

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO QUIBAN, DEFENDANT-APPELLANT.***G.R. Nos. 57809-10. August 28, 1984*

Ponente: RELOVA, J.

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On November 21, 1980, the then Circuit Criminal Court of Cebu City rendered a decision convicting the accused Carlito Quiban (1) in Criminal Case No. 2082, for murder, and sentencing him to the penalty of reclusion perpetua, with the accessory penalties of the law, and to indemnify the heirs of the deceased Francisco Tolibas in the sum of P12,000.00 and to pay the costs; and (2) in Criminal Case No. 2092, for frustrated murder, and sentencing him to the penalty of, from eight (8) years of prision mayor to twelve (12) years and one (1) day of reclusion temporal, with the accessory penalties of the law, "to indemnify the heirs of (sic) Filemon Ramada the sum of P3,000.00 and to pay the costs." (p. 21, Rollo)

From the foregoing judgment, Carlito Quiban appealed to this Court, alleging that the trial court erred (1) in finding that the accused was the aggressor; (2) in finding that it was the accused who apparently had an ax to grind against Romeo Velarde and the group of the latter; (3) in finding that there was treachery when he killed Francisco Tolibas and wounded Filemon Ramada; and (4) in not acquitting him.

Prosecution evidence shows that about seven o'clock in the evening of December 31, 1979 appellant Carlito Quiban and his companions disembarked from the fishing boat M/V Alferogmil and proceeded to Mandaue City. While thus walking, they passed by a drinking joint and Romeo Velarde who was then drinking there with the other crew members called him. Romeo Velarde, Francisco Tolibas and Felimon Ramada wanted to borrow money from him but appellant refused because the money he had at the time was intended for the repair of his teeth. However, he offered to pay for the drinks the group had taken. This gesture on his part made the group happy and the drinking which appellant joined in lasted up to 12:00 midnight. When appellant asked for the bill, he was surprised to find that the total cost was P50.00 which is about the same amount the group intended to borrow from him.

Velarde's group left for the fishing boat ahead of appellant who waited for a friend who went around Mandaue City. When Quiban returned to the boat, he saw Romeo Velarde and Francisco Tolibas at the prow. Appellant went to his cabin and changed trousers. Soon thereafter, appellant went out and, without any provocation, immediately rushed at Velarde with a knife. The latter tried to avoid the attack by jumping overboard. Quiban's attention was diverted to Tolibas who was at a striking distance. Tolibas tried to run but he stumbled on a barrel and this enabled the appellant to stab him. Thereafter, appellant left, looking for other would be victims. Failing to find one, he returned to where he had left Francisco Tolibas who, at the time was already helpless. He then held the deceased and stabbed him several times. (p. 4, tsn., Sept. 4, 1980 hearing).

Felimon Ramada at the time was already sleeping on the upper deck when he was awakened by his brother to tell him of what had just happened. Without losing time, Ramada jumped into the water hoping to reach the shore

safely. However, appellant went after him and the chase started from the fishing boat towards the seashore and then back again to the fishing boat.

Appellant was able to stab Ramada but the intention to assault him further was aborted when Ramada's brother and one Delmar Magallano pulled him out of the water to avoid further harm. Appellant then swam towards the wharf and hid himself but in no time his arrest was effected by the police.

The defense, on the other hand, stressed the fact that when appellant arrived at the boat, Romeo Velarde and Francisco Tolibas were each armed with an ax and a knife. Velarde was drunk and he suddenly rushed at appellant hitting the latter with an ax on his left eyebrow. The wound was not fatal because Quiban was able to parry the blow. Francisco Tolibas followed by stabbing appellant who, however, was able to hold Tolibas' hand after which he was able to wrest the weapon. Notwithstanding, Tolibas was able to get a spear and he thrust it at Quiban who was hit on the left shoulder. Appellant was able to hold the spear but Tolibas succeeded in pulling it away. Thereafter, appellant stabbed Tolibas with a weapon which he took away from the latter.

After stabbing Tolibas and realizing that he was alone against many, appellant jumped into the water. Felimon Ramada jumped after him. He chose to stand his ground and face Tolibas. Tolibas delivered the first blow which appellant was able to parry and then stabbed Tolibas to defend himself. Thereafter, he surrendered to the police who brought him to the hospital for treatment of his wounds.

From the evidence of the prosecution and the defense, the trial court made the following observations:

"x x x We find that it was the accused Carlito Quiban who apparently had an ax to grind against Romeo Velarde and the group of the latter, the group of Romeo Velarde having tried to mulct him for money. Indeed, while he agreed to pay for the intoxicating drinks that the group had drunk, he failed to realize that the group had already drunk plenty of intoxicating drinks, the cost thereof having amounted to P50.00. Surely, he felt deceived by the circumstance. Had he agreed to lend P20.00 each to Romeo Velarde, Francisco Tolibas and Filemon Ramada, or P60.00 all in all, he would not have lost this amount because he had hopes of yet being repaid by them. They needed it only as a loan. It turned out that he actually paid P50.00 for their drinks, nearly equalling the amount the group intended to borrow from him and the payment of P50.00 was made without the accused having any hope of being paid for it. The great possibility is therefore that it was the accused who was the aggressor and that it was he who initiated the attack against Romeo Velarde, the leader of the group who insisted on borrowing money from him. The accused was the party aggrieved. In a physical encounter, it is easy to see who is the aggressor. He who feels offended and aggrieved by an act of the other is presumed in the ordinary course of human behavior as the one who struck the first blow. (People vs. Jose Laurel, 22 Phil. 252).

"Truth to tell, had Romeo Velarde truly waylaid the accused with an ax, and with Francisco Tolibas armed with a hunting knife hitting him, the accused supposedly taken by surprise as he manifested before the court, he would not have lived to tell the tale. He would have been killed outright, inasmuch as he could not have been put on guard. There is reason to believe therefore the allegation of the prosecution witnesses to the effect that it was the accused who was the aggressor and that Romeo Velarde in order to repel that aggression had to arm himself with an ax. As We have said earlier, Romeo Velarde did not use his ax. He threw it away and jumped into the sea after making sure that he could escape from the aggression of Carlito Quiban without fighting for his life. If Romeo Velarde were indeed the aggressor, he would not have thrown the ax away. He would not have just jumped off the boat. He would have struck the accused with the ax upon observing that the accused was rendered off balance.

"It taxes our sensibilities to see foisted before Us the allegation that the accused when attacked by Francisco Tolibas with a knife relieved the deceased Francisco Tolibas of his weapon in the manner of a judo or karate expert, which he was not. That the accused was not wounded in the process and instead was able to use the knife against his attacker is unbelievable. Granting that his allegations were true, the accused would have

stopped harming the deceased after the first fatal blow. But, the physical evidence revolt against this proposition because it has been shown that the deceased Francisco Tolibas had in fact suffered four fatal stab wounds. One wound - and one alone - would have been sufficient to immobilize and render harmless the deceased. That the accused wounded the deceased four times on vital parts of the deceased's body only served to indicate aggression on the part of the accused and intent to make sure that he killed the offended party. The fact is that the first blow inflicted by the accused on Francisco Tolibas had been effected on the abdomen and this had already sent Francisco Tolibas staggering towards the railing, the latter holding his mid-section with both his hands. He could not have offered any resistance to further attack but, as though berserk, the accused ran from place to place on board the boat in search for other victims and finding none other, he went back to Francisco Tolibas and killed him by stabbing him not only once but three more times.

"These and other meritorious circumstances appear on the record to have made the claim of self-defense unworthy of credence. To cap it all, there is the failure of the defense to present as evidence the ax which Romeo Velarde had allegedly wielded at the accused. The accused should have presented it before the court, if only to give credence to his testimony.

"When the accused Carlito Quiban was apprehended by the police as he swam back to the shore, he simply admitted the killing of Francisco Tolibas and the wounding of Filemon Ramada but he made no mention of the fact that he committed the aforesaid acts by reason of self-defense. This militates strongly against the defense of self-defense now interposed by him because it is clear that such a defense has been interposed as an afterthought." (pp. 10-12, Decision)

We find no reason to disturb the findings of the trial court considering that appellant in his testimony of October 9, 1980 admitted that when he arrived at the boat and went to his cabin, Romeo Velarde and Francisco Tolibas were not armed. Hereunder is his testimony on this point:

"COURT (to witness)

Q Why don't you answer frankly. You get around the bush! So you are certain that when you first passed by them in going inside your cabin to undress you did not see that they were already armed with weapons?

A I did not see any weapon yet. Yes, sir." (p. 7, tsn., October 9, 1980)

Indeed, if the victims were really armed and had intention to assault him, they could have immediately attacked the defenseless appellant with their weapons. Thus, it is logical to conclude that it was the appellant who was the aggressor in this case. It was he who had an ax to grind against Romeo Velarde and his group when the latter tried to mulct him for money. While it is true that he agreed to pay for the drinks of the group, he did not realize that the latter had already drunk plenty, the cost of which amounted to P50.00. Surely, he felt aggrieved by the circumstances. On the other hand, Francisco Tolibas and Filemon Ramada had no reason to assault appellant Quiban. In fact, they were the guests of appellant in that drinking spree few hours before.

To prove self-defense, appellant must show with clear and convincing evidence (1) that he is not the unlawful aggressor; (2) that there was lack of sufficient provocation on his part; and (3) that he employed reasonable means to prevent or repel the aggression. Appellant failed to establish by clear, satisfactory and convincing evidence the justifying circumstance of self-defense. In the first place, there can be no self-defense until there has been unlawful aggression on the part of the deceased, and if there is no unlawful aggression, there is nothing to prevent or to repel. The second requisite of self-defense will have no basis.

Besides, the theory of self-defense is belied by the nature and number of wounds found in the body of the deceased Francisco Tolibas. The autopsy findings of Dr. Alan Simporios on the deceased Tolibas show:

"Autopsy Findings:

Multiple penetrating stab wounds:

1. 7th intercostal space, right 3 cm. with hemothorax, 2.5 liters, lacerating right diaphragm, right lobe of the liver;
2. 3rd intercostal space left paras-ternal area 2 cm. with hemothorax 2 liters;
3. left lateral chest wall, 1 cm. at level of 6th intercostal space;
4. left 8th intercostal space, with omental herniation perforating transverse colon and intraabdominal hemorrhage.

CAUSE OF DEATH: CAPDIORESPIRATORY ARREST SECONDARY TO HYPOVOLEMIC SHOCK DUE TO MULTIPLE PENETRATING STAB WOUNDS." (pp. 5-6, Decision)

and the injuries suffered by Filemon Ramada -

"Penetrating stab wound right anterior chest wall 1.5 cm. at 4th inter costal space with pneumohemothorax right multiple abrasions left anterior chest wall; ulna 3rd left arm; lower 3rd left thing." (p. 6, Decision)

We agree with the trial court that the crime committed against deceased Francisco Tolibas is murder. Treachery has been alleged in the information as a qualifying circumstance and was proven during the trial by prosecution eyewitness, Nicolas Anduyan, who categorically stated that after appellant had attacked the deceased, he left him, looking for others, and finding no one, he returned and killed the fleeing and defenseless victim. In *U.S. vs. Baluyot*, 40 Phil. 385, We held that even though in the inception of the aggression treachery was not present, "if there was break in the continuity of the aggression and at the time the fatal wound was inflicted on the deceased he was defenseless, the circumstance of treachery must be taken into account." And, in several other cases, We ruled that there is treachery where the victim was stabbed in a defenseless situation. In Criminal Case No. 2082, treachery was not present at the first attack since the deceased at the time had a chance to defend himself and/or the opportunity to prevent the assault, and/or escape therefrom; however, at the subsequent attack this qualifying circumstance was attendant because the deceased was already helpless.

However, We agree with appellant that in Criminal Case No. 2092, the lower court erred in finding that there was treachery when he wounded Filemon Ramada. This victim had testified that there was trouble on board the boat and in fact he had heard appellant saying: "Whoever the person I will see from here on had better beware, because I will kill him (p. 4, tsn., Sept. 5, 1980 hearing)." This circumstance must have put him on guard. In *People vs. Doniego*, 9 SCRA 541, We held that "treachery is not present where the assault on one of the victims must have put others on guard."

Thus, herein appellant Carlito Quiban is guilty of murder in Criminal Case No. 2082 and of frustrated homicide only in Criminal Case No. 2092.

WHEREFORE, in Criminal Case No. 2082, the judgment of the lower court convicting appellant Carlito Quiban of the crime of murder and sentencing him to Reclusion Perpetua is hereby **AFFIRMED**, with the modification that the indemnity to the heirs of the deceased Francisco Tolibas is increased to P30,000.00.

In Criminal Case No. 2092, appellant Carlito Quiban is found guilty of the crime of frustrated homicide and is hereby sentenced to an indeterminate penalty of **TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY** of prision correccional, as minimum, to **EIGHT (8) YEARS and ONE (1) DAY** of prision mayor, as maximum, and to indemnify Filemon Ramada in the sum of P3,000.00.

With costs.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

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