

SECOND DIVISION

[G.R. No. 141914, November 21, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MONDIJAR Y GALLARES, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] of the Regional Trial Court of Cataingan, Masbate, Branch 49, dated March 17, 1999, in Criminal Case No. 812, finding appellant Pedro Mondijar y Gallares guilty of the murder of Pamfilo Aplacador^[2] and imposing upon him the penalty of death. Because appellant was more than seventy-nine (79) years old at the time of the commission of the offense, the sentence was commuted to *reclusion perpetua*, pursuant to Article 47^[3] of the Revised Penal Code, as amended by Republic Act No. 7659.

Appellant and the victim were neighbors in Cataingan, Masbate. Although appellant was the father-in-law of the victim, apparently, there was bad blood between them. In a previous incident, the son-in-law (Aplacador) had stabbed appellant.^[4] Whatever their quarrel, it was never patched up. A month later, the ill feelings erupted anew with fatal results for Aplacador.

In an information dated June 16, 1994 appellant was charged with murder committed as follows:

That sometime on February 26, 1994 at about 6:30 o'clock in the evening more or less, at Barangay Domorog, Municipality of Cataingan, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, above-named accused with intent to kill, evident premeditation, treachery, did there and then wilfully, unlawfully and feloniously, attack, assault, stab, hack, with the use of a sharp and pointed bolo, one PAMFILO APLACADOR hitting him at the different parts of his body which was the direct and the logical cause of his instantaneous death.

CONTRARY TO LAW.^[5]

Upon arraignment, accused pleaded not guilty. Trial then ensued.

The Office of the Solicitor General (OSG) summed up the prosecution's version in its brief, as follows:

Around six o'clock in the evening of February 26, 1994, while prosecution witness Josephine Lebuga was at the back of her house located at Sitio Mangga, Domorog, Cataingan, Masbate feeding her pigs, she heard a commotion and shouting at the house of her neighbor appellant Pedro Mondijar. Appellant's house is about fifteen (15) meters away from

Lebuga's house, thus, the sound coming from appellant's house was audible to Lebuga from where she was standing. Lebuga heard the voice of appellant's son-in-law, the deceased Panfilo Aplacador begging appellant "Pay, don't kill me because I am your son." Then she heard appellant reply, "Okay let's go to your house." After feeding her pigs, Lebuga went inside her house (citation omitted).

Around six thirty in the evening of the same day, prosecution witness Rogelio Booc was walking along Mangga Street, Cataingan, Masbate, on his way home. While working (sic), he saw his neighbor, herein appellant, on the road about fifty (50) meters away, walking behind Aplacador and holding a long bolo about thirty (30) inches in length. Appellant hit Aplacador on the neck with the bolo, thereby decapitating him. When Aplacador fell down, appellant picked up the detached head and threw it about five armslength away from its body. Afraid of what he saw, Booc ran towards his house which is about two hundred meters away from the scene of the incident. Booc informed his wife about the incident and they closed all the windows of their house because they feared for their lives (citation omitted).

The following morning, February 27, 1994, instead of reporting the incident to the police, Booc went to appellant's house and told appellant that he saw a dead body lying along Mangga Street which looked like appellant's son-in-law. He told appellant to proceed to Domorog to seek the help of barangay councilor in getting Aplacador's body. Afraid that he might be killed, appellant did not heed Booc's advise but instead went to Burias Island, Masbate (citation omitted).

On that same day, prosecution witness Lilia Condrillon learned about the tragic death of her brother. She proceeded to the Philippine National Police Station of Cataingan, Masbate and filed a Complaint for the death of Aplacador with policeman Romy Meliton (citation omitted). Appellant was subsequently arrested by the police (citation omitted). An autopsy conducted on the remains of Aplacador revealed that he sustained the following mortal wounds:

1. 12 cm. Hacking wound right auricular^[6] area reaching the brain stem;
2. 12 cm. Hacking wound right zygomatic area reaching the brain stem;
3. 10 cm. hacking wound right lower mandible;
4. multiple hacking wounds neck through and through.^[7]

Dr. Allen Ching, who conducted the post-mortem examination of Aplacador's remains, testified that the victim died of cardio-respiratory arrest due to multiple stab wounds in the neck.^[8]

For his part, appellant admitted killing the victim, but claimed that he only acted in self-defense. He testified that on February 26, 1994 at about 6:30 in the evening, he and his wife were in their house when Aplacador arrived as if looking for trouble. When appellant asked what Aplacador wanted, he did not reply but gritted his teeth. Appellant then told Aplacador to go home so there would be no trouble. Appellant proposed that he would accompany Aplacador on his way home. Appellant then got

his bolo (*minasbad*), so he would use it to cut coconut leaves, which he would burn as a torch to light his way back home. When the two were about 50 meters from appellant's house, Aplacador, who was walking ahead of appellant, faced the latter and said, "I will stab you now." Aplacador then tried to stab him with his knife, but appellant parried the blow. Aplacador lunged again with his knife at appellant but missed because the latter was able to move backward. Thereafter, appellant hacked Aplacador twice, but was not sure whether he hit him for by then it was already dark. Appellant then went home and slept with his wife. The following day, he went to Burias Island. He also declared that a month before the incident, Aplacador stabbed him on the knee, thereby causing him to limp.^[9] He claimed, however, that he did not bear a grudge against Aplacador. He likewise denied hacking the victim for being a wife-beater. Appellant insisted that he killed Aplacador because the latter tried to kill him.^[10]

The trial court found the prosecution's version credible and convicted appellant. Its judgment reads:

ACCORDINGLY, the court finds the accused Pedro Mondijar guilty beyond reasonable doubt of the crime of MURDER and hereby imposes upon him the penalty of DEATH and shall indemnify the legal heirs the amount of P50,000 for the death of Pamfilo Aplacador, P 30,000 for moral damages and P20,000 for exemplary damages.

Considering the age of the accused (over 70 years), pursuant to Sec. 25 of R.A. 7659, he is therefore entitled to a suspension of the execution of his death sentence (in case the herein death sentence is affirmed by the Honorable Supreme Court), thus, the death sentence shall be commuted to the penalty of reclusion perpetua with all the accessory penalties under the code.

With costs de officio.^[11]

Hence, this appeal assigning the following as errors:

I

THE LOWER COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF TREACHERY, ABUSE OF SUPERIOR STRENGTH AND EVIDENT PREMEDITATION AGAINST THE ACCUSED WHICH WERE NOT PROVEN BY THE PROSECUTION.

II

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PENALIZED UNDER ART. 248 OF THE REVISED PENAL CODE AS AMENDED BY RA 7659 INSTEAD OF PLAIN HOMICIDE.^[12]

Considering the aforecited errors, we find that the issues before us pertain to: (1) the propriety of appellant's conviction for the offense charged; and (2) the presence of treachery, abuse of superior strength, and evident premeditation as qualifying circumstances.

On the *first issue*, appellant merely insists that prosecution witnesses did not prove his guilt beyond reasonable doubt. However, he does not cite any particulars for our consideration to support his contention.

For the appellee, the OSG counters that by claiming self-defense, appellant admitted killing the victim. Hence, the burden of proof was shifted to appellant to show that the killing was justified.

The OSG points out that appellant failed to establish unlawful aggression on the part of the victim, one of the elements necessary for self-defense to be sustained. Aplacador's "gritting of his teeth" hardly constituted unlawful aggression, says the OSG, adding that appellant's act of continuously hacking the victim after the latter fell down and was disarmed is unjustified because the supposed aggression had already ceased. According to the OSG, appellant exceeded the limits of necessity to suppress an alleged attack, and the number and location of the hacking wounds sustained by the deceased belied appellant's claim of self-defense.

The OSG's contentions are well-taken. When an accused invokes self-defense, he effectively admits the killing, and the *onus probandi* shifts upon him to show clearly and convincingly that the killing is justified and that no criminal liability is incurred.

[13] For self-defense to prosper, the accused must satisfy the following requisites: (a) unlawful aggression by the victim, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the accused.[14] The accused must rely upon his own evidence and not on the weakness of the prosecution[15] in order to establish self-defense.

Assuming *arguendo* that the victim, Aplacador, did try to stab appellant, we agree with the OSG that appellant went beyond reasonable necessity in trying to prevent or repel the assault. The victim was not only disabled by multiple hack wounds; he was in fact decapitated. The nature and number of wounds inflicted upon the victim show that appellant's intentions went beyond trying to protect his person but sought to deliver serious harm, thus rendering self-defense unavailing in this case.[16] Appellant's claim of self-defense is, in our view, dubious. A plea of self-defense cannot be appreciated where it is not only uncorroborated by independent and competent evidence but is extremely doubtful by itself.[17]

On the *second issue*, appellant first argues that the trial court erred in appreciating *alevosia* as attending the killing of Aplacador. According to appellant, treachery was not proven because the prosecution failed to show how the killing commenced or how the act unfolded. For treachery to exist, the mode of attack must be thought of by the offender, and not spring from the unexpected turn of events. Further, appellant states that the prior stabbing incident between him and the victim should have forewarned the latter of the possibility of an impending attack. In other words, appellant avers there was no sudden and unexpected attack on the victim.

For the appellee, the OSG contends that treachery was established beyond reasonable doubt. According to the OSG, when Aplacador pleaded with appellant not to kill him, and appellant told him to go home and that appellant would accompany him in going home, the victim was lulled into complacency. Hence, appellant's attack was completely unanticipated by the victim. That the victim was decapitated shows the severity and suddenness of appellant's blow, argues the OSG.