

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER LLABRES Y ADVINCULA, ACCUSED-APPELLANT.

G.R. Nos. 74294-96. August 04, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant was charged in separate informations with murder, frustrated homicide and attempted homicide.[1] He invoked self-defense. The Regional Trial Court of Quezon City did not believe him and convicted him on all counts. We shall affirm.

A plea of self-defense transfers the burden of proof to the accused.[2] Having admitted the offense imputed to him, he must show that his acts were justified under the law. The appellant in the case at bar failed to do this.

The prosecution showed that at about eleven o'clock in the morning of August 23, 1984, a group consisting of Roland Yap, Enrique Paras, Santos Origenes, Victor Lim, Generoso Tumulac, Jr., and Dominador Sobroso went to the Egg and Eye Restaurant in Quezon City. Roger A. Llabres, who was working there as a security guard, did not allow them to enter because the restaurant was already closed. Yap asked Llabres to let them in anyway as he was a regular customer. Llabres refused. A heated argument followed, leading to a near-fist fight which was defused when Paras intervened. He persuaded Yap to just leave with them. The group then proceeded to the waiting shed about 10 meters away to wait for a taxi. Llabres entered the restaurant.[3]

After about five minutes, the group heard somebody behind them shout, "Putang ina ninyo!" Without looking back, Yap retorted, "Putang ina n'yo rin!" Suddenly, Llabres attacked Yap with a bolo. Yap fell but Llabres continued hacking him even when he was already on the ground. When Paras sought to wrest the bolo, Llabres turned on him, wounding him in the forehead and his left wrist. Llabres next attacked Origenes, hitting the latter's left arm, right armpit and right thigh. Lim moved to help his companions, but he was hit in the mouth when some seven or eight men armed with bolos came out of the restaurant and started throwing bottles at them. It was at this point that they fled, leaving the fallen Yap behind.[4]

Llabres had a different story. He says that in the evening of August 23, 1984, Yap and Paras went to the Egg and Eye Restaurant, where he was working as a security guard. As they were leaving at 1 o'clock in the morning, one of the waitresses asked him to detain them because they had not yet paid their bill. The bill was finally settled with the restaurant manager. Yap, still resentful, coldly told the waitress to "eat the change." [5]

But that was not the end of the incident. Yap and Paras came back after thirty minutes with five other men. They all had bolos. Yap told him to call the manager immediately or he himself would be killed. Llabres's reaction was to run to the waiting shed as he was not carrying his gun. But the group followed and then surrounded him. Yap made a stab at him with his bolo, but Llabres was able to parry the thrust and to wrest the weapon. Yap stepped back and pulled a kitchen knife but before he could use it, Llabres fell upon him with the bolo and continued hacking him. He also defended himself from Paras and Origenes when they tried to help Yap.[6]

LLabres later surrendered to the police and admitted hacking the three victims. He also turned over the bolo he had used in attacking them.[7]

Yap died as a result of shock and massive hemorrhage. The autopsy revealed that he had sustained 21 wounds in all, 10 hack wounds and 2 incised wounds at the back and 8 hack wounds and 1 incised wound in the front of his body.[8] Paras suffered 3 hack wounds on the forehead, left cheek and left forearm and a fracture on the forehead. He was hospitalized for 3 days. Dr. Ernesto Brion, who treated him, testified that Paras could have died from his wounds without timely medical attention.[9] Origenes had hack wounds on the back, knee, right thigh and palms, but Dr. Brion was not sure the wounds would have been fatal if not treated immediately.[10] Lim's injury was a laceration in his upper lip.[11]

After trial, Judge Rodolfo A. Ortiz rendered judgment dated January 30, 1985, disposing as follows:

1. Convicting the accused ROGER LLABRES y ADVINCULA, in Criminal Case No. Q-35261 beyond reasonable doubt as principal of the crime of Frustrated Homicide charged in the information, as defined and penalized in Article 249, in relation to Article 50, of the Revised Penal Code, and in accordance therewith, taking into consideration the provisions of the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances which attended the commission of the offense, the said accused is sentenced to an indeterminate penalty of imprisonment of from FOUR (4) YEARS and TWO (2) MONTHS of prision correccional in its medium period, as the minimum, to TEN (10) YEARS of prision mayor in its medium period, as the maximum, with all the accessory penalties provided for by law; to indemnify the private offended party, Enrique Paras y Yap, the amount of P10,000.00 for hospitalization and medical expenses, and to pay the costs.
2. Convicting the accused ROGER LLABRES Y ADVINCULA, in Criminal Case No. Q-35262 beyond reasonable doubt as principal of the crime of Attempted Homicide charged in the information, as defined and penalized in Article 249, in relation to Article 51, of the Revised Penal Code, and in accordance therewith, taking into consideration the provisions of the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances which attended the commission of the offense, the said accused is sentenced to an indeterminate penalty of imprisonment of from FOUR (4) MONTHS of arresto mayor in its medium period, as the minimum, to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional in its medium period, as the maximum, with all the accessory penalties provided for by law; to indemnify the private offended party, Santos Origenes y Garay, the amount of P7,000.00 for hospitalization expenses, and to pay the costs.
3. Convicting the accused ROGER LLABRES y ADVINCULA, in Criminal Case No. Q-35263 beyond reasonable doubt as principal of the crime of Murder charged in the information, as defined and penalized in Article 248 of the Revised Penal Code, and in accordance therewith, the commission of the offense having been attended by the aggravating circumstance of cruelty which is offset by the mitigating circumstance of voluntary surrender; the said accused is sentenced to suffer reclusion perpetua, with all the accessory penalties provided for by law; to indemnify the heirs of Roland Yap y Barrera the sums of: P30,000.00, as compensatory damages; P150,000.00, for funeral, interment, and memorial expenses; and P200,000.00, by way of moral damages, and to pay the costs.

The question in this appeal is one of credibility. We will decide it as the trial court did, in favor of the prosecution.

The appellant's version is an improbable tale. He would have us believe that eight men with intent to kill, and all armed with bolos for the purpose, ganged up on him that night. He himself was unarmed, but he was able to snatch Yap's bolo. Single-handed, he fought off his attackers, all eight of them, inflicting fatal wounds on Yap, nearly killing Paras, and also wounding Origenes. The armed men finally fled in fear.

Here is a veritable Rambo straight from the movies. Unarmed at first, he repulsed eight armed men determined to kill him, each carrying a bolo, not to mention the kitchen knife Yap drew when the appellant snatched his bolo.

Surprisingly, all of them hardly touched Llabres, who in the end killed one of them, nearly killed another, and wounded two others.

No one corroborated Llabres. Investigators found no kitchen knife at the scene of the crime.[12]

Under the first paragraph of Article 11 of the Revised Penal Code, a plea of self-defense will prosper only when it is shown that there was: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel such unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself. These circumstances must concur.

Only Llabres testified that it was Yap who began the aggression, and there is no corroboration either of his claim that he offered no provocation. The appellant's testimony was disbelieved by the trial court, which chose to give credence to Victor Lim and Enrique Paras, the eyewitnesses for the prosecution, who gave a different report of the incident.

Assuming there was unlawful aggression on the part of Yap, the Court nevertheless cannot accept that there was a reasonable necessity for the means employed by Llabres to prevent or repel such aggression. Yap was struck twenty-one times. He had 12 wounds in the back and 9 wounds in the front of his body. By Llabres's own admission, he kept hacking at Yap even when his victim was already helpless on the ground.[13] The number of wounds alone, let alone their nature, shows all too clearly that Llabres was not merely defending himself but needlessly striking at an already dying person.

The defense faults the prosecution for not presenting Origenes and deduces sinister motives from this omission. It is the prerogative of each party to choose its own witnesses in accordance with its own assessment of the evidence it needs to prove its case. We do not find that the non-presentation of Origenes has weakened the prosecution. If the defense felt that Origenes could support its own cause, there was nothing to prevent it from calling him as its own witness.

The trial court correctly appreciated the qualifying circumstance of treachery in the murder of Yap, who was suddenly attacked from behind and sustained eleven hack wounds in the back. Even if Yap did hear Llabres shout, "Putang ina ninyo!" the expletive was not sufficient warning that his life was in danger and that he would be suddenly attacked with a bolo. Judge Ortiz was also correct in rejecting the aggravating circumstance of evident premeditation. By the prosecution's own account, only five minutes elapsed from the time Llabres entered the restaurant until he reappeared to attack Yap and his companions.

But it was not correct to consider against the appellant the aggravating circumstance of cruelty. According to Article 14 (21) of the Revised Penal Code, there is cruelty when the wrong done in the commission of the crime is deliberately augmented by causing another wrong which is not necessary for its commission. This has not been shown in the case at bar. Llabres did not deliberately prolong the physical suffering of his victim; on the contrary, his repeated blows show that he intended to kill Yap as soon as he could.

Llabres is, of course, entitled to the mitigating circumstance of voluntary surrender in all the three cases.

Article 64 of the Revised Penal Code pertinently provides:

Article 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period."

The penalty for murder is reclusion temporal in its maximum period to death. In Criminal Case No. Q-35263, therefore, in view of the mitigating circumstance of voluntary surrender and the absence of any aggravating circumstance, the appropriate penalty is the indeterminate sentence of from ten (10) years and six (6) months of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

The trial court erred in not appreciating the mitigating circumstance of voluntary surrender in Criminal Case No. Q-35261 and No. Q-35262.

There being no aggravating circumstance in both cases, and applying Article 64 in connection with Articles 50 and 51 of the Revised Penal Code, as well as Section 1 of the Indeterminate Sentence Law (RA 4103, as amended), we hereby impose on the appellant in Criminal Case No. Q-35261 the indeterminate sentence of from two (2) years and four (4) months of prision correccional, as minimum, to six (6) years and four (4) months of prision mayor, as maximum, and in Criminal Case No. Q-35262, the indeterminate sentence of from two (2) months of arresto mayor, as minimum, to one (1) year and two (2) months, of prision correccional, as maximum.

The awards in Criminal Case No. Q-35263 are hereby reduced to P50,000.00 in keeping with the present policy of the Court.

WHEREFORE, premises considered, the appealed decision is AFFIRMED as above modified and the appeal is DISMISSED.

SO ORDERED.

Griño-Aquino, Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Rollo, p. 4; Records, pp. 2, 122.

[2] *People v. Nomat, Sr.*, 211 SCRA 14 (1992).

[3] TSN, November 12, 1984, pp. 3-4.

[4] *Ibid.*, pp. 4-7.

[5] TSN, January 2, 1985, pp. 4-6.

[6] *Ibid.*, pp. 6-12.

[7] TSN, November 14, 1984, p. 10; *id.*, p. 13.

[8] Exhibits "F" and "F-1;" Records, pp. 49-50.

[9] TSN, November 13, 1984, pp. 3-5.

[10] *Ibid.*, pp. 5-6, 8.

[11] Exhibit "P;" Records, p. 63.

[12] Records, p. 107.

[13] TSN, January 2, 1985, p. 27.

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