

FIRST DIVISION

[G.R. No. 139528, May 09, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORMAN OBORDO Y BULALAKAW, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

Before the Court is an appeal from the Decision of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, dated July 2, 1999 in Criminal Case No. 7659 finding accused-appellant Norman Obordo y Bulalakaw guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

On January 28, 1997, accused-appellant was charged with murder in an information which alleged:

That at dawn, on or about January 23, 1997 in Barangay Antipolo, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with a hunting knife, with intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the use of said hunting knife one, HOMER JAMAROLIN, thereby resulting to his instantaneous death.

That as a result of the criminal acts of the accused heirs of the deceased suffered the following damages to wit:

1. Moral damages - - - -	P 30,000.00
2. Exemplary damages - -	30,000.00
3. Death Indemnity - - - -	<u>40,000.00</u>
Total - - -	P100,000.00

CONTRARY TO LAW. (Viol. of Art. 248 of the Revised Penal Code, amended by R.A. 7659)^[1]

Upon arraignment, accused-appellant entered a plea of not guilty. Thereafter, trial ensued.

The prosecution presented as its witnesses Edgar Bendillo, Rolando Jamarolin, Dr. Bernardo Palma and Renelio Jamarolin.

Edgar Bendillo testified that at about 7:30 in the evening of January 22, 1997, he, the victim Homer Jamarolin and their companions Roy Adrias, Rene Adrias, and Inting Jamlod went to Antipolo, Dapitan City to attend a benefit dance. On their way to the dance, they stopped by the store of Mimie Valladares and engaged in a

drinking spree.^[2]

At about 1:00 a.m. of the following day, January 23, 1997, Rolando Jamarolin, Homer's brother, arrived at Valladares' store and asked the victim for some money to buy a bottle of softdrinks. Rolando persuaded Homer and his companions to proceed to the benefit dance and the group acceded.^[3]

While Homer and his companions were on their way to the benefit dance, they met the group of Ronald Alap-ap, which included accused-appellant Norman Obordo.^[4]

When Bendillo saw Alap-ap, with whom he previously had a fist fight, he approached Alap-ap and boxed the latter. Alap-ap staggered from the blow then pulled out a hunting knife from his waist, prompting Bendillo to retreat towards Homer and the rest of their group.^[5]

In the meantime, accused-appellant called Homer, who was then holding a lighted cigarette, and asked him if he could light accused-appellant's cigarette. Homer obliged and extended his lighted cigarette to accused-appellant.^[6] At this time, Bendillo was walking back towards his companions and was about one fathom^[7] A "fathom" is defined as a full stretch of the arms in a straight line; also, grasp, reach, or a unit of length equal to 6 feet based on the distance between fingertips of a man's outstretched arms and used especially for measuring the depth of water (Webster's Third New International Dictionary, p. 828 [1976]).⁷ away from Homer when he saw accused-appellant approach the latter to reach for the lighted cigarette. Accused-appellant's right hand was at the right side of his hip as if concealing something. Accused-appellant took Homer's cigarette with his left hand and with his right hand suddenly stabbed Homer on the left side of the abdomen near the navel with what seemed to be a small bolo. After he was stabbed, Homer retaliated by punching accused-appellant in the face. Accused-appellant fell to the ground, then got up on his feet and ran away. Bendillo said that although Homer and accused-appellant were facing each other then, Homer had no chance to defend himself because he was busy lighting accused-appellant's cigarette. Bendillo further stated that he was able to see the stabbing because the place was well-lighted because there was a fluorescent lamp from the electric post and the moon was shining brightly.^[8]

Rolando Jamarolin ("Rolando"), the brother of the victim, corroborated Bendillo's statements. Rolando testified he left the house on January 22, 1997 at around 8:00 p.m. to attend a benefit dance in a disco house in Antipolo, Dapitan City. At about 1:00 a.m. of January 23, 1997, he went outside the disco house to look for his brother Homer. Rolando eventually found Homer with Bendillo, Rene Adrias and Roy Adrias at Valladares' store. He asked Homer for money to buy a bottle of cola. After finishing his drink, Rolando suggested to Homer and his group that they proceed to the benefit dance before going home. However, they were not able to attend the dance because they met the group of accused-appellant, Alap-ap and their other companions along the way.^[9]

Rolando explained that when Bendillo saw Alap-ap, Bendillo approached the latter and boxed him. Rolando heard accused-appellant call Homer and say "Pagdakota ko, Bay." Accused-appellant was asking Homer to light his cigarette. Rolando then

saw Homer go near accused-appellant to light the unlighted cigarette with Homer's cigarette which was already lighted. While Homer was lighting accused-appellant's cigarette, the latter suddenly thrust his hunting knife towards the left side of Homer's abdomen. Homer was unable to prevent himself from being stabbed because the act took place all of a sudden.^[10]

After Homer was stabbed, he retaliated by punching accused-appellant. The latter fell out but he stood up at once, and then he and his companions ran away from the scene. Thereafter, Rolando Jamarolin and their other companions rushed Homer to the hospital, but the victim died before they could reach the same.^[11]

Rolando was able to ascertain that it was accused-appellant who stabbed his brother because the place was illuminated by a fluorescent bulb.^[12]

Dr. Bernardo Palma, the City Health Officer who examined Homer's body at about 9:10 a.m. on January 23, 1997, found that the victim sustained a wound on the left side of the navel and that his stomach and liver were also injured.^[13] His postmortem report indicated the following:

FINDINGS:

STABBED WOUND 1 inch left hypochondriac region with injuries to stomach liver.

CAUSE OF DEATH:

Acute anemia secondary to stabbed wound with injuries to stomach and liver.^[14]

Dr. Palma opined that the a sharp-edged pointed blade instrument which could be a small bolo or a hunting knife must have been used by the assailant in stabbing the victim.^[15]

The prosecution's last witness was the victim's father, Renelio Jamarolin ("Renelio"). He testified that at the time of his death, Homer was physically fit and gainfully employed by a certain Atty. Cainta as a fishpond watcher. Homer was earning Two Thousand Pesos (P2,000.00) a month, excluding his commission from the *bangus* and the *lukon*. Renelio said that he suffered great pain and anguish as a result of Homer's death. He claimed Thirty Thousand Pesos (P30,000.00) as moral damages, Thirty Thousand Pesos (P30,000.00) as exemplary damages and Forty Thousand Pesos (P40,000.00) as indemnity for his son's death.^[16]

The defense presented the testimonies of Vidal Calalang and the accused-appellant.

Vidal Calalang, a Barangay Tanod of Antipolo, Dapitan City at the time of Homer's killing, testified that on January 23, 1997 from about 1:00 to 2:00 a.m., he was patrolling the area near the disco where the benefit dance was being held. While patrolling near the bridge, he saw Homer punch accused-appellant. Accused-appellant thereafter stabbed Homer and ran away. Calalang said that he saw what happened because the incident occurred in a well-lighted place. He stated further

that he only saw Homer and the accused-appellant and that he did not see their companions.^[17]

Accused-appellant admitted before the trial court that he stabbed Homer with a hunting knife, but interposed self-defense. He stated that he attended the benefit dance held in Antipolo, Dapitan City on January 22, 1997. He and his companions Ronald Alap-ap, Richard Alap-ap, Walter Alajos and Ricky Esmade left the affair at about 2:00 a.m. the following day, January 23, 1997. On their way home to Tamion, Dapitan City, Ronald Alap-ap was boxed by Edgar Bendillo. Accused-appellant claimed that he was subsequently punched by Homer and he fell to the ground. He saw Homer trying to get something from his waist, so accused-appellant pulled out his hunting knife and stabbed Homer before the latter could harm him further.^[18]

On July 2, 1999, the trial court promulgated its Decision finding accused-appellant guilty beyond reasonable doubt for having killed Homer. The dispositive portion thereof states:

WHEREFORE, the Court finds the accused NORMAN OBORDO, GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under the Revised Penal Code, as amended under Section 6 of Republic Act No. 7659, and is hereby sentenced to RECLUSION PERPETUA, to indemnify the heirs of the deceased Homer Jamarolin in the amount of P50,000.00 and to pay P15,000.00 by way of moral damages.

COST DE OFICIO.

SO ORDERED.^[19]

Accused-appellant filed the instant appeal, assigning the following errors:

I

THE COURT A QUO ERRED IN NOT CONSIDERING SELF-DEFENSE IN THE CASE AT BAR.

II

THE COURT A QUO ERRED IN APPRECIATING TREACHERY IN THE CASE AT BAR.^[20]

Accused-appellant contends that the trial court erred in disregarding his claim of self-defense on the ground that he was not able to establish the existence of all the elements thereof. He insists that it was the victim's group which started the trouble, as in fact Edgar Bendillo, a friend of Homer, punched Ronald Alap-ap who was with accused-appellant on the day of the killing. Accused-appellant maintains that he was only defending himself when he stabbed Homer. He reiterated witness Vicente Calalang's statement that Homer punched him before he stabbed the victim. This he says was clearly an act of unlawful aggression on Homer's part. Moreover, he asserts that the means by which he defended himself was reasonable since Homer was about to get something from his waist and accused-appellant believed at that

time that the victim was about to pull out a weapon and use it to harm him.^[21]

Accused-appellant argues further that the trial court erred in holding that Homer's killing was attended by treachery, since it was Homer's group which initiated the attack on accused-appellant's group. This shows that Homer's group was really looking for and expecting trouble. Hence, it can not be said that the victim was not expecting an attack from accused-appellant's group.^[22]

The Court is not convinced by accused-appellant's arguments.

When an accused invokes self-defense, the burden of evidence is shifted to him to prove by clear and convincing evidence the elements of his defense.^[23] In effect, he admits that he committed the killing and the burden is shifted to him to prove that the killing was justified. He must therefore establish the presence of the following requisites of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.^[24]

Accused-appellant failed to prove by clear and convincing evidence that there was unlawful aggression on the part of the victim, a condition *sine qua non* for the successful invocation of self-defense.^[25] He failed to show that his life was threatened and that the threat was imminent and actual, not imaginary.^[26] It was established during trial that prior to the stabbing, the victim merely extended his lighted cigarette to accused-appellant. This cannot by any stretch of imagination be construed as an unlawful aggression on the part of Homer.

Accused-appellant's claim that Homer punched him first before he stabbed the victim was not given credence by the trial court, which found the testimonies of Bendillo and Rolando Jamarolin to be more credible.

Bendillo narrated in detail the incidents that led to the killing of Homer in the early morning of January 23, 1997 as follows:

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Q: Then what did you see when you were there already at the place where Homer Jamarolin was situated?

[A]: I immediately saw Homer Jamarolin at that time that Norman Obordo was about to light a cigarette and I saw him stabbed Homer Jamarolin.

Q: How far were you when you saw Norman Obordo stabbed Homer Jamarolin?

A: One (1) fathom.

Q: Did you see what weapon did Norman Obordo use in stabbing Homer Jamarolin?

A: Yes, sir.