

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MERLO RAMIREZ, ACCUSED-APPELLANT.*G.R. Nos. 80747-48. October 17, 1991*

Ponente: NARVASA, J.

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In the late afternoon of June 23, 1981, at Tayug, Pangasinan, Merlo Ramirez, a sergeant of the 151st PC Company headquartered at that place, fired his pistol at former Vice Mayor Aureo (“Alo”) Zaragoza III four (4) times. All four shots found their mark in various parts of the latter’s body and resulted in his death within two (2) hours. The autopsy report of the Senior Resident Physician of the Eastern Pangasinan General Hospital, Dr. Felipe Cantor,[1] set out the cause of death as, “Massive intra-thoracic and intra abdominal hemorrhage due to gunshot wounds, right side chest macerating the right lobe of the liver and penetrating the right kidney,” and included the following remarks, “Patient arrived at the hospital in shock and with marked pallor pulseless, BP - 0/0 Patient expired one hour 15 mins. after arrival in the hospital inspite of all heroic and remedial measures done.” On the same occasion, Ramirez also allegedly shot at another person, Rogelio Robosa, but failed to hit him.

Ramirez was thereafter charged with consummated and attempted murder in the Regional Trial Court of Pangasinan,[2] under separate indictments.[3] On arraignment, he entered pleas of not guilty to both offenses. The cases were consolidated, and tried and decided jointly.[4] The Trial Court’s judgment, dated August 12, 1987,[5] rejected Merlo Ramirez’s claim of self-defense, pronounced him guilty beyond reasonable doubt of both the crimes ascribed to him, and declared him to be criminally and civilly liable therefor as follows:

“PREMISES CONSIDERED, this Court is of the opinion and so holds that the accused Merlo Ramirez is proven guilty beyond reasonable doubt of the crime of Murder committed against the victim, defined and penalized by Article 248 of the Revised Penal Code and taking into consideration the concurrence of the aggravating circumstance of evident premeditation and there being no mitigating circumstance to offset the same the imposable penalty should be death. HOWEVER, with the abolition of capital punishment under the new constitution (Sec. 19, Article III), the Court hereby sentences the accused to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of the deceased in the sum of P57,700.00 and to pay the costs.

Likewise, the Court finds accused proven GUILTY beyond reasonable doubt of the crime of Attempted Murder against Rogelio Robosa, penalized by Art. 284 in relation to Art. 6, paragraph 3 of the Revised Penal Code (and) applying the provisions of the Indeterminate Sentence Law, the Court hereby SENTENCES said accused to suffer an Indeterminate penalty of TWO (2) YEARS, TEN (10) MONTHS AND TWENTY (20) DAYS of prision correccional as minimum to EIGHT (8) YEARS AND TWENTY (20) DAYS of prision mayor as maximum.”

From this joint judgment, Ramirez has appealed to this Court; and here, he attributes to the Trial Court the following errors:

- 1) disregarding his evidence of self-defense, and in the process,

- 2) imposing its own surmises and conjectures;
- 3) not considering his testimony in relation to his sworn statement executed immediately after the incident, relating exactly what happened;
- 4) giving credence to the palpably perjured testimonies of prosecution witnesses Arestado and Robosa;
- 5) finding him guilty of attempted murder on the basis of the perjured testimonies of Arestado and Robosa.

The basic issue, in fine, is whether or not the evidence of the prosecution, in relation to that of the defense, does indeed prove the guilt of Merlo Ramirez of the felonies with which he is charged, or show that his acts are justified, having been done in legitimate self-defense. Stated otherwise, the ultimate question is which set of witnesses is more deserving of credit, that of the prosecution or the defense.

It is not disputed that the shooting was preceded by a conversation between Sgt. Ramirez and Alo Zaragoza at the “Express Lounge and Restaurant” in Tayug. The conversation took place at a table in an interior room of the restaurant. Also seated at the same table were Ramirez’s companion, PC Sgt. Espero, “Boy” Mamenta, a court employee, and two local police officers, Patrolmen Carbonel and Castulo. At another table in the main dining area outside the room were two other acquaintances, Rogelio Robosa and Antonio Arestado, who both could see the group through the doorway.[6] Apparently, the conversation dealt with the setting up of a “jueteng” gambling operation in the town, although it is not clear who precisely was making the proposal. What is certain is that Alo Zaragoza very shortly became agitated and stood up, angrily uttering some words and pounding the table with his hand. Ramirez also stood up and walked away from the table, towards the comfort room. A few minutes afterwards, Zaragoza also walked out of the room. From this point, there is disagreement between the prosecution and the defense as to the ensuing events.

The evidence of the prosecution tends to show that after leaving the room, Zaragoza stopped between two tables in the main eating area and there paused to drink beer from the mug he was holding; that it was at this point, while he was standing, head up, pouring beer down his throat, that Ramirez suddenly reappeared and fired three (3) successive shots at Zaragoza with a hand gun; that Rogelio Robosa grabbed Ramirez from behind to stop him from firing more shots, but Ramirez was able to squeeze off one more shot at Zaragoza; that Ramirez wrenched himself free of Robosa’s embrace and this somehow caused Robosa to be thrown to the floor, and the pistol to slip from Ramirez’s hand; that, however, Ramirez quickly retrieved his gun and fired at Robosa as Robosa was rising from the floor; and that Ramirez thereupon fled from the restaurant, followed by Sgt. Espero. Zaragoza, who had been hit by all four (4) shots discharged at him, managed to walk to the restaurant’s kitchen where Robosa found him moments later, on the floor, being assisted by Castulo. He was rushed to the hospital, but expired an hour or so after arriving there.

Ramirez’s version is different. It was Zaragoza who suggested the setting up of the jueteng operation. When the suggestion was made, Ramirez simply said that he was a mere NCO operation officer, and that the proposal should be made to people higher up. For some reason the remark incensed Zaragoza. In a loud voice, he said, “No more jueteng, jueteng,” slapping the table with the palm of his hand. Pointing a finger at Ramirez, he added, “Okinnam, ado ti basol mon ditoy Tayug, ket no kayat ko nga mapukaw ka, mapukaw ka” (which the Trial Court translated as follows: “Vulva of your mother, you have so many faults already here in Tayug and if I want you to disappear, you will disappear”). Then, turning to his companion, Pat. Castulo, and extending his hand to him, Zaragoza said, “Man to paltog mo, Condring, to paltogak” (meaning, according to the Court: “Give me your gun, Condring, as I will shoot him”). To avoid trouble, Ramirez abruptly bade the group goodbye and went to the counter to pay his bill, but seeing no one there, moved towards the toilet. On his way out, Pat. Carbonel held him by the waist and asked him to go home directly as “Don Alo” (Zaragoza) was very angry. Ramirez shoved

Carbonel away, causing him to fall. As he was walking towards the door, he saw Zaragoza emerge from the inner room, cursing him and saying, "I am going to kill you." Because of Zaragoza's earlier threat to shoot him, and fearing that he had indeed succeeded in getting Pat. Castulo's firearm, Ramirez drew his gun and started shooting at Zaragoza while making his way towards the exit.

Upon the foregoing set of facts, Ramirez's lawyer, Atty. Bernardo Ligsay, argues that Ramirez should be exonerated because he had acted under a mistake of fact -- in the not unreasonable belief that Zaragoza was going to shoot him.[7] Atty. Ligsay adds that Ramirez had acted reflexively, in obedience to the instinct of self-preservation, and in his brief invokes "People v. Tarlit ('76 O.G. 4490, p. 821')" allegedly to the effect that: "In emergencies where the person or life of another is imperilled, human nature does not act upon formal reason but in obedience to the instinct of self--preservation." [8] Atty. Ligsay omits to mention, however, that Tarlit --- whose citation should correctly read, "76 O.G. No. 26, pp. 4490" -- is a decision of the Court of Appeals, not of this Court; that the facts of that case are quite different from those of the present case; and the legal principle predicated on those facts quite inimical to his cause, as would have been immediately disclosed had he but reproduced in full the paragraph from which he had taken the statement quoted by him. The paragraph reads in full as follows:[9]

"In emergencies where the person or life of another is imperilled, human nature does not act upon formal reason but in obedience to the instinct of self-preservation. In a situation, like the one at bar, where the deceased was taller, bigger and stronger than the accused, the latter had to act fast or otherwise the aggression on his person would have continued and his life ended. There being no other means by which accused-appellant could prevent or repel the unlawful aggression, he, Tarlit had to use the very same weapon which wounded him (accused). There was a reasonable necessity for the accused to use the said weapon because he was already losing strength and could not run due to loss of blood."

Even conceding that Tarlit (a Court of Appeals decision) is binding on this Court, it is at once evident that the ruling therein is inapplicable to the case at bar. In Tarlit, the accused was (1) actually attacked by the deceased; (2) said deceased was taller, bigger and stronger than the accused; (3) the accused had been wounded and was in fact already losing strength and could no longer run due to loss of blood; and (4) he could no longer repel the aggression and would surely have lost his life had he not used on the aggressor the very same weapon by which he had been wounded by the latter. Not one of these circumstances is present in the present case. Indeed, as shown the proofs of both the prosecution and the defense, the victim, Zaragoza, had no gun or weapon of any other sort when he emerged from the interior room. The State's evidence is that at this time he was holding nothing more intimidating than a glass of beer, and doing nothing more belligerent than gulping down the beer while standing in the middle of the dining area.

It is contended by the defense that as Zaragoza emerged from the inner room he was swearing at Ramirez and repeating the threat to kill him. However, there is nothing but Ramirez's uncorroborated testimony to establish this; and it is belied by the evidence of the prosecution. But even conceding this, Ramirez's cause would not be appreciably advanced. For in one instant Ramirez would quickly have seen that Zaragoza bore no arms and was launching nothing more perilous than a verbal onslaught.

In either case Zaragoza's acts could not be deemed to constitute unlawful aggression on his part, or to have placed Ramirez in an emergency situation analogous to that in the Tarlit case cited by him. More to the point, to be sure, is the precedent cited by the Trial Judge, People v. Macaso,[10] from which the following is quoted:

" * * A review of the evidence fails to lend credence to the accused-appellant's claim that the deceased was the unlawful aggressor. He was not even armed at the time, while the man he was up against was a policeman who was in possession of his service pistol. * * * True, the deceased acted rather belligerently, arrogantly

and menacingly at the accused-appellant, but such behavior did not give rise to a situation that posed a real threat to the life or safety of the accused-appellant. The peril to the latter's life was not imminent and actual. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause injury, shall have been made. A mere threatening or intimidating attitude is not sufficient * * there must be a real danger to life or personal safety."

Ramirez however invokes, as above stated,[11] the familiar mistake-of-fact doctrine enunciated by this Court in *U.S. v. Ah Chong*[12] to exempt himself from criminal liability. Here again he relies on inapplicable precedent. In *Ah Chong*, it will be recalled the accused stabbed dead his friend and roommate in the mistaken belief that the latter was a ladron, or burglar, attempting to force entry into the room they commonly shared. The door of the room was secured only by a small hook or catch in lieu of a permanent lock, a flimsy expedient which it was the occupants' habit to reinforce by putting a chair against the door. On the night in question the accused was awakened by the sound of someone trying to force the door open. He called out twice to the person to identify himself. Receiving no answer, he uttered the warning, "If you enter the room, I will kill you." It was at that moment that he was hit above the knee by the chair that had been placed against the door. It could well be that the chair had merely been pushed back by the opening of the door against which it rested; but thinking that he was being attacked by the unknown intruder, the accused seized a kitchen knife kept under his pillow and struck out blindly, hitting the latter who turned out to be his roommate, and who later expired from his wounds. Now, the two had an understanding that whoever returned at night should knock at the door and identify himself, and the Court found nothing to explain -- except as probably a practical joke -- the victim's failure to do so on that occasion. It was upon these facts that the Court reversed on appeal the conviction of the accused, holding that he had acted " ** in good faith, without malice or criminal intent, in the belief that he was no more than exercising his legitimate right of self-defense."

There is however no semblance of any similarity or parallel between the facts in *Ah Chong* and those of the present case, nothing here that would have caused the accused-appellant, Ramirez, to entertain any well-grounded fear of imminent danger to his life by reason of any real or perceived unlawful aggression on the part of the victim, Zaragoza. Upon the evidence, at the time he was shot and killed, the latter was doing nothing more hostile than drinking a bottle of beer; if he had earlier cursed or threatened Ramirez, it was unaccompanied by any overt act of bodily assault. There was no unlawful aggression.

Absent this essential element of unlawful aggression on the part of Zaragoza or, at the least, of circumstances that would engender a reasonable belief thereof in the mind of Ramirez, any consideration of self-defense, complete or incomplete, is of course entirely out of the question.[13]

By and large, the Court is persuaded that the Trial Court's basic conclusion that Merlo Ramirez is criminally liable for the death of Aureo Zaragoza is correct and that the defense has not demonstrated any serious or reversible error therein.

The Court finds itself unable to agree, however, with the conclusion that alevosia, as a circumstance qualifying the killing of Zaragoza to murder, and evident premeditation, as a generic aggravating circumstance, should be appreciated against Ramirez.

While Ramirez's shooting of Zaragoza, was as regards, the latter, sudden and unexpected and gave him no opportunity whatever to undertake any form of defense or evasion, this does not necessarily justify a finding of treachery or alevosia, absent any evidence that this mode of assault was consciously and deliberately adopted to insure execution of the crime without risk to the offender. Ramirez acted on the impulse of the moment, rashly and not improbably, out of resentment, at having been publicly cursed, insulted and threatened. Thus, on seeing Zaragoza come out of the room, Ramirez had forthwith drawn his service pistol and begun to shoot at Zaragoza.

As recently observed by this Court:[14]

“Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself. There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution without risk to himself. It does not always follow that if the attack was sudden and unexpected, it should be deemed attended with treachery.”

Neither may the aggravating circumstance of evident premeditation be appreciated against the appellant in connection with either of the two felonies with which he stands charged, because, as the Solicitor General correctly points out, “the determination to commit the crime was ** almost on the spur of the moment where the appellant had no opportunity to reflect on his action.” In *People v. Molato*,[15] this Court made the following relevant observation:

“As held in *People v. Fernandez* (154 SCRA 30 [1987]) citing *People v. Jardiniano* (103 SCRA 530 [1981]) and *People v. Guiapar* (129 SCRA 539 [1984]), to properly appreciate evident premeditation, it is necessary to establish proof, as clear as the evidence of the crime itself about - (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect. * * The element of sufficient lapse of time between the determination and the execution of the criminal act to afford the culprit full opportunity for calm reflection on the consequences of the crime was not established in this case.”

It follows that Ramirez may properly be convicted only of the felony of homicide defined and penalized in Article 249 of the Revised Penal Code in Criminal Case No. T-470 ([G.R. No. 80747] as regards Alo Zaragoza), and of attempted homicide in Criminal Case No. T-471 ([G.R. No. 80748] as regards Rodolfo Robosa) and should be sentenced to the medium period of the penalty prescribed by law for each of said offenses, there being no mitigating or aggravating circumstance modifying his criminal responsibility. Moreover, in addition to the actual damages for which he was adjudged liable by the Trial Court, he should also be made to pay to the heirs of the Zaragoza the additional sum of P50,000.00 as indemnity for the latter’s death.

WHEREFORE, subject only to the modifications just indicated, the Decision of the Trial Court in said Criminal Cases No. T-470 and T-471, dated August 12, 1987, is AFFIRMED and the appellant Merlo Ramirez is hereby SENTENCED as follows:

1. In Criminal Case No. T-470, G.R. No. 80747, to suffer the indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to sixteen (16) years of reclusion temporal, as maximum, together with all the accessory penalties thereto appertaining, and to pay to the heirs of the deceased, Aureo “Alo” Zaragoza, the sum of Fifty Seven Thousand Pesos (P57,000.00) as actual or compensatory damages and the sum of Fifty Thousand Pesos (P50,000.00) as indemnity for death; and
2. In Criminal Case No. T-471, G.R. No. 80748, to suffer the indeterminate penalty of from two (2) months and one (1) day of arresto mayor, as minimum, to three (3) years and three (3) months of prision correccional.

Costs against appellant.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exh. D

[2] Branch 51, at Tayug, Pangasinan.

[3] Respectively docketed as Criminal Cases Numbered T-470 and T-471

[4] The trial of both cases was presided over by Hon. Lope P. Lopez, and, upon the latter's retirement, decided by his successor, Hon. Hugo B. Sansano, Jr.

[5] Rollo, pp. 21-33

[6] TSN, Oct. 6, 1981, p. 81; Original Record, p. 157

[7] Citing *U.S. v. Ah Chong*, 15 Phil. 503 allegedly stating "in substance ** (that) to stop and ascertain if the aggressor is armed, would entirely take away the essential right of self-defense" (Appellant's Brief, p. 69)

[8] Appellant's Brief. pp. 36-37, 70

[9] At p. 4494: italics supplied

[10] 64 SCRA 659, 665-666

[11] Appellant's Brief, p. 69

[12] 15 Phil. 503

[13] *Ortega v. Sandiganbayan*, G.R. No. 57664, Feb. 8, 1989; *Peo. v. Bayocot*, G.R. No. 55285, June 28, 1989; *Peo. v. Rey*, G.R. No. 80089, April 13, 1989

[14] *Peo. v. Tugbo*, G.R. No. 75894 (April 22, 1991) citing *Peo. v. Vicente*, 141 SCRA 347; *Peo. v. Salcedo*, 172 SCRA 78; *Peo. v. Raquipo*, 188 SCRA 571

[15] 170 SCRA 640 (1989); *Peo. v. Catugay*, G.R. No. 74065, Feb. 27, 1989; *Peo. v. Almario*. G.R. No. 69374, March 16, 1989

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