), 35-50; Rollo, 15-30. Per Judge Heliodoro T. Fiel.

[2] OR, 48-50; Rollo, 28-30.

[3] Rollo, 31.

[4] OR, 38-42; Rollo, 18-22.

[5] OR, 42-44; Rollo, 22-24.

[6] OR, 44-47; Rollo, 24-27.

[7] OR, 48; Rollo, 28.

[8] Rollo, 61.

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

[10] *People vs. Ybeas*, 213 SCRA 793 [1992], citing *People vs. Rey*, 172 SCRA 149 [1989]; *People vs. Paya-an*, 84 SCRA 353 [1978]; and *RAMON C. AQUINO*, *The Revised Penal Code*, vol. I, 1987 ed., 132. See also *People vs. de la Cruz*, 207 SCRA 632 [1992]; *People vs. Molina*, 213 SCRA 52 [1992]; *People vs. Sarence*, 214 SCRA 780 [1992].

[11] People vs. Pascual, 208 SCRA 393 [1992]; People vs. Simon, 209 SCRA 148 [1992]; People vs. Garcia, 209 SCRA 164 [1992]; People vs. Florida, 214 SCRA 227 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992].

[12] OR, 45-46; Rollo, 25-26.

[13] Id., 39; Id., 19.

[14] TSN, 26 August 1992, 25.

[15] Exhibit "3."

[16] OR, 40; Rollo, 20.

[17] Exhibit "D."

[18] People vs. Kempis, 221 SCRA 628 [1993].

[19] Article 14(16), in relation to Article 248(1), Revised Penal Code.

[20] RAMON C. AQUINO, Revised Penal Code, vol. I, 1987 ed., 376.

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