

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO ALPETCHE, ANANIAS ALPETCHE, ROMEO ALPETCHE, MELCHOR ALPETCHE, CARLITO ALPETCHE, ANTONIO ALPETCHE, JOHN DOE AND PETER D...

G.R. Nos. 76149-50. December 22, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For the two (2) crimes committed on the same occasion on 7 January 1982 at Sta. Catalina, Negros Oriental, two (2) separate Informations were filed before the Court of First instance of Negros Oriental, Branches II and IV, respectively: [1] for Murder against four brothers surnamed Alpetche (Criminal Case No. 5458), and [2] for Frustrated Murder against the same individuals in addition to Rogelio Alpetche, another brother, Antonio Alpetche, a cousin, John Doe and Peter Doe (Criminal Case No. 5274).

Upon arraignment, all accused in the two cases pleaded "Not Guilty." And since the two crimes arose out of the same occurrence upon agreement of the parties, through counsel, the Trial Court ordered a joint trial.

The evidence adduced by the prosecution discloses that about 8:00 o'clock in the evening of 7 January 1982, RUPERTO Villalon, together with his brother-in-law SATURNINO Mansin, were at Lobo-lobo, Mansagomayon, Sta. Catalina, Negros Oriental, to buy viands for their respective families. While RUPERTO was still urinating at the back of the store of Bebang Escriba where they intended to buy their viands, he was stabbed without warning by accused Rogelio "Toto" Alpetche hitting him at the right side of his back (TSN, April 12, 1983, p. 5) just one inch above his waistline (ibid., p. 6). When RUPERTO looked behind him and noticed that he would be stabbed again, he grappled with Rogelio for possession of the weapon, a hunting knife. RUPERTO overpowered Rogelio momentarily and when they fell on the ground RUPERTO rode on the latter and continued grappling for possession of the knife (ibid., p. 11). At this instance, the brothers Alpetche, namely: ANANIAS ("Aming"), Romeo ("Boy"), Melchor ("Nonoy"), Carlito ("Carling"), and a cousin, Antonio Alpetche, all armed, suddenly appeared and ganged up on RUPERTO and surrounded him (ibid., pp. 7, 14, 15, 26, 29, 34 and 36). He then heard them say: "Let us finish this person" (ibid., p. 36). Thereafter, each one inflicted injuries on RUPERTO with the use of bolos and a three-bladed weapon by ANANIAS. At this juncture, RUPERTO's brother-in-law SATURNINO, who was about six (6) or eight (8) meters away (ibid., p. 28), and his brother, Felix Villalon, shouted to RUPERTO "Run away, Dong, because they are many" (TSN, June 7, 1983 p. 4). Upon hearing this, the Alpetches left RUPERTO and chased Felix and SATURNINO, who ran in different directions. Four of the accused namely: ANANIAS, Romeo, Melchor and Carlito caught up with SATURNINO. Melchor hacked him first hitting him at the back. That felled SATURNINO face up (TSN, September 4, 1984, pp. 11-12). While thus lying on the ground, the other Alpetches, namely, Carlito, Romeo, and ANANIAS took turns in hacking him (ibid., p. 12) with their respective weapons, killing him instantly. Felix Villalon, who was faster, escaped from the pursuing group to safety.

The examining physician, who treated RUPERTO, described his injuries as [1] hack wound on the left face, [2] partially avulsed left ear, [3] multiple incised wounds on different parts of the body and [4] multiple abrasions, dorsum and palm, left (Exhibit "A"). Said physician also declared that, of the four injuries, the wound on the face would have been fatal had it not been for the timely medical attendance given RUPERTO (TSN, August 23, 1983, p. 6).

The Municipal Health Officer, who conducted a postmortem examination on the body of SATURNINO at the site of the incident (TSN, October 30, 1984, p. 168), found three (3) hack wounds, one on his left forearm, and two (2) at his back forming an "X" (ibid., p. 165). Of these three (3) wounds, the two (2) wounds at the back forming an "X" were fatal (ibid., p. 166).

For their part, ANANIAS interposed self-defense contending that RUPERTO, Felix and SATURNINO were the unlawful aggressors and that he (ANANIAS) and his brothers were the ones provoked. Thus, ANANIAS testified that after he and his brother Rogelio had attended a dance at Lobo-Lobo and were on their way home holding each other's hands, and in the company of two women, they were waylaid by three persons, namely: Felix Villalon, RUPERTO, the victim in the Frustrated Murder case, and SATURNINO Mansin, the deceased in the Murder case; that Felix Villalon suddenly attacked his brother Rogelio with a piece of wood hitting the latter in the forehead; that as a result of the blow, his brother fell; that as he was about to help his brother, the deceased SATURNINO hacked him with a bolo in the right forearm; wounded, ANANIAS ran to get his bolo hidden in the bushes and immediately went back; that seeing his brother being attacked by the three, he faced SATURNINO and hacked him twice, hitting him first on the right side of the body and then in the left arm; that Felix Villalon attacked him with stones, hitting his back; and that seeing RUPERTO on top of his brother and attacking the latter, he hacked RUPERTO. The two brothers then went home and the following day they surrendered to the police in Pamplona, Negros Oriental.

Corroborating the fact that they had sustained injuries, the former Municipal Health Officer of Pamplona testified that sometime in January 1982 he examined Rogelio and ANANIAS (TSN, October 14, 1985, p. 4). On ANANIAS, he found an incised wound on the left forearm (ibid., p. 6). On Rogelio, he found slight injuries on the face, hands and legs (ibid., p. 5).

Confronted with the foregoing conflicting versions of the incident, the Trial Court * considered the prosecution account as the more credible and, on 31 July 1986, rendered two separate Decisions, which were textually identical except for the crimes charged and the dispositive portions. Thus, in Criminal Case No. 5458, for Murder, the Court *a quo* ruled:

"In view of the foregoing, the accused Romeo Alpetche, Melchor Alpetche and Carlito Alpetche is (sic) sentenced each to reclusion perpetua; Ananias Alpetche who is credited with the mitigating circumstance of voluntary surrender is sentenced to an indeterminate period of imprisonment ranging from ten (10) years and one (1) day of prison mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal; to jointly and severally indemnify the heirs of the victim the sum of twelve thousand pesos (12,000) without subsidiary imprisonment in case of insolvency, and to pay the costs." (p. 7, Decision)

And, in Criminal Case No. 5274 for Frustrated Murder, the Trial Court decreed:

"In view of the foregoing, this Court declares accused Rogelio alias 'Toto' Alpetche guilty of the charge of Frustrated Murder beyond reasonable doubt. The mitigating circumstance of voluntary surrender being credited in his favor, he is hereby sentenced to the penalty of six (6) years and one (1) day to twelve (12) years and one (1) day of prison mayor; the five (5) other accused, namely: Romeo 'Boy' Alpetche, Ananias 'Aming' Alpetche, Carlito 'Carling' Alpetche, Melchor 'Nonoy' Alpetche and Antonio Alpetche are hereby declared guilty of the lesser offense of Frustrated Homicide and, except for Ananias Alpetche, there being no

aggravating nor mitigating circumstances against them are hereby sentenced each to an indeterminate sentence of two (2) years, four (4) months and one (1) day to eight (8) years. Accused Ananias Alpetche who is credited with one mitigating circumstance of voluntary surrender is sentenced to the minimum of two (2) years, four (4) months and one (1) day, to six (6) years and one (1) day; with costs against the accused.

"Meantime, the case against John Doe and Peter Doe are hereby archived until such time that they are duly identified and brought to the jurisdiction of the Court" (pp. 7-8, Decision).

Dissatisfied with the judgments of conviction, the Alpetches appealed. However, on 8 April 1987, this Court granted Rogelio's ("Toto's") Motion to withdraw his appeal. Similarly, on 20 July 1987, we allowed Melchor, Carlito and Romeo, all surnamed Alpetche, as well as Antonio Alpetche, to withdraw their respective appeals.

Consequently, only accused ANANIAS' ("Aming's") appeal remains for this Court to rule upon.

It is to be recalled that ANANIAS was convicted of Murder for the death of SATURNINO Mansin, and of the lesser offense of Frustrated Homicide for the injuries to RUPERTO. In both cases, ANANIAS was credited with the mitigating circumstance of voluntary surrender, such that, in the Murder case he was sentenced to ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal; and in the Frustrated Murder case where he was convicted of Frustrated Homicide, he was sentenced to two (2) years, four (4) months and one (1) day, to six (6) years and one (1) day.

And although ANANIAS was penalized with a penalty less than reclusion perpetua, this Court retains jurisdiction to decide the appeal pursuant to Section 17, paragraph 3[1] of the Judiciary Act of 1948, providing:

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in-

(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories, or whether they have been tried jointly or separately;

x x x x x x x x "

ANANIAS assails the judgments of conviction on the following ascriptions:

"I

THE COURT A QUO ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

"II

THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED." (p. 1, Brief for Accused-Appellant)

We are far from persuaded.

Well-established is the principle that evidence, to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. And by this is meant that it should be natural, reasonable and probable as to make it easy to believe (Tuason vs. Luzon Stevedoring, L-13541, January 28, 1961, 1 SCRA 189).

In this case, it is most unnatural that two brothers, Rogelio and ANANIAS would be holding each other's hands in the company of two (2) women whom they were escorting and that the two (2) brothers were separated from each

other only when ROGELIO was allegedly attacked and hit with a piece of wood by FELIX. If the two (2) women were walking a little ahead or behind, as the Trial Court had stated, it would not have been an easy matter for anyone to strike Rogelio with a piece of wood without hitting the women as well. And if these two (2) women were, in fact, in the brothers' company, it is strange that they did not testify for the defense to corroborate its version that it was their group which was attacked and that they merely defended themselves.

Rogelio Alpetche also contends that the knife he used was as RUPERTO's and that he was able to wrest possession of the same from the latter but that on the way home he threw it away. This is again hard to believe for if the knife actually belonged to RUPERTO, the most natural thing for Rogelio to have done was surrender it to the authorities, which would have bolstered the defense contention that RUPERTO and his group were the assailants. That Rogelio threw the knife away can only lead to the conclusion that the knife was his and had to be disposed of for being incriminatory evidence.

Aside from ANANIAS and Rogelio, the other three (3) brothers neither testified for the defense nor did they, at the very least, deny the charges against them, or belie their participation. What is more, they had withdrawn their appeal which could mean that they now acquiesce to the veracity of the prosecution evidence (*People vs. Bongo*, L-26909, February 22, 1974, 55 SCRA 547).

Fundamental is the rule that one who rests his case on self-defense must prove the same by clear and convincing evidence and in so doing, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution. And even if the evidence of the prosecution were weak, which it is not in this case, it cannot be disbelieved after the accused themselves had admitted the killing and the physical injuries inflicted although they claim self-defense (*People vs. Martija*, L-44972, March 15, 1982, 112 SCRA 528). Moreover, the number of wounds RUPERTO suffered indicates that the concerted act by the Alpetches was not an act of self-defense but a determined effort to kill the victim. That ANANIAS and Rogelio themselves sustained injuries would neither prove their theory of self-defense; rather, they support the prosecution account that RUPERTO and Rogelio had grappled with each other.

After all is said and done, the focal issue remains one of credibility governed by the fundamental rule that the findings of the Trial Court in that respect are given great weight and the highest degree of respect by the Appellate Court. The reason, of course, is that the Trial Court is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial (*People vs. Sarol*, L-66240, October 8, 1985, 139 SCRA 125).

The Trial Court correctly categorized the crime as Murder. The killing of SATURNINO was qualified by treachery as shown by the suddenness of the attack. ANANIAS' group chased and hacked to death a helpless and unarmed person who had merely tried to warn his brother-in-law, RUPERTO, to run because the latter was hopelessly outnumbered. In collectively and deliberately hacking SATURNINO successively, they insured his killing without risk to themselves arising from any defense which the deceased could have made.

Treachery likewise initially characterized the assault on RUPERTO. He was answering the call of nature when he was suddenly attacked by the brothers Alpetche, namely, Rogelio, followed by ANANIAS, Romeo, Melchor, Carlito and cousin Antonio. RUPERTO heard them say "let us finish this person" after which they hacked him successively. Romeo hacked RUPERTO with a long bolo called "pinuti," hitting his left foot (TSN, April 12, 1983, p. 7). Antonio then hacked also with a "pinuti" hitting his left cheek. Then, Melchor hacked him with a bolo, hitting his back (ibid., p. 8). ANANIAS hit him with a three-bladed weapon, injuring his left arm (ibid., p. 9). Carlito hacked his back, also with a "pinuti" (ibid., p. 10). With their superiority in numbers and weapons, they would have finished RUPERTO off as well had not SATURNINO and Felix Villalon appeared in the scene and

told RUPERTO to run. But that turned out to be SATURNINO's own undoing for the accused went after him and killed him instantly.

The penalties imposed by the Trial Court, therefore, will have to be modified.

With the abolition of capital punishment in the 1987 Constitution, the penalty for Murder should now be reclusion temporal in its maximum period to reclusion perpetua (People vs. Gavarra, No. L-37673, October 30, 1987 (en banc); People vs. Masangkay, G. R. No. 73461, October 27, 1987 (Second Division). As ANANIAS is entitled to the mitigating circumstance of voluntary surrender, said penalty is imposable in its minimum period or from seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months. The penalty next lower in degree for purposes of the Indeterminate Sentence Law would be within the range of prision mayor, maximum, to reclusion temporal, medium, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months (Article 61, par. 3, Revised Penal Code).

With respect to the crime of Frustrated Murder, the penalty prescribed by law is prision mayor in its maximum period to reclusion temporal in its medium period. Appreciating the mitigating circumstance of voluntary surrender in ANANIAS' favor, the penalty is imposable in its minimum period, or, from ten (10) years and one (1) day to twelve (12) years. The penalty next lower in degree for purposes of the Indeterminate Sentence Law is within the range of prision correccional, maximum, to prision mayor, medium, or from four (4) years, two (2) months and one (1) day to ten (10) years.

WHEREFORE, the appealed judgments are modified as follows: [1] In Criminal Case No. 5458 for Murder, Ananias ("Aming") Alpetche is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months of reclusion temporal, as maximum. The civil indemnity is increased from P12,000.00 to P30,000.00 following current jurisprudence; and

[2] In Criminal Case No. 5274 for Frustrated Murder, Ananias ("Aming") Alpetche is declared guilty of the crime of Frustrated Murder, instead of Frustrated Homicide, and is sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to ten (10) years and one (1) day of prision mayor, as maximum.

Proportionate costs in both cases against accused-appellant Ananias ("Aming") Alpetche.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Presided over by Judge Nickarter A. Ontal.

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