

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO CAABAY, ESTEBAN CAABAY, RODRIGO “LUDRING” CAABAY, VALENTINO “COOL” CAABAY AND ISIDRO “BOYET” CAABAY, ACCUSED,VIRGILIO CAABA...

G.R. Nos. 129961-62. August 25, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an automatic review of the Decision[1] of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, convicting the appellants with double murder for the deaths of Paulino Urbano and his son Aliguer Urbano, sentencing them to double death by lethal injection, and directing them to pay, jointly and severally, civil indemnity in the total amount of P100,000.00.

The Indictments

On August 9, 1994, an Information was filed with the RTC of Occidental Mindoro, docketed as Criminal Case Nos. R-3733, charging the appellants and Rodrigo Caabay with murder, qualified by abuse of superior strength, the accusatory portion of which reads:

That on or about the 27[th] day of June, 1994 at around 5:00 o'clock in the afternoon in Sitio Lamis, Barangay San Agustin, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with sharp bladed instruments, with intent to kill and taking advantage of their superior strength, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said weapons one Aliguer Urbano, thereby inflicting upon the latter serious wounds which caused his untimely death.

CONTRARY TO LAW. [2]

Another Information was filed with the said RTC docketed as Criminal Case No. 3734, charging the same appellants and Rodrigo Caabay with murder, the accusatory portion of which reads:

That on or about the 27[th] day of June, 1994, at around 5:00 o'clock in the afternoon in Sitio Lamis, Barangay San Agustin, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with sharp bladed instruments, with intent to kill and taking advantage of their superior strength, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said weapons one Paulino Urbano, thereby inflicting upon the latter serious wounds which caused his untimely death.

CONTRARY TO LAW.[3]

On November 9, 1994, the appellants, assisted by counsel, were arraigned and entered their respective pleas of not guilty. Accused Rodrigo Caabay remained at large. A joint trial thereafter ensued.

The Case for the Prosecution[4]

The spouses Paulino Urbano and Adelina Urbano, were residents of Sitio Lamis, Barangay San Agustin, San Jose, Occidental Mindoro. About forty meters away from their house was Paulino's four-hectare farmland. The house of their 27-year-old son Aliguer Urbano[5] and his wife Arlene, was about fifteen meters away. The 64-year-old Paulino could not walk without the use of a cane because of a foot injury. Adjacent to the couple's property was a two-hectare farmland cultivated by accused Virgilio Caabay and his sons accused Esteban Caabay, Rodrigo (Ludring) Caabay, Valentino (Cool) Caabay and Isidro (Boyot) Caabay. Banana trees were planted within the periphery of the common boundary of the two parcels of land. Because of a recurring dispute over the boundary of the farmlands they respectively cultivated, Paulino lodged a complaint against accused Virgilio with Barangay Captain Victory Sualog. On May 31, 1993, the barangay captain resolved the dispute and delineated the boundary of the farmlands. On March 14, 1994, Adelina complained to the barangay captain that their house was burned.

On June 27, 1994, at 5:30 p.m., Paulino and Adelina were at their farmland. Paulino was cutting the overgrown grasses in the middle portion of the land using a bolo. After a while, he rested and smoked a cigarette while seated. Adelina was cooking dahon ng sili. Momentarily, Adelina told her husband that it was getting late and they should be heading home. Paulino told his wife to go ahead as his clothes were drenched in sweat and he was waiting for them to dry. Despite her proddings, Paulino refused to go home.

Accused Rodrigo Caabay sauntered by and commented to Paulino that he was clearing a wide portion of the land. Paulino replied that the farmland was very wide and it was about time that he cleared it. Rodrigo then inquired from Adelina what she was doing and she answered that she was cooking. Rodrigo left. Adelina also decided to go home and left her husband behind.

When Adelina was barely three meters away from their house, she met her son Aliguer, armed with a bolo, rushing to where his father was. When Adelina looked back, she was shocked to see accused Virgilio and his children - Esteban, Rodrigo, Valentino and Isidro - each armed with bolos, hacking Paulino on the neck and the right hand. Accused Rodrigo hacked Paulino on his back. The victim fell to the ground. Aliguer scampered away from the scene but accused Virgilio and Esteban ran after and overtook him. Accused Virgilio, Esteban, Valentino and Isidro and other persons encircled Aliguer, and thereafter ganged up and stabbed him. Aliguer fell to the ground, mortally wounded. The accused Caabays and their cohorts placed the cadavers of Paulino and Aliguer side by side. Shocked and petrified, Adelina could do nothing but bow her head in silent grief. She was afraid even to go to the place where her husband and son were. Alone in their house, Adelina was unable to sleep the entire night.

The following morning, Adelina proceeded to the place where her husband and son were hacked and stabbed. She found them sprawled in their farmland, side by side, already dead. She proceeded to the house of Barangay Captain Victory Sualog at Barangay San Vicente and reported the incident. She also informed the barangay captain that accused Virgilio and his sons Esteban, Valentino, Rodrigo and Isidro were the assailants. In the meantime, SPO3 Romeo Robles and SPO2 Jesus Gonong arrived and conducted an on-the-spot investigation.

The next day, Municipal Health Officer Dr. Hurley G. delos Reyes of San Jose, performed an autopsy on the cadavers of the victims and signed two autopsy reports. The doctor made the following findings on his examination of Paulino's body:

...

II POST MORTEM FINDINGS:

- Incised wound, 13 cms. x 7 cms., left scapular area incising the collar bone;
- Incised wound, (crosswise) at the ear, face and nose; 14 cms. x 2 cms.;

- Incised wound, 6 cms. x 1.2 cms. at the left parietal area;
- Incised wound, 8 cms. x 1.5 cms. at the left temporal area;
- Incised wound, 3 cms. x 1.4 cms. at the left frontal area;
- Incised wound, 5 cms. x 0.3 cm. at the chin;
- Stab wound, 3 cms. x 1 cm. at the right scapular area;
- Amputated, right hand;
- Incised wound, 4 cms. x 3 cms. at the left posterior area;
- Incised wound, 4 cms. x 3 cms. at the left anterior wrist;
- Incised wound, 13 cms. 4 cms. at the posterior neck;

I. CAUSE OF DEATH:

Cardio respiratory arrest, hemorrhage due to incised and stab wounds.[6]

On the other hand, the following were the doctor's findings upon examining Aliguer's body:

II. POST MORTEM FINDINGS:

- Incised wound, 12 cms. x 4 cms. maxillary area fracturing the teeth;
- Incised wound, 10 cms. x 5 cms. at the left of the face;
- Incised wound, 13 cms. x 3 cms., right posterior hand;
- Incised wound, pointer and middle fingers, right hand;
- Incised wound at the scrotum;
- Incised wound, 4 cms. x 1 cm. at the right forearm posterior;
- Incised wound, 3 cm. x 1 cm., left ear;

II. CAUSE OF DEATH:

Cardio respiratory arrest, hemorrhage due to incised wounds.[7]

Dr. delos Reyes signed the respective death certificates of Paulino and Aliguer.[8] Because the collar bone was broken, it appears that the incised wound on Paulino's left scapular area was the most serious.

On June 29, 1994, Adelina gave her sworn statement on the stabbing incident to SPO1 Romeo P. Narcise, wherein she identified Virgilio Caabay and his sons Esteban, Rodrigo, Valentino and Isidro as the assailants.[9]

The Evidence of the Accused[10]

The accused Virgilio Caabay admitted having hacked Paulino and Aliguer. He claimed, however, that he killed Aliguer to defend himself. He, also killed Paulino to defend his son, accused Esteban Caabay.

Virgilio testified that he was adept at defending himself, having studied martial arts. He was 54 years old at the time of the killings. On June 27, 1994 at 5:00 p.m., he was outside feeding their pigs, while his wife was cooking in the kitchen. His son Esteban was about 15 meters away, "transferring the cow to another place."

Virgilio saw Paulino within the boundary of his farmland, destroying his fence. Virgilio confronted Paulino and

told him to stop. Paulino retorted: "Bakit, ano?" Virgilio said: "Hindi ako lalaban." Aliguer, who was near the banana trees, about a meter away, was armed with a bolo. He suddenly tried to hack Virgilio from behind. The latter turned around and faced Aliguer who, thereupon struck Virgilio with the bolo, hitting the latter on the face and the left ear. Paulino likewise hacked Virgilio, but the latter was able to parry the thrust with his right hand. Virgilio's leg and right elbow were hit by Paulino's bladed weapon. Virgilio cried for help, calling his son Esteban who armed himself with a piece of wood and immediately rushed to his father. Aliguer then hacked Virgilio on the head twice, but Virgilio was able to wrest the bolo away from Aliguer. He then held Aliguer's hands and used him as a shield, to prevent Paulino from stabbing him. Virgilio pushed Aliguer forward. Aliguer fell to the ground. Virgilio then stabbed the fallen Aliguer several times, even as the latter tried to ward off the thrusts with his feet. Virgilio could no longer recall how many times he stabbed and hacked the victim.

In the meantime, Paulino squared off with Esteban. After hacking Aliguer, Virgilio then thrust the bolo at Paulino and hacked the latter several times. Paulino's right hand was severed; it fell to the ground, its fingers still clutching the bolo. Virgilio, his wife and Esteban then proceeded to Barangay Adela where they took a motor boat and proceeded to the Zapanta Maternity and General Hospital for the treatment of their wounds. He stayed in the hospital for one week, and had to return for further treatment. His wife destroyed the bolos.

For his part, accused Esteban testified that at 5:00 p.m. on June 23, 1994, he was grazing his cow in their farmland. He saw Paulino and Aliguer, each armed with a bolo, hacking his father. He heard his father shout to him for help. Esteban picked up a piece of wood, about a meter long, from the fence and rushed to defend his father who was then fending for himself against Aliguer's hacking blows. Esteban sustained wounds on his left and right arms, and the left side of his neck. Esteban called to his father for help. Virgilio had by then hacked Aliguer to death. He squared off with Paulino, whom he also struck down. Virgilio, his wife, and Esteban then fled from the scene, and proceeded to Barangay Adela, about one and a half kilometers from Sitio Lamis where they borrowed a banca owned by Iyok Awit. From there, they proceeded to the house of Councilor Danilo Malayas whose banca they borrowed for the trip to the Zapanta Maternity and General Hospital in San Jose. Once there, Dr. Senen Zapanta treated father and son for their wounds.

Virgilio and Esteban were treated for multiple lacerated wounds. Virgilio sustained the following wounds:

- Lac. Wd. Face Left about 7-8 inches up to the ear left.
- Lac. Wd. Temple Left 1 inch.
- Lac. Wd. Wrist Left, Posterior
- Lac. Wd. Shoulder Rt. Anterior
- Lac. Wd. Elbow Rt. Post
- Lac. Wd. Leg Middle 3[rd]. Rt. Ant.[11]

Esteban sustained the following injuries:

- Lac. Wd. Face Rt.
- Lac. Wd. Forearm Prox. 3[rd]. Postero-Lateral
- Lac. Wd. Forearm Distal 3[rd]. Antero-Lateral
- Lac. Wd. Forearm Middle 3[rd.] Ant.
- Lac. Wd. Hand, Palmar along the little finger

- Lac. Wd. Thigh, Distal 3[rd.] Anterior
- Lac. Wd. Leg, middle 3[rd]. Antero-Lat. Left
- Lac. Wd. Finger, Thumb, Ant.
- Lac. Wd. Forearm, distal 3[rd]. Post.
- Lac. Wd. Forearm, middle 3[rd]. Post.[12]

The wounds sustained by the two could have been caused by a sharp bolo; the wounds were serious and could have caused their deaths. Virgilio and Esteban were discharged from the hospital on July 12, 1994.

Renato Oquindo testified that he was a barangay kagawad and chairman of the barangay peace and order committee. At 8:00 a.m. on June 28, 1994, Adelina arrived in his house at Barangay San Agustin and told him that her husband and her son had been killed. He accompanied Adelina to the house of Barangay Captain Victory Sualog, who directed them to go to San Jose to report the incident to the police authorities. Later, Oquindo and Barangay Councilor Alberto Quindap proceeded to the scene of the killing and saw the cadavers of Paulino and Aliguer, about ten meters away, inside the Urbano farmland. Adelina told Oquindo that were it not for their white dog, she would not have discovered the bodies. However, Oquindo failed to inform the police authorities about what Adelina had told him.

Barangay Captain Victory Sualog testified that at 6:30 a.m. on June 28, 1994, Oquindo and Adelina arrived at his house and reported the stabbing and killing of Paulino and Aliguer. He was told that the incident stemmed from a boundary conflict between Virgilio and Paulino. Adelina requested him and the two barangay councilors to conduct an on-the-spot investigation. Sualog then ordered Oquindo and Quindap to proceed to the scene of the crime, while he proceeded to San Jose to report the incident to the police authorities and secure the services of a medico-legal officer.

The accused Isidro and Valentino denied any involvement in the killing of Paulino and Aliguer. They adduced evidence that they were employed by Danilo Malayas at Barangay Adela, Cambaruan, Rizal, about three kilometers from Sitio Lamis. They had been working in the twelve-hectare farmland as operators of hand tractors since June 10, 1994 or barely two weeks before the killing. During this time, they stayed in Danilo's house. They likewise averred that it would take three hours on foot to reach Sitio Lamis from the Malayas farm, but there was also a route via motor boat through the nearby Busuanga River.

In the afternoon of June 27, 1994, Isidro and Valentino were at work until 6:00 p.m. They left the fields with their employer. Rodrigo and Isidro were told that their father Virgilio and their brother Esteban had been hacked and were confined at the Zapanta Maternity and General Hospital in San Jose. With their co-worker Juanito Roldan, they rushed to the hospital on board the motor banca owned by Malayas. Valentino and Isidro slept in the hospital that night. The testimonies of Valentino and Isidro were corroborated by Juanito Roldan.

Danilo Malayas testified that Valentino and Isidro had been working in his farm since June 1, 1994. On June 27, 1994, he and his helpers, including Valentino and Isidro, were working at his farmland since 7:30 a.m. At 11:30 a.m., they left the farm and went to his house at the poblacion, which was about a kilometer away. They went back to the farm at 1:00 p.m. His brother Lucreo Malayas saw them as they worked. Danilo went back home at 4:00 p.m., leaving Valentino and Isidro. At around 6:00 p.m. to 7:00 p.m., Virgilio and Esteban arrived, wounded. They asked him to lend his motor boat, to ferry them to the Zapanta Maternity and General Hospital in San Jose. He agreed. Virgilio and Esteban were transported to San Jose on board his motor boat. When Esteban and Isidro arrived, he told them what happened. Danilo also testified that it would take one to negotiate the distance from his house to the place of the killing about forty to fifty minutes.

Lucreo Malayas corroborated Danilo's testimony. He testified that accused Valentino and Isidro were in the farm from 7:00 a.m. to 6:00 p.m. on June 27, 1994. The next day, June 28, 1994, he learned that Valentino and Isidro, as well as accused Virgilio, Esteban and Rodrigo, were suspects in the killing of Paulino and Aliguer. Lucreo Malayas corroborated the testimony of his brother Danilo.

During the preliminary investigation, the accused submitted their respective counter-affidavits.

On January 23, 1997, the trial court rendered judgment convicting the appellants with double murder, the decretal portion of which reads:

WHEREFORE, the Court finds that:

a) In Criminal Case No. R-3733;

Accused Virgilio Caabay, Esteban Caabay, Cool (Valentino) Caabay, and Boyet (Isidro) Caabay guilty as principals of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act No. 7659, otherwise referred to as the Death Penalty Law, and are hereby sentenced to DEATH.

All the accused are hereby ordered to jointly and severally indemnify the heirs of the late Aliguer Urbano in the amount of FIFTY THOUSAND PESOS (P50,000.00).

b) In Criminal Case No. R-3734;

Accused Virgilio Caabay, Esteban Caabay, Cool (Valentino) Caabay, and Boyet (Isidro) Caabay guilty as principals of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act Number 7659, otherwise known as the Death Penalty Law, and are hereby sentenced to DEATH.

All the accused are ordered to jointly and severally indemnify the heirs of the late Paulino Urbano in the amount of FIFTY THOUSAND PESOS (P50,000.00).

The accused who are all detained at the Provincial Jail at Magbay are ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City.[13]

The trial court ruled that treachery and abuse of superior strength were attendant in the commission of the crimes.

All the accused, now the appellants, assail the decision of the trial court, contending that:

The Court a quo erred:

- In relying heavily on the testimony of the lone alleged eye- witness of the prosecution whose testimony is tainted with bias and contradictions.
- In totally not giving credence and deliberately disregarding the testimonies of witnesses for the defense.
- In finding of material facts against the accused unsupported by evidence.
- In convicting all the accused for murder.[14]

The appellants aver that the trial court erred in giving credence and probative weight to Adelina's testimony. She failed to reveal the identity of the assailants to her daughter-in-law Arlene Urbano, to the policemen who conducted an on-the-spot investigation of the killings and to Barangay Captain Sualog. She did not tell them that she witnessed the killing. Appellants Valentino and Isidro could not possibly be involved because at the time, they were working in the Malayas farmland. Only the appellants Virgilio Caabay and Esteban Caabay were involved in the killing of the victims, as only they sustained injuries. The other appellants did not even sustain a scratch on

their bodies. The trial court also erred in not holding that appellants Virgilio Caabay and Esteban Caabay acted in self-defense when they killed the victims.

The Office of the Solicitor General, for its part, argues that Adelina positively identified the appellants as the assailants. That she failed to divulge their identities to her daughter-in-law Arlene, to the policemen who conducted the on-the-spot investigation and to Barangay Captain Sualog, did not impair her credibility and the probative weight of her testimony. The trial court did not err in giving credence and probative weight to Adelina's testimony which is even corroborated by the physical evidence on record.

The contentions of the appellants do not persuade. The legal aphorism is that the findings of the trial court, its assessment of the credibility of the witnesses and the probative weight thereof, and its conclusions based on the said findings are accorded by the appellate court conclusive effect unless the trial court ignored, misconstrued and misinterpreted facts and circumstances of substance which, if considered, would alter the outcome of the case.[15]

After a review of the evidence on record, we find no reason to deviate from the findings and conclusions of the trial court. Contrary to the appellants' assertions, Adelina did identify the appellants as the assailants and testified on their respective involvement in the killings. Her testimony on direct examination is as follows:

Q

You mentioned also about the accused as the one who killed your husband and son, will you kindly point to us accused Virgilio Caabay?

A

(The witness pointed to a person seated on the bench and when asked about his name, he answered that he is Virgilio Caabay)

Q How about Esteban Caabay, is he in court?

A Yes, sir.

Q Will you please point to him?

A (The accused voluntarily stood up when he heard his name).

Q How about Ludring Caabay, is he inside the court?

A He's not yet arrested, Sir.

Q How about Cool Caabay, is he inside the courtroom?

ATTY. VILLAMAR:

The accused voluntarily stood up when he heard his name.

Q How about Boyet Caabay, where is he?

A

(The witness pointed to a person wearing white T-shirt and when asked his name he answered that he is Isidro Caabay @ Boyet Caabay).

COURT:

There are five accused, only one at large.

FISCAL SALCEDO:

Yes, your Honor.

Q Now, will you kindly tell us Mrs. Urbano the relationship of the accused with each other?

A One family, Sir.

Q And who is the father among the accused?

A Virgilio Caabay is the father who is wearing wrist watch.

Q How about this Ludring Caabay, what is his relationship?

A He is also the son of Virgilio Caabay.

Q Do you want to tell us that Esteban, Ludring, Cool and Boyet are the children of Virgilio Caabay?

A Yes, sir.[16]

...

FISCAL OLARTE:

Q When you were going to your house, what happened, if any?

A

When I reached home, I met my son Aliguer and he told me that we have a visitor in our house and I told him to go ahead of me.

COURT:

Q What happened to your husband?

A

When my son went to approach my husband and when I turned my back, I saw my husband dead already. I saw also my husband being hacked, Your Honor.

Q Who hacked your husband?

A The Caabays, Your Honor.

Q Who among the Caabay because there are many Caabays?

A The Caabays hacked my husband, "sabay-sabay", Your Honor.

Q All of the Caabays were armed with bolos?

A Yes, Your Honor, they were all armed with long bolos.

Q And they hacked your husband to death?

A Yes, Your Honor, they hacked my husband on the neck and cut his right hand.

FISCAL OLARTE:

Q I noticed that there are only four (4) Caabays, now, where is the other one?

A He is hiding in Cambarwang [sic], in the house of Marcelo Candelario, Sir.

Q What is the name of that Caabay who is hiding in the house of Mario Candelario?

A Ludring Caabay, Sir. He was really the one who hacked my husband at the back.

Q While your husband was being hacked by the Caabays, as you said, what did your son Aliguer Urbano do?

A

When my son approached the body of my husband, he was chased by the two (2) accused, Berling Caabay and Esteban Caabay so, my son ran away.

Q What happened to your son when he was being chased by these persons?

A Eight (8) persons approached and they killed my son, Sir.

Q Who killed your son?

A All the Caabays, Sir.[17]

...

Q Now, when you met your son, your son proceeded to the place where your husband was?

A When I met my son, and when I turned back, I saw my son being hacked by the Caabays.

COURT:

All these accused Mrs. Witness?

A Yes, your Honor.

Q Including Ludring who is still at large?

A When my son ran away, many persons encircled and ran after him.

ATTY. VILLAMAR:

Your son went to that direction to help his father, is it not?

A My son proceeded to the place where my husband was to fetch him so that he could go home.

Q But according to you, when you turned your back, you saw your husband being hacked by the Caabays?

A

My son was still walking when I met him, and when I turned back, I saw my husband being hacked by the Caabays.

Q

And when you saw his father being hacked by the Caabays, your son proceeded to the place where his father was?

A Yes, Sir.

Q And your son was holding a bolo?

A Yes, sir.

Q When you left your husband in that place, he was with his bolo because he was then clearing your land?

A Yes, sir.

Q

You mentioned that there were 10 people who were involved in the killing of your son and husband, my question is: you do not know the others except the Caabays?

A I do not know them by their names but I looked only at the Caabays.

Q Because you're very familiar with the Caabays?

A Yes, sir.

Q And in fact, you have land boundary dispute?

A Yes, Sir.

Q Now, because of what you witnessed when you turned your head, you were shocked, is it not?

A Yes, Sir, I just looked at them, and I know them, I just stood up and bowed my head.

Q And you never run towards your husband to plea for his life?

A No, sir, because they were armed.

Q

But before that incident, you're in talking terms with the Caabays because in your testimony your husband and Ludring Caabay even talked with each other?

A Yes, sir, in fact we gave them fish when my husband caught fish.

Q How long did you stay there standing and in shocked [sic]?

A After my husband was killed, they left, so I also went home.

Q And you stayed in your house?

A Yes, sir.[18]

On cross examination, Adelina testified as follows:

ATTY. VILLAMAR:

On that morning of the following day, you never went to the place where you saw your husband and your son dead?

A Before I went to the Barangay Captain, I went first to the place where my husband and son were killed.

Q

And you saw the dead bodies of your husband and son Aliguer the following morning before you went to the house of the Barangay Captain?

A Yes Sir, they were beside with [sic] each other.

Q

Do you want to tell us that the dead bodies of your husband and your son the following morning before you went to the Barangay Captain were lying side by side already?

A Yes Sir, they were lying side by side.

COURT:

Who moved the bodies?

A

The Caabays your Honor, who laid the bodies side by side.[19]

On June 29, 1994, or barely two days after the gory killing, Adelina gave her sworn statement to SPO1 Romeo P. Narcise, where she identified the appellants as the assailants:

- T - Sino o sino-sino naman ang pumatay sa iyong asawa at anak, kung kilala mo?

S - Sina VIRGILIO CAABAY, ESTEBAN CAABAY, LUDRING CAABAY, COOL CAABAY at BOYET CAABAY.

- T - Ano naman ang ginamit ng mga taong iyong binanggit sa pagpatay sa iyong asawa at anak?

S - Ang mag-aama pong ito na pumatay sa aking asawa at anak na ang kanilang ginamit ay tig-iisa sila ng gulok.

- T - Kailan at saan naman nangyari ito?

S - Noon pong petsa 27 ng Hunyo, 1994 humigit kumulang sa alas 5:30 ng hapon sa aming bukid sa So. Lamis, Brgy. San Agustin, bayang ito.[20]

The fact that Adelina is Paulino's widow and Aliguer's mother adds more credence to her testimony. It is in her natural interest to secure the conviction of the killers of her loved ones. Thus, this deters her from implicating persons other than the real culprits, for otherwise, the latter would thereby gain immunity.[21]

In *People v. Porras*,[22] we held that experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with a high degree of reliability the identities of criminals, and the time and manner they committed the crimes.

In *People v. Baquiran*,[23] we ruled that the natural reaction of one who witnesses a crime and recognizes the offender is to reveal it to the authorities at the earliest opportunity so that the culprits will be apprehended without loss of time and prosecuted and convicted in due course of proceedings. In this case, Adelina informed Barangay Captain Victory Sualog that the appellants were the assailants of her husband and son:

Q Now, the following morning, you proceeded to where?.

A I went to Barangay Captain Victory Sualog.

Q And you narrated what you saw to the barangay captain?

A

I told the barangay captain that my husband and son Aliguer were dead lying down, and they were killed by the Caabays.[24]

There is no standard behavior for a person confronted with a shocking incident, especially if the victim is a close kin. One may immediately report the incident to the proper authorities and may opt to come forward to reveal the identities of the perpetrators.[25] Others may simply opt to prioritize his reaction to a gory incident. One may bring the victim to the hospital to save his life, and defer in the meantime the reporting of the incident to the

police authorities and the revelation of the identities of the perpetrators. Others may report the crime to the police authorities after some time for investigation.[26]

In this case, Adelina was the simple unlettered wife of a farmer. She had just witnessed the gory debutchery of her husband and son. She was deluged with mixed feelings of fear, grief and helplessness. Ranged against the appellants who were each armed with bolos, she had nobody to lean on for help. She opted to report the incident to the barangay captain who would then be obligated to report the same to the police authorities. The police investigators must have noticed how distraught Adelina was that they did not immediately subject her to questioning at the time. This can be gleaned from Adelina's testimony:

Q The police went to Sitio Lamis?

A

Yes, your honor.

Q What time did they arrive there?

A Around 11:00 o'clock in the morning, your Honor.

Q Were you investigated by the police?

A

They did not investigate me because my mind was not yet ready for the investigation.[27]

Adelina was so overcome with grief when she saw the motionless bodies of her husband and son, that Barangay Captain Victor Sualog and the barangay councilors present had to pull her away:

ATTY. VILLAMAR:

Who were the persons that you were able to talk on that day June 28, 1994?

A

The barangay captain and councilors were the one [sic] who pulled me away from the body of my son and husband.[28]

There was no need to inform Arlene that her husband had been killed, because, as Adelina testified, Arlene herself saw the incident from her house:

ATTY. VILLAMAR:

How far is the house of Aliguer from your house?

A Near Sir, fifteen meters away.

Q And the wife of Aliguer is living in their house?

A Yes, Sir.

Q And on that afternoon, you know for a fact that the wife of Aliguer was in their house?

A Yes, sir.

Q And yet, you did not go to their house to tell that her husband, your son, was already dead?

A She saw also because she looked outside the window and saw Caabay hacked her husband.

Q

And you know for a fact also that the wife of Aliguer did not go to any authority to report the incident on that afternoon?

A

She did not go outside the house because her son was sick and had measles.[29]

We do not believe Renato Oquindo's testimony that Adelina told him that she would not have known about the killing of her husband and son were it not for their white dog. There is no evidence on record that the Urbanos owned a dog. Furthermore, Oquindo never breathed a word about this to the police authorities. It was only when he testified that he revealed the matter for the first time.

The alibi and the denials of the appellants Isidro and Valentino Caabay, being the weakest of all defenses, will not prevail over the positive and straightforward identification made by Adelina, pointing to the appellants as two of the assailants of her husband and son.[30] Such defenses are easy to concoct and difficult to disprove.[31] To merit approbation, the appellants were burdened to prove their alibi at the trial with clear and convincing evidence; that they were in such a place other than the situs criminis, such that it was physically impossible for them to have committed the crimes.

In this case, the evidence of the appellants in support of their alibi is weak. Even assuming that indeed as of June 27, 1994, the appellants were employed by Danilo Malayas in his farmland and were staying thereat, it was not physically impossible for them to have been at the scene of the crime at the time of its commission. Danilo Malayas, the appellants' employer, testified that one would take only one and a half hours to travel from his farmland to Sitio Lamis, where the assailants killed the victims:

...

Q

And from the river if you would use the paddled banca directly going to Sitio Lamis it would take you about fifteen minutes also?

ATTY. VILLAMAR:

No. You can not reach Sitio Lamis by banca.

COURT:

From the river bank going to Sitio Lamis, how long will it take you to the other side?

A

Because when we came from the farm going to Sitio Lamis you will passed [sic] by Adela so that you can ride in a banca, Your Honor.

COURT:

Q How long will it take you from the farm to Adela by walking?

A One (1) hour, Your Honor.

COURT:

And the banca, that will take you ten to fifteen minutes?

A Twenty minutes, Your Honor.

When you reached the other side, how long will it take you walking?

A After crossing the river you will walk around ten minutes, Your Honor.

COURT:

So, more or less one hour and thirty minutes. Proceed, Fiscal.[32]

He also testified that one coming from his house going to the place of the hacking incident, would negotiate the distance in only forty to fifty minutes:

COURT:

Q How far is that place of hacking incident to your house?

A 1.5 kilometers, Your Honor.

Q How far is that place of the hacking to your farm?

A 2.5 kilometers, Your Honor.

Q If you will go to the place of the incident by walking or hiking how many hours will it reach [sic] you?

A 1-1/2 hours, Your Honor.

Q From your house to the place of the hacking incident how long will it take you to negotiate the distance?

A 40 to 50 minutes, Your Honor.

COURT:

Alright, proceed.[33]

Considering the short distance between the situs criminis and the Malaya farm where the appellants claim they were, it was not physically impossible for appellants Valentino and Isidro Caabay to have left the Malaya farmland at 4:00 p.m., arrive at their house at about 5:30 p.m. and thereafter hack the two victims to death.

Self-defense as interposed by the appellants Virgilio and Esteban is untenable. For one thing, appellant Esteban's theory is antithetical to his and appellant Virgilio's testimonies that when appellant Esteban rushed to the aid of his father, he was armed merely with a piece of wood, and upon hearing his son, appellant Esteban, pleading for succor, appellant Virgilio faced Paulino and hacked the latter to death with the bolo which he earlier managed to grab from Aliguer. Paulino and Aliguer died of incised and stab wounds, and not of injuries caused by a piece of wood. Furthermore, whether the accused acted in self-defense or in defense of a relative is a question of fact to be determined by the trial court based on the evidence on record.[34]

The trial court must consider by a balance of probabilities who of the participants in a fight had in the natural order of things, the reason to commence the unlawful aggression.[35]

Case law has it that like alibi, self-defense or defense of relatives are inherently weak defenses which, as experience has shown, can easily be fabricated.[36] If the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the accused defending himself.[37] Defense of a relative requires

the following essential elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression of the victim; and (c) in case of provocation given by the person being attacked, the one evading the attack, defense had no part therein.[38] For the accused to be entitled to exoneration based on self-defense or defense of relatives, complete or incomplete, it is essential that there be unlawful aggression on the part of the victim, for if there is no unlawful aggression, there would be nothing to prevent or repel.[39] For unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[40]

The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, the same could no longer be disbelieved after the accused has admitted the killing.[41] Self-defense and/or defense of relatives cannot prosper if not corroborated by independent and competent evidence.[42]

In this case, the appellants aver that the trial court erred in not exonerating them on their plea of self-defense, taking into account the following:

- The victims are admitted to be both armed with bolos.
- The accused Virgilio Caabay and Esteban Caabay suffered several serious injuries that will negate the presumption adopted by the Lower Court that they were the aggressors qualified by Treachery and aggravated by the presence of evidence premeditation and abused of superior strength.
- That the testimonies of the accused Virgilio Caabay and Esteban Caabay jibed with the corresponding injuries. For instance Esteban Caabay said that he was just armed with a piece of wood and that he only parried the hacking blows of the victim Aliguer Urbano by his hands. True enough, most of his injuries, were on his hands. As to Virgilio Caabay, he said that he was hacked by the victim Paulino Urbano on his face. This allegation is backed by a serious hack wound on his face. The only reason why he survived the attack [sic] of Paulino Urbano is because he knows something about martial arts.[43]

But the trial court ruled that the appellants failed to prove with clear and convincing evidence their plea of self-defense or defense of a relative.

We agree with the trial court.

First. The trial court gave credence and probative weight to the testimony of Adelina, fortified as it is with the physical evidence on record. She testified that the appellants hacked the victim Paulino on the neck and cut off his arm. The autopsy report of Dr. Hurley delos Reyes shows that the victim sustained an incised wound on the neck and his right hand was amputated.[44]

Second. Appellant Virgilio testified that he was not armed, while appellant Esteban was armed with a piece of wood. However, Paulino sustained ten incised wounds and one stab wound on the scapular area, ear, face and nose, parietal area, left temporal area, left frontal area, chin, right scapular area and posterior neck. Aliguer sustained seven incised wounds on the maxillary area, fracturing his teeth on the left side of the face; he also sustained wounds on the scrotum and on the left ear.[45] Considering the nature, location and number of the wounds sustained by the victims, the appellants' plea of self defense and defense of a relative will not hold.[46]

Third. Appellant Virgilio failed to prove when and how he learned martial arts. His barefaced testimony that he knew something about martial arts is self-serving and barren of probative weight.

Fourth. The appellants should have surrendered the bolos and the piece of wood to the police authorities. They should have reported that appellants Esteban and Virgilio were at the Zapanta Maternity and General Hospital for the treatment of wounds sustained while defending themselves from the victims. The appellants did not. Appellant

Virgilio testified that his wife destroyed the bolos, thus:

Q Those bolo [sic] that you retrieve [sic] from Aliguer did you surrender it?

A No, sir, I was in the hospital.

Q How about the bolo used by Paulino Urbano, was there anybody who get [sic] that?

A It was in our house but my wife throw [sic] it away, sir.

Q Likewise the bolo that you retrieve [sic] from Aliguer Urbano was thrown away?

A Yes, sir.[47]

Appellant Virgilio, however, failed to present his wife to explain when and why she destroyed the bolos used by the victims.

Fifth. Appellant Virgilio testified that he managed to grab Aliguer's bolo, then pushed the latter, held his right hand, and used him as a shield. He then stabbed Aliguer several times even as the victim had already fallen to the ground. Appellant Virgilio could no longer remember how many times he had stabbed the victim because his vision had blurred:

Q

And according to you when Aliguer Urbano was about to strike you parried his blow and by using judo, you were able to wrest the bolo from him?

A I was able to get the bolo from him, sir.

Q Because you used judo?

A Yes, sir.

Q

You demonstrated in Court [sic] Aliguer Urbano immediately fell on the ground when you twisted his arm and finally wrest the bolo, is it not?

ATTY. VILLAMAR:

The question is misleading, Your Honor.

FISCAL SALCEDO:

Why misleading?

ATTY. VILLAMAR:

When they wrestle[d] with the bolo away from Aliguer, Aliguer fell. There is no showing that he immediately fell.

FISCAL SALCEDO:

When you wrestled with Aliguer wrestling the bolo from him, did he fell on the ground?

A No, sir.

Q What was the relative position of Aliguer Urbano after you wrest the bolo from him?

A He was standing, sir.

Q Facing you?

A Yes, sir.

Q Right then and there you delivered hacked wounds on his face?

A Yes, sir, when I got hold of that bolo, I hacked him.

Q The same bolo that you get [sic] from him?

A Yes, sir.

Q

You hit him?

A Yes, sir.

Q On what part of his body?

A I hit him in his arm, sir.

Q How many times did you hit him?

A That is what I do not know, sir.

Q Now, this Aliguer Urbano was already defenseless at the time you wrested the bolo from him?

A

Yes, sir.

Q In fact, since you have already wrested the bolo you should stop hitting him if you wanted so, is it not?

A Because my sight at that time was already blurred, sir.

Q How long did you face Aliguer Urbano after you wrested the bolo from him?

A "Saglit lang po," sir.[48]

...

Q So thereafter you let loose his son is that what you want to tell us?

A I pushed him away, sir.

Q You pushed him towards Paulino Urbano?

A I pushed him and after that I hacked him, sir.

Q And Paulino Urbano did not do anything at the time you were successively hacking Aliguer Urbano?

A None, sir.

Q He remain [sic] standing while you were continuously hacking his son Aliguer Urbano?

ATTY. VILLAMAR:

We will object to the word `continuously', Your Honor.

FISCAL SALCEDO:

Okay, he remain [sic] standing while you were hacking his son Aliguer Urbano?

A He was already facing Steven, sir.

Q And according to you when Aliguer Urbano fell, you also stabbed him with a bolo you used in hacking him?

A Yes, sir.

Q Why? Was the bolo you used a pointed one?

A Yes, sir.[49]

In *People v. Decena*,^[50] we ruled that where the inept unlawful aggression of the victim had already ceased, the accused had no more right to kill the victim. In this case, there is no evidence that Aliguer attacked appellant Virgilio when the latter felled him.

Sixth. The bare fact that the appellants sustained injuries does not prove that they acted in self-defense or in defense of a relative.^[51]

The Crimes Committed by the Appellants

The trial court correctly ruled that the appellants are guilty of two counts of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by abuse of superior strength. However, the trial court erred in appreciating treachery in both cases as an aggravating circumstance against the appellants.

First. Adelina did not see how the assault started; hence, she could not testify whether the appellants deliberately adopted a sudden and unexpected method of attack which deprived the victims of an opportunity to defend themselves.^[52]

Second. Even if proved, treachery was not alleged in the information as mandated by Section 9, Rule 110 of the Revised Rules of Criminal Procedure. Although the crime took place before the effectivity of the said rule, the same should be applied retroactively because it is more favorable to the appellants.^[53] On the other hand, the aggravating circumstance of abuse of superior strength was attendant because the appellants took advantage of their numerical superiority and their bladed weapons in killing the victims.^[54]

Proper Penalties for the Felonies

The trial court erred in sentencing the appellants to death for each of the crimes. The penalty for murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 is reclusion perpetua to death. There being no modifying circumstance attendant in the commission of the crimes, aside from the qualifying circumstance of abuse of superior strength, the appellants should be sentenced to suffer reclusion perpetua for each crime, conformably to Article 63 of the Revised Penal Code.

Civil Liabilities of the Appellants

The trial court ordered the appellants to pay, jointly and severally, the heirs of the victims Paulino Urbano and Aliguer Urbano in the amount of P50,000 for each crime as civil indemnity. However, the trial court failed to award to the heirs of the said victims in the amount of P50,000. The decision of the trial court should, thus, be modified.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, is **AFFIRMED** with **MODIFICATIONS**. Appellants Virgilio Caabay, Esteban Caabay, Valentino Caabay and Isidro Caabay are found guilty beyond reasonable doubt of murder in Criminal Cases Nos. R-3733 and R-3734. The said appellants are sentenced to reclusion perpetua for each crime; and are directed to pay, jointly and severally, the heirs of Paulino Urbano P50,000 as civil indemnity and P50,000 as moral damages;

and to the heirs of Aliguer Urbano the amount of P50,000 as civil indemnity and P50,000 as moral damages. Costs against the appellants.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Penned by Executive Judge Ernesto P. Pagayatan.

[2] Records, Vol. I, p. 1 (Criminal Case No. 3733).

[3] Records, Vol. II, p. 1 (Criminal Case No. 3734).

[4] The prosecution presented two witnesses, namely, Adelina Awit Urbano and Dr. Hurley delos Reyes.

[5] Also spelled as Aleger Urbano.

[6] Exhibits "A" to "A-1," Records, Vol. I, p. 53.

[7] Exhibits "B" and "B-1," Id. at 54.

[8] Exhibits "C" and "E," Id. at 55, 58.

[9] Exhibit "D," Id. at 56.

[10] The defense presented nine witnesses, namely, Valentino (Cool) Caabay, Danilo Malayas, Lucreo Malayas, Virgilio Caabay, Juanito Roldan, Renato Oquindo, Barangay Captain Victory Sualog, Dr. Senen Zapanta and Esteban Caabay.

[11] Exhibits "3-a" to "3-c," Records, Vol. I, p. 275.

[12] Exhibits "4-a" to "4-c," Id. at 277.

[13] Records, Vol. I, p. 306.

[14] Rollo, p. 74.

[15] *People v. Dumayan*, 358 SCRA 26 (2001).

[16] TSN, 1 February 1995, pp. 3-4 (Urbano).

[17] TSN, 13 December 1994, pp. 5-6 (Urbano).

[18] TSN, 1 February 1995, pp. 8-10 (Urbano).

[19] Id. at 12.

[20] Exhibit "B," Records, p. 56.

[21] *People v. Abria*, 300 SCRA 556 (1998).

[22] 361 SCRA 246 (2001).

[23] 20 SCRA 451 (1967).

[24]

[25] *People v. Taclan*, 308 SCRA 368 (1999).

[26] *People v. Milan*, 311 SCRA 461 (1999).

[27] TSN, 1 February 1995, p. 13 (Urbano).

[28] *Id.* at 17.

[29] *Id.* at 11.

[30] *People v. Fernandez*, 375 SCRA 476 (2002).

[31] *People v. Abejuela*, 275 SCRA 236 (2002).

[32] TSN, 11 July 1995, p. 4 (Malayas).

[33] TSN, 10 July 1995, p. 8 (Danilo Malayas).

[34] *Joboco v. Court of Appeals*, 270 SCRA 270 (1997).

[35] *People v. Decena*, 235 SCRA 67 (1997).

[36] *People v. Noay*, 296 SCRA 292 (1998).

[37] *People v. Piamonte*, 303 SCRA 577 (1999).

[38] *People v. Santos*, 255 SCRA 309 (1996); *People v. Agapinay*, 186 SCRA 813 (1990).

[39] *People v. Santos*, *supra*; *Joboco v. Court of Appeals*, 270 SCRA 270 (1997).

[40] *People vs. Sarabia*, 317 SCRA 684 (1999).

[41] *People v. Caras*, 234 SCRA 199 (1994); *People v. Peña*, 291 SCRA 606 (1998).

[42] *Ibid.*

[43] *Rollo*, p.100.

[44] Exhibit "A," Records, p. 53.

[45] Exhibit "B," *Id.* at 54.

[46] *People v. Ubaldo*, 367 SCRA 432 (2001).

[47] TSN, 10 June 1996, p. 29 (Virgilio Caabay).

[48] *Id.* at 21-22.

[49] *Id.* at 25.

[50] See note 35.

[51] *People v. Tumaob, Jr.*, 291 SCRA 133 (1998).

[52] People v. Bantiling, 369 SCRA 47 (2001).

[53] People v. Gallego, 338 SCRA 21 (2000)

[54] People v. Pajatol, 368 SCRA 674 (2001).

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