

FIRST DIVISION

[G.R. No. 148810, November 18, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HEVER PAULINO Y BIYAYA, APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Dumaguete City, Branch 34, in Criminal Case No. 12720 finding appellant Hever Paulino y Biyaya guilty beyond reasonable doubt of the crime of Murder, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to indemnify the heirs of the victim the sum of P50,000.00.

For the death of the Leonarda Paulino, appellant was charged with murder in an Information that reads:

That on 18 August 1996 at about 5:00 o'clock in the afternoon in Sitio Tubod, Tamao, Tayasan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill and with treachery and evident premeditation and without regard of the respect due to the offended party on account of her sex did then and there willfully, feloniously and unlawfully attack, assault and stone one Leonarda Paulino with a large rock thereby inflicting upon the latter fatal injury at her head which caused her death soon thereafter.

CONTRARY TO ART. 248 of the Revised Penal Code.^[2]

When arraigned, appellant pleaded not guilty. Thereafter trial on the merits ensued.

The facts of the case are as follows:

On August 18, 1996, at about 5:00 p.m., the victim and her daughters, Joy and Mylene, were at their house when appellant passed by and asked for water to drink. Since he was the nephew of the victim, appellant was welcomed into the house and was given a glass of water by Mylene. He stayed at their porch while Mylene left for the house of her grandmother, Vivenciana Cantero, approximately 40 meters away. Moments later, the victim advised appellant to go home as his father might be looking for him. Appellant left the house angry at the victim for telling him to leave. Then, as the victim and Joy walked towards the house of Vivenciana Cantero to fetch Mylene, Joy saw appellant, who was only about 2 meters behind them, throw a rock at them hitting the head of the victim. The victim slumped to the ground with her face down while appellant ran away. Vivenciana heard the cries of Joy for help, and rushed to the scene. Her husband, Timoteo Cantero and Leonila Onayan, Joy's aunt, helped Vivenciana bring the victim to Bindoy District Hospital where she was

treated. She was then transferred to the Negros Oriental Provincial Hospital later that night. The victim died the following day.^[3]

Dr. Fe Herrera, a resident physician of Bindoy District Hospital, testified that the victim was unconscious when she was brought by the relatives to the hospital. The victim sustained two lacerated wounds, one on the left temporal region, about three centimeters long and the other one on the right parietal region, about six centimeters long. She referred the victim to the Negros Oriental Provincial Hospital for further treatment.^[4]

Dr. Virgilio de Guzman, the government physician at the Negros Oriental Provincial Hospital who attended to the victim, testified that the injuries sustained by the victim were fatal and no amount of surgical intervention could have saved her. The victim died on August 19, 1996 at 8:30 a.m. due to cardio-pulmonary arrest secondary to uncal herniation secondary to severe traumatic injury.^[5]

For his part, appellant admits that he threw a stone at the victim but claims that he did so in self-defense. According to him, in the afternoon of August 18, 1996, he passed by the house of the victim and asked for water to drink. After Mylene Paulino gave him a glass of water, he asked her if she already had a boyfriend. Mylene did not reply but kicked him instead. She then went into the kitchen. Suddenly, the victim came out of the kitchen holding a scythe in her hand and shouted at him, "*I will kill you! I will chop you finely with the use of this scythe!*" Appellant ran away and the victim chased him. When the victim was about 3 meters away from him, he picked a stone and threw it at her to defend himself. After that, he ran towards their house. He did not see whether the victim was hit or not. That same night, he told his father what happened. The following morning, he went to the house of policeman Remegio Torres to surrender. He was accompanied to the police station of Tayasan, Negros Oriental, where he was investigated and detained.^[6]

After trial, the court *a quo* rendered a decision, the dispositive portion of which reads:

WHEREFORE, accused HEVER PAULINO is hereby found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, and the Court hereby imposes upon him the penalty of *RECLUSION PERPETUA* .

Accused is likewise directed to indemnify the heirs of victim Leonarda Paulino the amount of FIFTY THOUSAND PESOS (P50,000.00).

In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, accused Hever Paulino is hereby ordered to be immediately detained at the New Bilibid Prison in Muntinlupa City, Metro Manila. The accused is, however, hereby given full credit for the entire period of his preventive detention, provided that he has submitted himself to and observed the rules and regulations imposed by the detention center.

No pronouncement as to costs.

SO ORDERED. ^[7]

Hence, this appeal, based on the following assignment of errors:

I.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II.

THE COURT A *QUO* GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

III.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS LIABLE FOR THE ACTS COMPLAINED OF, THE COURT A *QUO* GRAVELY ERRED IN APPRECIATING THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF TREACHERY.^[8]

Appellant's claim of self-defense is unavailing.

Settled is the rule in criminal cases that the prosecution has the *onus probandi* in establishing the guilt of the accused.^[9] However, where the accused admits commission of the crime but invokes self-defense, the basic rule that the burden of proving the guilt of the accused lies on the prosecution is reversed, and the burden of proof is shifted to the accused to prove the elements of his defense.^[10] It then becomes incumbent upon him to rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution, for even if the latter were weak, it could not be disbelieved after he had admitted the killing.^[11] Hence, if the accused fails to discharge the burden of proof, his conviction must ensue as a matter of consequence. ^[12]

By invoking self-defense, appellant must prove: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel or prevent it; and (c) lack of sufficient provocation on the part of the person defending himself. ^[13] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete. In other words in self-defense, unlawful aggression is a primordial element. ^[14]

The question whether appellant acted in self-defense is essentially a question of fact. ^[15] In convicting appellant, the trial court succinctly held that:

In the case at bar, the court is not persuaded to believe the assertion of accused Hever Paulino that he acted in self-defense when he threw a big stone at the head of victim Leornado Paulino, which led to her death. As admitted by the accused on the witness stand, he had no previous quarrel or misunderstanding with victim Leonarda Paulino, nor with

eyewitness Joy Paulino, or with any members of their family. There is no reason, therefore, why Leonarda would chase him with a scythe. There is also no reason at all why Joy Paulino would impute to the accused the heinous crime of Murder, if he did not commit the crime as charged. This is especially so, taking into account the fact that the accused, the victim and the eyewitness are relatives. Leonarda is the wife of the uncle of the accused, while Joy is the first cousin of the accused. Well-settled is the rule that where there is no showing that the principal witnesses for the prosecution were actuated by any improper motive, the presumption is that they are not so actuated and their testimonies are entitled to full faith and credit. Mere relationship of a witness to the victim does not impair her credibility as to render her testimony unworthy of credence where no improper motive can be ascribed to her for so testifying. The assertion of the accused that the victim chased him with a scythe is unworthy of belief as it is unnatural, coupled by the fact that it runs counter to the credible and straightforward testimony of eyewitness Joy Paulino...

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The fact that victim Leonarda Paulino advised the accused, who is the nephew of her husband, to go home because he has his own house and his father might be looking for him, does not constitute an unlawful aggression in contemplation of law. The victim simply showed concern for the accused and his father.^[16] (Citations omitted)

We have consistently held that findings of facts and assessment of credibility of witnesses are matters best left to 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. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.^[17] No such fact or circumstance obtains in the case at bar.

Appellant failed to prove with satisfactory and convincing evidence that the victim was guilty of unlawful aggression. Self-defense cannot be justifiably entertained where it is not only uncorroborated by competent evidence but is seriously doubtful. Like alibi, self-defense is inherently a weak defense, which is so easy to concoct but very difficult to verify.^[18] Appellant's invocation of self- defense therefore deserves scant consideration.

Appellant next argues that if he were to be held criminally liable, it should only be for homicide. According to him, treachery was not alleged in the Information with specificity as to qualify the killing to murder. He cites as bases for his argument the cases of *People v. Alba*^[19] and *People v. Manlansing*,^[20] wherein the Court disregarded the qualifying circumstance of treachery for the reason that it failed to specify treachery as a circumstance qualifying the killing to murder. In said cases, treachery was considered only a generic aggravating circumstance; thus, the crime committed was only homicide and not murder.