

THIRD DIVISION

[G.R. No. 145504, June 30, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY CAGAS,
APPELLANT.**

DECISION

CARPIO MORALES, J.:

On appeal is the August 17, 2000 of the Regional Trial Court of Surigao City, Branch 30 convicting Larry Cagas (appellant) of murder and sentencing him to suffer reclusion perpetua.

In the December 18, 1995 Information^[1] filed against appellant, he was charged as follows:

That on or about the 2nd day of November 1995 at 2:00 o'clock in the afternoon, more or less, at the Roman Catholic Cemetery, Poblacion Bacuag, Surigao del Norte, and within the jurisdiction of this Honorable Court, accused Larry Cagas, with jurisdiction of this Honorable Court, accused Larry Cagas, with intent to kill, through treachery, did then and there willfully, unlawfully and feloniously stab one Venecio Elicano, using a Batangas Knife, thereby inflicting fatal wounds upon Venecio Elicano which caused his instantaneous death to the damage and prejudice of the heirs of Venecio Elicano in such amount as shall established in court.

CONTRARY TO LAW with the qualifying circumstance of treachery.

Following appellant's arraignment on June 6, 1996 during which he entered a plea of not guilty,^[2] the case was tried.

Around 2:00 p.m. of November 2, 1995, all Souls Day, while Venecio Elicano (the victim) and his friend Alejandro Jamero, Jr. were seated on a bench at the store near the entrance of the public cemetery of Bacuag, Surigao del Norte, the victim was thrice stabbed with a Batangas knife by appellant. The victim was immediately brought to the hospital but was pronounced dead on arrival.^[3]

Soon after the police was informed of the incident, PO2 Rey Tadifa repaired to the cemetery proper where appellant fled. PO2 Tadifa, on seeing appellant, advised him to surrender the knife which appellant heeded.^[4]

The evidence for the prosecution shows that as the victim and Jamero were sitting on the bench, appellant who was then drunk, together with Cocoy Ibarra and two others, approached the victim and told the latter that they were cousins ("Magpinsan pa tayo 'tol"), drawing the victim to respond: "Is that so?"; and that following the shaking of hands by appellant and the victim, appellant suddenly

stabbed the victim.^[5]

Upon the other hand, appellant, interposing self-defense, declared as follows: On reaching the store where he was to buy an additional candle and cigarette, the victim asked him his name and where he is from. On giving his name and stating that he came from Barangay Pungtod, the victim suddenly grabbed him by the collar while his (the victim's) companions stood up. As he got scared, he told the victim: "Brod, no because we are still relative[s]" even if they were not. The victim went on to box him twice, however, and he was able to lean on the table. The victim again boxed him, and as he thought that the victim's two other companions might attack him, he grabbed a Batangas knife lying on the table and thrice stabbed the victim. He then went to the police following the incident.^[6]

At the witness stand, when appellant was asked if he submitted himself for medical examination in light of his claim that he was boxed several times, he answered in the negative, he explaining that he was afraid because he was almost shot by a policeman who happened to be a relative of the victim.^[7]

The post-mortem examination conducted on the victim by Dr. Manolo Tan, Municipal Health Officer, showed that the victim suffered the following wounds:

1. Clean-cut wound 6 cm length, 7 cm depth with blood air bubbles, one centimeter above the suprasternal notch.
2. Open wound, 2 cm length, 4 cm lateral to midsternal line level of right nipple, directed upward, 4 cm depth.
3. Open wound, 2 cm length, 3 cm lateral to right nipple, directed upward 3 cm depth.
4. Open wound 2 cm length at lateral distal 3rd of right arm with point of exit at medial distal 3rd of right arm.^[8]

Testifying for the defense, Tanny Bayang claimed seeing appellant being boxed by a man whom he does not know.^[9]

Another defense witness Pablo Placeros, on being asked what the victim was doing at the cemetery, answered that he was doing "nothing at all." On being subsequently asked how the victim boxed appellant, however, he declared that the victim was hit on the chest.^[10]

The other defense witness Max Manliguis testified that he saw appellant surrender the knife to SPO2 Tadifa.^[11]

By the decision^[12] on review, the trial court disposed as follows:

WHEREFORE, finding the accused Larry Cagas GUILTY beyond reasonable doubt as principal in the crime of murder, defined and penalized in Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, and after considering in his favor the mitigating circumstance of voluntary surrender, there being no aggravating circumstance to offset the same,

this Court hereby imposes upon him the penalty of reclusion perpetua, together with accessory penalties, and to pay the costs.

The accused is hereby ordered to indemnify the heirs of Venecio Elicano in the sum of Fifty Thousand Pesos (P50,000.00) and to pay private complainant Luciano Elicano the sum of Twenty-Eight Thousand Pesos (P28,000.00) for actual damages and another Fifty Thousand Pesos (P50,000.00) for moral damages.

Four-fifths (4/5) of the preventive detention of the said accused shall be credited in his favor.

In its decision, the trial court held that appellant's plea of self-defense lacked probative value:

In the case at bench, the testimony of the accused that he stabbed Venecio Elicano because the latter boxed him, has no probative value for being self-serving, the said testimony not being corroborated by any other witnesses for the defense.

Defense witness Max Manliguis admitted, on direct examination, that he has no personal knowledge of the stabbing in question; defense witness Tanny Bayang did not say that it was Venecio Elicano who boxed the herein accused, although said witness declared that he saw the latter being boxed; and defense witness Pablo Placeros admitted, on direct examination, that he has not actually seen the accused stab Venecio Elicano and that when the said witness was in the public cemetery of Bacuag, Surigao del Norte, at 2:00 o'clock in the afternoon of 2 November 1995, he saw Venecio Elicano there, doing "nothing at all."

Moreover, the assertion of the accused that it was Venecio Elicano who initiated the unlawful aggression in this case is rendered doubtful by the fact that no evidence whatsoever is adduced by the defense showing physical injuries sustained by the accused, in spite of his having been allegedly hit on his breast, right arm and left lower cheek by the fistic blows of Venecio Elicano. The explanation of the accused that he did not have himself examined by a doctor because he was afraid of a certain Besande, a policeman, and the latter's two companions, who are relatives of Venecio Elicano, is more imaginary than real, if not flimsy. The accused after the incident in question, was placed under preventive detention in the Bacuag Municipal Jail for more than one week and he was not armed by Besande and his companions until now. Res ipsa loquitur (the thing speaks for itself). The contention of the accused that he was almost shot by Policeman Besande is untenable, otherwise said accused would have already filed criminal or administrative charges against the said policeman. This, the accused failed to do.^[13] (Underscoring in the original; citations omitted)

In his Brief,^[14] appellant assigns to the trial court the following errors:

I.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE CLAIM OF ACCUSED-APPELLANT OF SELF-DEFENSE.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVEN BEYOND REASONABLE DOUBT.^[15]

Insisting that the three requisites of the justifying circumstance of self-defense are present,^[16] appellant explains that it is evident from the testimonies of the defense witnesses that it was the victim who initially boxed him in the presence of his companions who positioned themselves in a threatening manner, hence, it was only reasonable for him to feel that his life was in danger.^[17] Appellant adds that as he was pushed against the table, he had no other recourse but to make use of the knife lying thereon which is deemed reasonable under the circumstances considering that the victim was in the company of several others.^[18]

This Court finds the rejection of appellant's plea of self-defense is well taken.

When an accused invokes self-defense, the burden of evidence is shifted on him to prove it clearly and convincingly. He must rely on its strength and not on the weakness of the evidence of the prosecution, failing which the evidence for the prosecution can no longer be disbelieved and the accused can no longer be exonerated.^[19]

In the case at bar, appellant failed to discharge such burden. Though defense witness Bayang claimed to have seen someone box appellant, he did not point to the victim as the assailant.

As for defense witness Placeros, his testimony was laced with inconsistencies to thereby render it incredible:

COURT

Q: Do you know why Cagas stabbed Elicano?

A: I do not know, your Honor.

COURT

Go ahead.

ATTY. A. MOLETA

Q: You said that on November 2, 1995, at the Bacuag public cemetery, you saw the stabbing incident between Venecio Elicano and Larry Cagas at exactly what time after your arrival at one o'clock p.m. [at] said place that you saw Venecio Elicano in the same place?

A: More or less at two o'clock p.m.

Q: When you saw Venecio Elicano in the said public

cemetery at two o'clock p.m. of November 2, 1995, may we know what was he doing at that time?

A: Nothing at all.

Q: Do you mean the deceased in this case, the one according to you was stabbed [b]y Larry Cagas was simply doing nothing at two o'clock p.m. of Nov. 2, 1995 at the Bacuag cemetery?

ATTY. CATRE [defense counsel]

Already answered.

COURT

Sustained.

Q: Mr. Placeros, what do you mean doing nothing? We he simply standing or sitting?

A:

ATTY. CATRE

Objection

ATTY. A. MOLETA

Q: How did Venecio Elicano box Larry Cagas?

A: He boxed Larry Cagas and Cagas was hit on the chest (pointing to his left chest)

Q: The arm or feet was used [by] Elicano in boxing Larry Cagas?

A: Right hand, sir.

Q: Where was Larry Cagas when he was boxed by Elicano?

A: On the lower portion of the cemetery.

Q: You said that [V]enecio Elicano boxed Larry Cagas, was Larry Cagas hit when he was boxed by Elicano?

A: Yes, sir, on the chest.

Q: How did Elicano box Larry Ca[g]as, how many times?

A: Only once.

COURT

Q: When he was hit on the chest by Elicano, what happened to Cagas?

A: Larry Cagas . . . staggered and back track (sic), your Honor.

Q: After Cagas was staggered, what did he do?

A: I did not see what happened next, your Honor, because the commotion ensued after that.