

THIRD DIVISION

[G.R. No . 172973, December 18, 2008]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCELINO ABARE, APPELLANT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

For review before this Court is the July 18, 2005 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00764 which affirmed the Decision^[2] dated January 18, 2002 of the Regional Trial Court (RTC) of Calapan City, Oriental Mindoro, Branch 40, finding Marcelino Abare (appellant) guilty of murder qualified by treachery and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information in Criminal Case No. C- 5351 reads as follows:

That on or about the 24th day of November 1997 at around 7:30 o'clock in the evening, in Barangay Bucayao, Municipality of Calapan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to take the life of SAMSON CUYOGAN and with treachery and evident premeditation, did then and there willfully, unlawfully, feloniously, unexpectedly and treacherously attack, assault, and hack the latter with a scythe, wounding him on the neck and on the different parts of his body, which wounds being necessarily mortal, thereby causing the direct and immediate death of the said SAMSON CUYOGAN.

Contrary to law.^[3]

When arraigned, appellant pleaded "not guilty."^[4] Thereafter trial ensued.

The prosecution presented three witnesses: Armando Yabut (Yabut), Magdaleno Gameng (Gameng) and Dr. Angelita Legaspi. The defense presented appellant and Senior Police Officer 1 Agapito Marasigan.

The CA narrated the evidence presented by the parties, to wit:

Armando Yabut, 36 years old and a resident of Bucayao, Calapan City, Oriental Mindoro, testified that at around 7:30 in the evening of November 24, 1997, he was at the living room of his house at Barangay Bucayao, Calapan City together with Magdaleno Gameng, Antonio Bernardino and the victim, Samson Cuyogan who were among his guests in his birthday celebration. **The accused Marcelino Abare earlier arrived at his house at around 11:30 in the morning and left at around 7:30 in the evening.** Incidentally, the accused is his brother-in-law, the accused being his wife's cousin.

While waiting for the liquor they requested to be bought, the witness, together with Gameng, Bernardino and the victim Cuyogan, engaged in a conversation. He and the victim were seated with their backs turned against the window of the living room. **He was about two (2) feet away from the left side of the victim who was leaning against the window pane**, while on his left was Gameng and on Gameng's left was Bernardino. They were seated in such a way that they formed a slightly curved line, with Gameng and Bernardino facing him and the victim. **During the conversation, the witness suddenly saw the victim fall forward with blood oozing from his neck. He also saw the accused standing outside holding a bloodied scythe.** He then went outside and approached the accused and asked him, "Bakit mo nagawa ang bagay na yan? Bakit mo siya pinatay? Ano ang kanyang kasalanan?" To which the accused replied, "Amanos na kami, solved na ang problema ko." The witness then grabbed the hand of the accused and wrested the scythe from him and threw it towards the side of the house. After a few minutes, several people arrived including the victim's wife who became hysterical after seeing what happened to her husband. Thereafter, he and several neighbors brought the victim to the Provincial Hospital where the latter was pronounced dead on arrival.^[5]

On cross-examination, the witness stated that prior to the incident, no altercation transpired between the victim and another person. He did not actually see the accused hack the victim and when he wrested the scythe from the accused, the latter did not resist.^[6]

On the other hand, Magdaleno Gameng testified that he arrived at the house of Armando Yabut at around 5 o'clock in the afternoon of November 24, 1997 and joined the drinking session in celebration of Yabut's birthday. He was seated at the left side of Yabut facing the latter. By 7:30 in the evening of said date, he and his companions Yabut, Bernardino, and Cuyogan were already tipsy, having consumed a lot of liquor and they ordered for more. **While waiting for the liquor they requested to be bought, the victim suddenly fell face down (sumubasob) and his neck was bloodied and almost severed from the body. He then saw the accused outside the window holding a scythe with blood flowing down from it.** After a while, he saw Yabut go out of the house and confront the accused about what the latter just did.

On cross-examination, the witness said that while he did not actually see the manner by which the accused stabbed or hacked the victim, the accused was the only one who was holding a scythe outside the window after the victim fell face down. Finally, he claimed that he did not know if any altercation had transpired between the accused and the victim prior to the incident.^[7]

Finally, Dr. Angelita Legaspi, the rural health physician of Calapan City, testified that she conducted the autopsy on the cadaver of the victim on November 25, 1997, and issued a Necropsy Report^[8] x x x.

Dr. Legaspi explained that the victim suffered abrasions on the chin, left side of the chest, upper forearm and the left 3rd and 4th fingers probably caused by a sharp object or by rubbing on a rough surface, as in this case when the victim fell down on the floor. She also stated that the victim sustained a hack wound on the front portion of the neck which is about eight (8) inches long probably caused by a sharp object like a bolo or scythe. She opined that the assailant could have been in front, at the side or at the back of the victim when he inflicted the injury on the neck of the victim. She claimed the injury on the neck was fatal because it contained major blood vessels including the carotid artery and these blood vessels were cut. She concluded that the victim died because of loss of blood resulting from the wound on his neck.^[9]

In his defense, accused-appellant testified that while he was at his house on November 24, 1997, Armando Yabut came to fetch him to attend the former's birthday celebration. At around 5:00 o'clock in the afternoon, Yabut requested him to buy one case of beer after which they, together with Gameng and Bernardino, engaged in a drinking spree. At around 6:00 p.m., the victim Samsom Cuyogan arrived somewhat drunk, requesting that more beer be bought. After one and half (1 ½) cases more beer were bought, the group continued drinking. **After a while, the accused demanded from the victim the amount of P200.00 as his wages for the excavation and installation of a deep-well tank in Barangay Natulo, Naujan, Oriental Mindoro. Apparently, the victim was a contractor in the installation of deep-well tanks while the accused was one of the victim's workers. When the victim told him that he had no money, he replied that he could give him rice. The victim, however, told him, "problema mo na yan, hindi ko problema yan!" The witness then saw a scythe on top of the table which they were then using to cut calamansi fruits, and he and the victim grappled for it. He was able to take possession of the scythe and when the victim turned his back on him, he struck the former with a scythe thinking that the victim would just be hit on the shoulders. He then went out of the door, taken aback by what he did.** He claimed that he had not intention to kill the victim. Thereafter, a number of people arrived, among those was his aunt who patted him on the left shoulder and told him, "Takbo na!" He then got scared and ran towards his father's house. His father instructed him to go to Barangay Biga, Calapan City, together with his brother. They then proceeded to the house of his brother-in-law where he slept for a while. At twelve midnight, his brother and father fetched him to surrender him to the police authorities. Finally, he reiterated that he did not intend to kill the victim.^[10]

On cross-examination, he testified that he had an altercation with the victim when he demanded the full payment of wages due him for the the installation of a deep-well in Naujan, Oriental Mindoro. He got angry about the victim's reply and struck the latter. He did not intend to hit the victim on the neck and did not see any blood coming out of the body of

the victim. He did not remember having told Yabut, "Ay amanos na kami, solved na ang aking problema." He claimed he voluntarily surrendered to the police.^[11]

The last witness to take the stand was SPO1 Agapito Marasigan, a member of the Philippine National Police, who testified that on the night of November 24, 1997, somebody arrived at his residence in Bucayao, Calapan City and informed him about the killing of the victim Samson Cuyogan. He then proceeded to the crime scene and on his way thereto, he met the father of the accused who told him that his son was involved in the killing of Cuyogan and intended to surrender the accused to him. The father of the accused then fetched the former from where he was staying at that time. The witness then brought the accused to the police detachment in Barangay Sta. Isabel, Calapan City and called up the Calapan City Police Station. When police investigators from the police station arrived, he informed them that the accused voluntarily surrendered to him but he was not aware if the same was recorded in the police blotter or any relevant police record.^[12] (Emphasis supplied)

The RTC upheld the prosecution evidence and found appellant guilty of the crime of murder.

The dispositive portion of the RTC decision reads as follows:

Accordingly, this Court finds herein accused Marcelino Abare y Isidro guilty beyond reasonable doubt as principal by direct participation of the crime of Murder qualified by treachery and punishable under Article 248 of the Revised Penal Code. Considering the absence of any other aggravating nor mitigating circumstances, said accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties as provided for by law and to pay the costs, to indemnify the heirs of the victim Samson Cuyogan the amount of P50,000 as civil indemnity and another P50,000 as moral damages.

SO ORDERED.^[13]

The RTC decision was appealed to this Court by the appellant; the decision, was, however, referred to the CA pursuant to *People v. Mateo*.^[14]

In its Decision dated July 18, 2005, the CA affirmed the decision of the RTC, to wit:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The January 18, 2002 Decision of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, is hereby AFFIRMED.

SO ORDERED.^[15]

Appellant filed a Motion for Reconsideration,^[16] which was denied by the CA through a Resolution^[17] dated January 27, 2006.

Hence, herein appeal.

In his Brief,^[18] appellant raises the following errors:

I.

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME OF MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.^[19]

The appeal is not meritorious.

Appellant submits that the prosecution was not able to prove beyond an iota of doubt that the crime of Murder was committed, and that treachery was attendant in the case at bar.^[20] Appellant argues that there was no direct eyewitness to the alleged hacking incident.^[21] More specifically, appellant contends that the testimonies of prosecution witnesses Yabut and Magdaleno reveal that neither of them saw how the hacking commenced.

To bolster his case, appellant relies on this Court's pronouncement in *People v. Lug-aw*^[22] (*Lug-aw*), to wit:

"Absent any particulars as to the manner in which the aggression commenced, on how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated to qualify the killing to Murder." x x x.^[23]

The reliance of appellant on *Lug-aw* is misplaced, as the factual circumstances therein do not find application to the case at bar. In *Lug-aw*, the Court observed:

The trial court drew conclusion of the presence of treachery because the attack was sudden as Pal-loy was simply going about his task of fencing his *kaingin*. **We find however, that no one witnessed the initial attack. As Sonia herself testified, she *heard* the first shot, went up a hill, climbed a tree and from there, saw Lug-aw shooting her father with the shot reverberating as the *second* gun report. Nowhere do we find in the records any evidence that she witnessed the first shot nor how her father reacted to it.** What she did see was her father trying to repel the assault with a bolo but failed when a *second* shot hit him. As this Court held in *People v. Castor*, **where the lone eyewitness was not able to observe the commencement of the assault, he could not testify on how it all began and developed.**^[24] (Emphasis and underscoring supplied)

In other words, in *Lug-aw*, the aggravating circumstance of treachery was not appreciated for the following reasons: *first*, it was only after the eyewitness had gone up a hill and climbed a tree upon hearing the first shot that she saw Lug-aw shooting her father for the second time; and *second*, since the eyewitness never saw the first shot, she therefore could not testify how the attack on her father by