

## SECOND DIVISION

[ G.R. No. 139907, March 28, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELO BATES, ACCUSED-APPELLANT. MARCELO BATES, JR.  
(AT-LARGE), ACCUSED.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is an appeal taken by accused Marcelo Bates from the Judgment of the Regional Trial Court of Ormoc City (Branch 35) finding him guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer imprisonment of "forty years of *reclusion perpetua*".

The Information states:

That on or about the 28<sup>th</sup> day of November 1995, at around 5:30 o'clock in the afternoon, in Brgy. Esperanza, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused MARCELO BATES and MARCELO BATES, JR., conspiring together and confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, being then armed with long bolos, did then and there willfully, unlawfully and feloniously stab and hack to death the person of the victim herein, JOSE BOHOLST without giving the latter sufficient time to defend himself, thereby inflicting upon him multiple wounds which caused his instantaneous death. Death Certificate and Autopsy Report are hereto attached. In violation of Article 248, Revised Penal Code.<sup>[1]</sup>

Upon arraignment, Marcelo Bates entered a plea of not guilty.

The version of the prosecution:

Around 2:00 in the afternoon of November 28, 1995, Edgar Fuentes, Simon Fuentes and Jose Boholst left Barangay Esperanza, Ormoc City to deliver copra to a certain Fely Rodado at Barangay Green Valley, Ormoc City. After delivering copra around 5:00 in the afternoon, the three men headed back to Barangay Esperanza. While they were along a trail leading to the house of Carlito Bates, the latter suddenly emerged from the thick banana plantation surrounding the trail, aiming his firearm at Jose Boholst who was then walking ahead of his companions. Jose grabbed Carlito's right hand and elbow and tried to wrest possession of the firearm. While the two were grappling for possession, the gun fired, hitting Carlito who immediately fell to the ground. At that instant, Marcelo Bates and his son Marcelo Bates, Jr., brother and nephew of Carlito, respectively, emerged from the banana plantation, each brandishing a bolo. They immediately attacked Jose hacking him several times.

Jose fell to the ground and rolled but Marcelo and his son kept on hacking him. Marcelo, then, turned to Simon and Edgar and shouted "huwes de kutsilyo". Upon hearing the same, Simon and Edgar ran.<sup>[2]</sup>

Around 5:30 of the same afternoon, Concepcion Boholst, wife of Jose, was at their home preparing dinner. Upon being informed by a certain Violeta Fuentes that Jose was waylaid, she immediately went to the place where the incident reportedly happened which is less than a hundred meters from their house. There, she saw Marcelo Bates and his son Marcelo, Jr. hacking Jose who was lying face up. She pleaded for them to stop but they did not listen. She did not see Carlito. She went home fearing for her life, thinking that Marcelo and his son might turn their ire on her.<sup>[3]</sup>

The version of the defense:

Around 5:00 in the afternoon of November 28, 1995, Ponciano Sano went to the house of Marcelo Bates. Ponciano was sent by Barangay Captain Feliseo Sano to get a chicken from Marcelo. While they were trying to catch a chicken, they noticed Jose Boholst, Edgar Fuentes, and Simon Fuentes approach the house of Carlito Bates which is about twenty meters away from Marcelo's house. Thereafter, they saw Jose drag Carlito out of the latter's house while both were arguing and grappling. Marcelo immediately ran towards Jose and Carlito but when Marcelo was about to approach them, Jose shot Carlito with a gun. Edgar and Simon ran away. Upon seeing Carlito fall to the ground, Marcelo attacked Jose but the latter also fired a shot at him. However, Marcelo was able to duck and avoid being shot. Jose was about to shoot Marcelo a second time but the latter retaliated by hacking Jose with a bolo hitting him on his neck and causing him to fall to the ground. Marcelo then went to the aid of his brother Carlito but upon seeing that he was already dead, he went back to where Jose was lying and again hacked him. Thereafter, Ponciano picked up the gun used by Jose and surrendered it to Barangay Captain Sano. Marcelo also surrendered himself to the said barangay captain. During the whole incident Marcelo Bates, Jr. was not present.<sup>[4]</sup>

Upholding the prosecution evidence, the trial court rendered its Judgment, dated June 4, 1999, the dispositive portion of which reads as follows:

Wherefore, all the foregoing considered, the Court finds the accused Marcelo Bates **GUILTY** beyond reasonable doubt of the crime of murder as charged and hereby sentences him to suffer imprisonment of forty (40) years reclusion perpetua after appreciating the mitigating circumstance of voluntary surrender, and to pay the offended party the sum of P50,000.00 as indemnity and another sum of P50,000.00 as moral damages.

If the accused is a detainee, the period of his imprisonment shall be credited to him in full provided he abides in writing by the terms and conditions for convicted prisoners, otherwise, for only four-fifths (4/5) thereof.

SO ORDERED.

Aggrieved, Marcelo Bates brought the present appeal. He raises the following:

## ASSIGNMENT OF ERRORS

### I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE DEFENSE INTERPOSED BY ACCUSED APPELLANT.

### II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

### III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS ATTENDANCE IN THE COMMISSION OF THE CRIME CHARGED ON THE ASSUMPTION THAT ACCUSED-APPELLANT DID NOT ACT IN SELF-DEFENSE.

### IV

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING PASSION AND OBFUSCATION AS A MITIGATING CIRCUMSTANCE IN FAVOR OF ACCUSED-APPELLANT ON ASSUMPTION THAT THE LATTER DID NOT ACT IN SELF-DEFENSE.<sup>[5]</sup>

Appellant claims self-defense. Under Article 11 of the Revised Penal Code, anyone who acts in defense of his person or rights do not incur any criminal liability provided that the following circumstances concur: First, unlawful aggression on the part of the victim; second, reasonable necessity of the means employed to prevent or repel it; and third, lack of sufficient provocation on the part of the person defending himself.<sup>[6]</sup> It is a settled rule that when an accused admits killing the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he acted in self-defense; and as the burden of the evidence is thus shifted to him, he must rely on the strength of his own evidence and not on the weakness of the prosecution.<sup>[7]</sup>

After scrutiny of the evidence presented, we agree with the trial court that self-defense was not established by appellant. He testified that he initially inflicted only a single hack wound on the neck of Jose causing the latter to fall to the ground. He then went to the aid of his brother Carlito but upon finding that he was already dead, he went back to where Jose fell. Appellant admitted that at that time, Jose was in a lying position still alive but hardly moving.<sup>[8]</sup> Under such a situation, Jose could have hardly put up any defense, much less, make an aggressive move against appellant. Despite Jose's condition, appellant repeatedly hacked Jose. Granting that Jose was the one who first committed unlawful aggression, appellant was no longer justified in further inflicting wounds upon Jose because at that time, the latter was already lying helpless on the ground. At that moment, unlawful aggression on the part of Jose had ceased. It is a settled rule that when unlawful aggression ceases,

the defender has no longer any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed.<sup>[9]</sup> Hence, the fact that unlawful aggression on the part of Jose already ceased when Marcelo repeatedly hacked him rules out the possibility of self-defense, whether complete or incomplete.<sup>[10]</sup> Thus, the first assigned error is without merit.

In his second assigned error, appellant questions the credibility of the prosecution witnesses. We have time and again, held that the issue of credibility is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts; and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have affected the outcome of the case.<sup>[11]</sup> In the present case, the trial court found the testimonies of the prosecution witnesses to be more credible than those of the defense witnesses.

We find no cogent reason to depart from the findings of the trial court.

Prosecution witness Edgar Fuentes testified that Jose and Carlito grappled for possession of the gun. Appellant insists that this is belied by the absence of gunpowder burns on the wound of Carlito. Appellant cites the medical findings and the testimony of Dr. Rogelio Mercado who conducted the autopsy on the bodies of Jose and Carlito, to the effect that the absence of gunpowder burns on the wound of Carlito would indicate that he and Jose did not fight for the possession of the gun. We are not convinced.

The finding of the physician is not certain and conclusive as it is contradicted by no less than appellant himself when he testified, as follows:

Q. After you noticed Jose Boholst with two companions went to your house of your elder brother, what did you notice if there was any?

A. This Jose Boholst dragged my elder brother from the door to the yard.

Q. And how far were you at that time when you noticed that Jose Boholst drag your brother?

A. At the same distance of about 20 meters from our house.

Q. While you said that Jose Boholst dragged your brother Carlito Bates, were they arguing with each other?

A. Yes, sir and they were grabbling(sic).

Q. Do you know what they were arguing about?

A. I've heard that they were arguing about the palm of the coconut tree.

Q. What else did you know if you notice that Carlito Bates was arguing as a matter of fact they were grabbling(sic) each other, what did you do?