

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARDO TOLDO; PANES (AT LARGE), MANUEL PANES, WILSON VELASCO AND NOEL DELA CRUZ, ACCUSED-APPELLANTS.

G.R. Nos. 116744-47. August 29, 1997

Ponente: PUNO, J.

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PUNO, J.:

This appeal stems from four (4) informations for murder filed against BERNARDO "Toldo" PANES, and army soldiers MANUEL PANES, WILSON VELASCO and NOEL DELA CRUZ before the Regional Trial Court, 11th Judicial Region, Branch 26, Surallah, South Cotabato on September 30, 1987.[1]

The similarly worded informations read:

That on or about the 13th day of March, at (sic) 1987, at 3:00 o'clock in the afternoon, more or less, at Purok Baras, Barangay Roxas, Municipality of Sto. Nino, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, said three (3) accused, in company with one BERNARDO "Toldo" PANES who is at-large and whose whereabouts is unknown, conspiring and confederating together and mutually helping one another, armed with high-powered firearms being then at the time army soldiers, with intent to kill, treachery, evident premeditation, and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot, x x x ",

JUANILLO COCJIN, SR. in Criminal Case No. 583-Sn; STEVE COCJIN in Criminal Case No. 584-Sn; CONRADO COCJIN in Criminal Case No. 585-Sn; and JIMMY COCJIN in Criminal Case No. 586-Sn.

Except for Bernardo "Toldo" Panes who has remained at-large, the three (3) other accused pleaded not guilty when arraigned on November 20, 1987.[2] They underwent a joint trial.

The prosecution's evidence came mainly from the testimony of Demetrio Paypon, Jr., sole eyewitness to the crimes at bar. Paypon testified that on March 13, 1987 at about 3:00 p.m., he was walking on a farmroad at the boundary of the land of Juanillo Cocjin, Sr. and Primo Castro situated at Purok Baras, Barangay Roxas, Sto. Nino, South Cotabato. He saw the four (4) Cocjins - Juanillo, Jimmy, Conrado and Steve - standing in the plowed field, near the fence of Bernardo "Toldo" Panes. Suddenly, Toldo Panes ran to the farmroad and waved his hand towards the house of Diego Tamano, Jr., his son-in-law. Shortly, Manuel Panes, Noel dela Cruz and Wilson Velasco, each armed with an armalite rifle, went down from Tamano's house and approached Toldo Panes.[3] Together, the four (4) moved towards Juanillo Cocjin, Sr. Panes suddenly shot Cocjin, Sr., while Paypon hid behind a coconut tree.[4] Cocjin, Sr., fell on his knees and raised both hands. He was shot again by Panes. Jimmy Cocjin ran towards his father. Panes also fired at Jimmy. When Jimmy dropped on both knees, Panes approached him and pumped more bullets at him. At that instant, Toldo Panes went after Conrado Cocjin with a bolo. Conrado ran for his life but dela Cruz darted out from behind the banana trees and shot him several times. As Conrado attempted to stand up, Dela Cruz shot him again. Wilson Velasco turned to Steve Cocjin. He pushed Steve on the ground and pointed the muzzle of his rifle at him. Immediately thereafter, Paypon heard another

gunshot and he scampered away from the scene of the crime. Panes shouted to him: "You come back here and I will break your head." He ignored the threat and went straight to Crossing Guinsang-an, where he informed Juanillo Cocjin's wife that her family members were shot by soldiers. On March 16, 1987, Paypon executed an affidavit (Exhibit "A") before the 456th Philippine Constabulary Company. In his affidavit, he identified Manuel Panes, Noel dela Cruz and Wilson Velasco, all military men, and Bernardo "Toldo" Panes, a civilian, as the killers of the Cocjins.[5]

Dr. Vincent Dave Farhat, Municipal Health Officer of Sto. Nino, South Cotabato, conducted an autopsy on the victims. He found that Juanillo Cocjin, Sr. suffered seven bullet wounds, two of which hit his left forearm. The other bullet wounds were in his thorax, left elbow joint, front portion of his right elbow, back part of his left hip, and back portion of his left thigh.[6] Jimmy Cocjin sustained three gunshot wounds which penetrated his right shoulder blade, nape, and left wrist.[7] Conrado Cocjin was hit on the face just below the right eye and on the left hip bone.[8] Steve Cocjin was hit in the upper outer part of his right thigh which damaged his pelvic arteries.[9]

On the other hand, the accused alleged that on March 13, 1987, at about 6:00 in the morning, the three of them with two other members of the 3rd Infantry Brigade of the Philippine Army, patrolled Purok Mabuhay, Barangay M. Roxas, Sto. Nino, South Cotabato. They had information that armed men would pass by the area. They reached Purok Mabuhay at 9:30 in the morning and waited until 2:30 in the afternoon. When the armed men did not appear, accused Panes, as team leader, decided to return to their headquarters. They walked towards the highway to take the bus. While walking, they saw a man being chased by the Cocjins, each of whom was armed by a two (2) feet lagarao (bolo). Manuel Panes recognized the man being chased as his brother, Bernardo "Toldo" Panes. Toldo told Manuel that his carabao was hacked by the Cocjins. Manuel asked Cocjin, Sr.: "Nong Juaning, why did you hack my brother's Carabao?" Cocjin, Sr., retorted: "You have no business here." Just then, Cocjin, Sr. swung his bolo at Manuel but missed. Manuel fired a warning shot but Cocjin, Sr. again struck Panes and hit his right thigh. Manuel shot Cocjin, Sr., but the latter continued hacking him. Manuel shot Cocjin, Sr. again.

They also alleged that accused dela Cruz was attacked by Steve and Conrado Cocjin. Dela Cruz fired a warning shot but the two continued advancing towards him. Dela Cruz fell down while trying to ward off his attackers. When the two were already near him, dela Cruz was forced to shoot them. Manuel Panes ordered Wilson Velasco to return to their detachment to report the shooting. Velasco informed the Detachment Commander that Panes and dela Cruz shot several persons in self-defense. They surrendered when the policemen arrived.[10] They were brought to Dr. Oco's clinic in Banga for medical treatment.[11]

After the trial, the lower court convicted the three accused. The dispositive portion of the decision reads: [12]

IN VIEW OF THE FOREGOING, the court finds the accused Manuel Panes, Noel dela Cruz and Wilson Velasco:

"1. In Criminal Case No. 583-Sn, guilty beyond reasonable doubt of murder and sentences each one of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Juanillo Cocjin, Sr., in the sum of P50,000 for the death of said victim;

"2. In Criminal Case No. 584-Sn, guilty beyond reasonable doubt of murder and sentences each one of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Steve Cocjin, the sum of P50,000 for the death of said victim;

"3. In Criminal Case No. 585-Sn, guilty of murder beyond reasonable doubt, and sentences each one of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Conrado Cocjin, the sum of P50,000 for the death of said victim;

"4. In Criminal Case No. 586-Sn, guilty beyond reasonable doubt of murder, and sentences each one of them to

suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Jimmy Cocjin, the sum of P50,000 for the death of said victim.

"SO ORDERED."

On February 22, 1993, the three (3) accused appealed. They contend in their Brief:

"I

THE TRIAL COURT ERRED IN CONCLUDING THAT THE THREE ACCUSED CONSPIRED IN KILLING THE VICTIMS.

II

THE TRIAL COURT ERRED IN APPRECIATING THE PRESENCE OF TREACHERY THEREBY QUALIFYING THE KILLING INTO MURDER.

III

THE TRIAL COURT ERRED IN NOT APPRECIATING THE ACCUSED PLEA OF SELF-DEFENSE AND OF A RELATIVE."

We sustain the conviction of accused-appellants.

Panes and dela Cruz insist that they acted in self-defense while Velasco denies firing any shot during the incident. We reject these assertions in light of the credible and steadfast testimony of eyewitness Demetrio Paypon, Jr. Paypon is familiar with the appellants whom he has accompanied on several occasions while patrolling nearby areas from where he lived. He has no reason to testify falsely against the appellants.[13] He had also a good view of the appellants when they were attacking and shooting the Cocjins. He was 30 meters from Toldo Panes when the latter waved his hand towards the house of his son-in-law, and as if on cue, the appellants stepped out of the house, and started firing at their victims.[14] Appellants were evidently the aggressors. The four victims were idly standing by the fence of Toldo Panes when the appellants attacked them. Toldo Panes who allegedly was pursued by the victims with bolos did not testify to corroborate the defense of the appellants.

Manuel Panes' story was uncorroborated in other aspects. Allegedly, the carabao of Toldo had been hacked by the Cocjins. The alleged attack on the carabao of Toldo Panes, was not substantiated by Panes, to wit:

ATTY. PAGUNSAN (Defense Counsel):

"Q: How about in this Exhibit "2-a", would you tell us where is the wound sustained by the carabao in this picture?

MANUEL PANES:

"A: Here, sir. (Witness pointing a portion on the right neck of the carabao.).

"INTERPRETER:

The interpreter cannot see the wound as pointed to.

"ATTY. LEDDA (Private Prosecutor): We adopt the manifestation of the Court Interpreter." [15]

And, contrary to the allegations of the said appellant, Paypon testified:

Q: While walking on that farmroad and according to you Toldo Panes was seen by you walking towards the

farmroad, can you tell the Court if you saw any carabao in the farm of Toldo Panes that afternoon?

"A: No, the carabao was outside of the farm of Toldo Panes.

"Q: Where was it particularly?

"A: At the place where the house of Leopoldo Lagulay was.

"Q: How far is that house of Leopoldo Lagulay from the house of Toldo Panes?

"A: Fifty (50) meters, more or less."[16]

On the other hand, appellant dela Cruz contends that Steve and Conrado Cocjin were the ones who attacked him with bolos. The bolos were not offered as evidence. Indeed, no bolo was recovered by the police at the scene of the crime. The absence of said bolos strengthens the testimony of Paypon that the Cocjins were unarmed when they were mowed down with armalites, to wit:

COURT:

"Q: Was Juanillo with a bolo at the time of the incident?

"PAYPON:

"A: I have not seen.

"Q: How about Conrado?

"A: I have not seen.

"Q: Steve.

"A: I have not seen.

"Q: Jimmy.

"A: I have not seen.

"Q: Is it not natural for farmers in your place to bring bolos in going to their farms?

"A: Not always.[17]

We also reject Wilson Velasco's claim that he did not take part in the shooting of the Cocjins. Velasco's story is belied by Paypon, an unbiased eyewitness. Paypon was 50 meters from Manuel Panes when the latter shot Juanillo and Jimmy; 50-60 meters when Toldo Panes ran after Conrado with a bolo; 60 meters when Noel dela Cruz shot Conrado; and 55 meters when Wilson Velasco shot Steve. It was 3:00 in the afternoon, the sun was still high when the shooting took place. Paypon's view was unobstructed for the plants in the crime scene were few and only two (2) feet high.[18] His clear view gave him an opportunity to relate the details of the crimes at bar.

Trite is the jurisprudence that when an accused interposes self-defense, he must prove: first, unlawful aggression on the part of the victim; second, the reasonable necessity of the means employed to prevent or repel the aggression, and third, the person defending himself must not have provoked the victim into committing the act of aggression.[19] Although all of these elements must concur, self-defense is perched on proof of unlawful aggression on the part of the victim. "Unlawful aggression presupposes an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely an intimidating attitude. There must exist a real danger to the life or personal safety of the person claiming self-defense." [20] In the case at bar, there was no unlawful aggression on the part of the Cocjins. They were merely standing beside Toldo's fence when the appellants shot them with armalites. Likewise, the numerous and fatal wounds sustained by the Cocjins negate appellants' claim of self-defense. Juanillo Cocjin, Sr. was shot seven (7) times; Jimmy, three (3) times and Conrado, twice (2).

We also hold that the trial court did not err in finding the appellants guilty of murder qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution of the crime which tend directly and specially to insure its execution and that in insuring the execution of the crime through such means, methods and forms, the offender places himself out of risk arising from the defense which the offended party might take.[21] The evidence shows that the Cocjins had no inkling they would be assaulted by the appellants. They were unarmed and just standing by near the fence of Toldo Panes. They were shot with high powered weapons. The appellants incurred no risk in attacking the defenseless Cocjins.[22] Juanillo was kneeling down with both arms raised upward when Manuel Panes shot him. Jimmy was running towards his father when Manuel Panes gunned him down. Conrado was scampering for his life when Noel dela Cruz shot him while Steve was pushed on the ground before Wilson Velasco pulled the trigger on him.

We also affirm the finding of the trial court that the appellants conspired in killing the Cocjins. They acted in concert from the moment Toldo Panes signalled them to start the attack on the Cocjins up to the time the last wound was inflicted on the last victim. Manuel Panes took care of Juanillo and Jimmy; Noel dela Cruz of Conrado (when Toldo Panes failed to finish him off) and Wilson Velasco of Steve. There is no other conclusion but that all the appellants approved of each other's part in the commission of the crimes at bar. Hence, they are collectively responsible for the death of all the victims for "(t)he convergence of the wills of the conspirators in the scheming and the execution of the crime amply justifies the imputation to all of them the act of any one of them." [23]

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 26, Surallah, South Cotabato in Criminal Case Nos. 583 Sn-586 Sn, is AFFIRMED. Costs against appellants.

SO ORDERED.

Romero, Mendoza, and Torres, Jr., JJ., concur.

Regalado, J., (Chairman), on official leave.

[1] Criminal Case Nos. 583 Sn-586 Sn; Motion For Leave To File Four Separate Information, Original Record, pp. 1-2.

[2] Manuel Panes, Wilson Velasco and Noel dela Cruz were discharged from the military service after the filing of the information in Court, TSN, Noel dela Cruz, March 5, 1991, p. 4; TSN, Manuel Panes, October 20, 1989, p. 3.

[3] TSN, Demetrio Paypon, Jr., February 10, 1988, p. 26.

[4] Ibid, pp. 24-25.

[5] Ibid, pp. 1-12.

[6] Exhibit "D".

[7] TSN, Dr. Dave Farhat, October 13, 1988, pp. 8-11; Exhibit "B".

[8] Exhibit "E".

[9] Exhibit "C".

[10] TSN, Wilson Velasco, November 18, 1991, pp. 1-22; Noel dela Cruz, March 5, 1991, pp. 4-16; Manuel Panes, October 20, 1989, pp. 3-14, 27.

[11] Medical Certificate, Exhibit 1 and 1-a; TSN, Noel dela Cruz, March 5, 1991, p. 17; Manuel Panes, October

20, 1989, pp. 14-16.

[12] Decision, pp. 12-13; Original Record, pp. 233-234.

[13] Supra note 3, p. 30.

[14] Ibid, p. 18.

[15] TSN, Manuel Panes, October 20, 1989, pp. 17-19.

[16] Ibid.

[17] Supra note 3, p. 29.

[18] Ibid, p. 15.

[19] People v. Tuson, G.R. Nos. 106345-46, September 16, 1996; People v. David Cabiles, Sr., et al., G.R. No. 115216, July 5, 1996.

[20] People v. Sergio Patotoy and Bonifacio Patotoy, G. R. No. 102058, August 26, 1996.

[21] People v. Monterey, G.R. No. 109767, September 3, 1996.

[22] People v. Nestor Babor and Sonny Babor, G.R. No. 106875, September 24, 1996.

[23] People v. Peralta, 25 SCRA 759 (1968).

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