

EN BANC

[G.R. Nos. 140006-10, April 20, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY PAGADOR, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

ROLLY PAGADOR was charged with two (2) counts of murder for hacking to death the spouses Herminigildo and Magdalena Mendez,^[1] and with three (3) counts of frustrated murder for the physical injuries sustained by Shirley Mendez, Rosalinda Mendez and Emily Mendez -Castro.^[2] The spouses Herminigildo and Magdalena Mendez were poor but hardworking peasants of Alaminos, Pangasinan. The elderly couple had to toil long and hard in the fields to support their seven (7) children. Ricardo, the eldest and only son, was an invalid; Emily was married; and, with the exception of Shirley who was only ten (10) years old, their other daughters, Nenita, Josephine, Marlyn, and Rosalinda, were of marrying age although still single. Among their children, Nenita was fated to introduce to the family the man who was to cause the untimely death of the couple and bring untold sufferings to the surviving members of the family.

Accused Rolly Pagador and Nenita Mendez were sweethearts for more than two (2) years. Although the accused was a mere tricycle driver Nenita's family had no objection to their relationship; in fact they allowed him to drop by their house anytime and spend the night with her. He was treated like a member of the family such that he would visit the Mendez household even at 1:00 o'clock or 2:00 o'clock in the morning.

On 12 October 1996, at around 1:00 o'clock in the morning, Nenita and her sisters Emily, Josephine and Rosalinda were awakened by shouts coming from their parents' room. It was their mother Magdalena shouting, "*Aray ko! Aray ko!*" Thinking that their mother was again having another bout with her perennial ailment, they hurriedly rushed to her room. Emily was first to reach the room, followed by Josephine, then Nenita, and finally, Rosalinda. They were shocked to see accused Rolly Pagador stabbing their mother with a bolo at the back with two (2) hands holding the bolo.

The accused was kneeling behind their mother as he continuously stabbed her who was already slumped on the floor with her legs outstretched. Their ten (10)-year old sister Shirley was clutching her wounded stomach while lying on their mother's lap. Their father Herminigildo was sprawled motionless on the floor. Quite instinctively, the four (4) sisters approached their mother in an attempt to repulse the assailant but the latter swung his bolo at them, cutting Emily's left index finger in the process. Forthwith, Emily rushed back to her room, picked up her sleeping child and jumped out of the window.

Meanwhile, Nenita cried out, "*Rolly! Rolly!*" but the accused swung his bolo in silent rage. Nenita retreated from the room and, like her sister Emily, jumped out of the window. As she reached the ground, Nenita hid behind a tamarind tree. Moments later she saw the accused passing by still wielding his bolo. Fearing that she would be discovered, she removed her white dress and crawled towards a group that was making charcoal. As she went near them, she put on her clothes and pleaded to them for help. Unfortunately, no one could extend any assistance to Nenita, much less to any of the Mendezes, as everyone was too afraid to confront the rampaging lothario.

According to Josephine, like her sisters, she rushed to her parents' room when she heard the anguished cries of her mother. There she saw her father lying motionless on the floor, while her younger sister Shirley was clutching her bleeding stomach. On bent knees the accused repeatedly stabbed their mother at the back. Josephine immediately recognized Rolly Pagador as the assailant because the room was well lighted by a kerosene lamp. Together with her other sisters, she tried to approach the accused but the latter menacingly swung his bolo at them hitting her forefinger. She retreated to her room and jumped out of the window.

Among the four (4) sisters, Rosalinda bore the brunt of Rolly's fury. She narrated that she was the last one to leave her parents' room. As she escaped to her own room, Rolly went after her and violently pulled her hair causing her to fall down. The accused sat astride on her stomach and furiously hacked and stabbed her. As he directed the bolo at her face, Rosalinda held the blade of the bolo and deflected the thrust to her left side. The accused made several more thrusts with the bolo hitting her on the right ear, left breast, left upper portion of her arm and right thigh. To stop the murderous assault, she played dead. Apparently the ruse succeeded because the accused thereafter stood up and escaped through the window. With blood oozing profusely from her numerous wounds Rosalinda slowly lost consciousness.

Shirley testified that she was awakened when she felt someone striking her on the stomach and other parts of the body. She saw the accused swinging a bloodied bolo at her sisters and saw her lifeless parents on the floor. But she could not ascertain who was responsible for her wounds although she saw the accused wielding a bolo.

Dr. Rafael Manaois of the Western Pangasinan District Hospital testified that Shirley sustained (a) a hacking wound lateral neck on left; (b) a hacking wound 7 cm. (L) hypochondriac with intestinal evisceration, i.e., in layman's language, the intestine coming out of the stomach; (c) a hacking wound 4 cm. postero-lateral aspect distal 3rd arm (L); (d) a hacking wound 5 cm. postero-lateral aspect middle third forearm; and, (e) a stab wound 4 cm., back, projecting downward.

Interpreting the Legal Necropsy Examination Report prepared by Dr. Rafael Quebral on the cadaver of Herminigildo Mendez, Dr. Glorioso Maramba testified that the deceased suffered the following wounds: (a) a semi-circular chop wound on the head, nape, left, 3 x 4.5 cm., shallow; (b) a penetrating stab wound on the inferior portion of the sternum; (c) a blood clot and unclotted extracted inside the chest cavity; (d) a wound on the thoracic cage on the posterior aspect; (e) two (2) parallel stabs cut wound, vertical, on left shoulder anterior aspect x x x cutting off the pectoralis and deltoid muscles; and, (f) a chop wound on the upper extremity

arm. Cause of death was massive intra-thoracic hemorrhage.

Also, according to Dr. Maramba, the deceased Magdalena Mendez sustained the following injuries: (a) a stab wound below the scapula; and (b) a wound on the upper portion of the lumbar region, back, left side, and another wound just below and slightly lateral directed posteriorly, medially toward the stomach. Cause of death was massive bleeding inside the abdomen and the thoracic cavity.

Dr. Vicente Tongson, Jr., Medical Officer III of the Western Pangasinan District Hospital, testified that he examined and treated Rosalinda Mendez and Emily Mendez. He noted in his medico-legal report that Rosalinda sustained about fourteen (14) hacked wounds on different parts of her body: (a) right thigh; (b) left shoulder muscle; (c) wound immediately below wound number 2; (d) left hand between the left thumb and the index finger; (e) right mandible on the right ear; (f) left forearm third or left wrist; (g) left index finger; (h) below the nipple between the 7th and 8th ribs; (i) below the ear; (j) base of the neck; (k) left shoulder; (l) right shoulder at the back; (m) upper back ; and, (n) back of the nape.

Likewise, the medico-legal examination by Dr. Tongson on Emily Mendez yielded (a) an amputated index finger, third left hand; and (b) a lacerated wound on the fourth (4th) finger, third left hand.

Accused Rolly Pagador denied all the accusations against him. He narrated that on the night of 11 October 1996 he had just finished his work as a tricycle driver when he decided to drop by the house of his girlfriend Nenita Mendez. When he arrived at the Mendez' residence, he met Nenita's father Herminigildo and casually greeted him as was his habit. Herminigildo told him that Nenita was already asleep.

Rolly was taken aback by the sudden change in the old man's attitude towards him. Nenita had been his fiancée for more than two (2) years and her family was used to his visits even at the most ungodly hours. But, ignoring Herminigildo's acerbic remark, he tried to go to Nenita's room but Herminigildo blocked his way and tried to push him out of the house. Herminigildo then went inside Nenita's room and when he reappeared moments later he was already armed with a bolo. Without warning Herminigildo hacked him but the accused deftly dodged the blow. According to the accused, he kicked the kerosene lamp and dashed towards the room of Herminigildo where the latter's wife Magdalena was sleeping.

When the accused reached the room of the Mendez couple, Magdalena was already awake. Imploringly, he asked Magdalena why her husband was acting the way he did. Before she could answer, Herminigildo barged into the room and hacked his wife believing it was the accused. The accused grappled with Herminigildo for possession of the bolo and succeeding, he boloed the deceased causing the latter to fall face down. He denied having caused the injuries suffered by Shirley and surmised that she might have been wounded during the struggle.

Further the accused narrated that the sisters Emily, Nenita, Josephine and Rosalinda arrived and upon seeing their lifeless father, the four (4) women furiously manhandled him. Some kicked him while the others pulled his hair. When he noticed that Rosalinda was trying to take hold of the bolo, he wrested it from her and swung it at the four (4) enraged women never knowing whether anyone was hit. After the women took flight, he ran out in pursuit of Nenita but she was

nowhere to be found. He further claimed that while detained at the municipal jail, he gathered reports from Nenita's relatives that Herminigildo had already committed Nenita to marry a certain seaman which, according to him, explained the hostile treatment he received from the deceased father.

The trial court found the accused guilty in all five (5) cases charged against him. Specifically, he was convicted of frustrated murder on two (2) counts committed individually against Shirley and Rosalinda and imposing upon him the penalty of *reclusion temporal* or twelve (12) years and one (1) day to twenty (20) years; another penalty of *arresto mayor* for the crime of frustrated murder against Emily Mendez-Castro; and, murder on two (2) counts committed individually against the spouses Herminigildo and Magdalena Mendez for which the accused was meted the supreme penalty of death for each count.^[3]

In finding the accused Rolly Pagador guilty as charged, the trial court said -

In short, the accused would want to foist before this (Honorable) Court the justifying circumstance of killing by way of self-defense, availing of Art. 11, Par. 1, (RPC) x x x x

What the Court cannot understand was, the insistence of the accused to enter the room of Nenita since they are (sic) merely sweethearts. Assuming *arguendo* that the deceased blocked his way when he persisted to enter Nenita's room, this does (sic) not constitute unlawful aggression on the part of the deceased as the latter had the perfect right to allow or not the entry of persons in his house; that if there was unlawful aggression, it was not the deceased who committed the unlawful aggression, but the accused x x x x

If it is true that the accused stabbed the deceased in order to defend himself, it defies reasons why the accused have (sic) to stab the deceased several times inflicting wounds on the chest, left shoulder, arm, nape, infra-scapular region x x x x^[4]

On automatic review, accused-appellant laments the failure of the trial court to give weight to his plea of self-defense in the light of his un rebutted testimony that established the elements of this justifying circumstance. In support of his contention, he insists that the following facts have been sufficiently established: (a) Although not yet married to Nenita, he had already been going to their house, and often slept there; (b) If he had a bolo and the intention to kill the deceased spouses, he would have right then and there, at the ground floor of the two-storey house, first killed Herminigildo Mendez, who met him at the door. The fact is undisputed that Herminigildo died inside his own bedroom where his wife and youngest daughter Shirley were sleeping; (c) It was the deceased Herminigildo who was in fact the aggressor when he struck him with a bolo but accidentally hit his own wife; and, (d) Even more enraged, the deceased Herminigildo assaulted him more aggressively leaving him with no other choice but to disable him with the deceased's own weapon.

We do not agree. In light of the established evidence, accused-appellant's

insistence on his incredible story is like forcing a square peg into a round hole. We are confounded how he could possibly invoke self-defense in view of the contrary findings of the medico-legal officers and the credible testimonies of the prosecution witnesses.

We do not believe accused-appellant's claim that Herminigildo was killed when he overpowered and hacked him (Herminigildo) with his own bolo during their fatal encounter. The multiplicity and nature of the injuries inflicted on the deceased belie his claim. Herminigildo suffered stab wounds on the chest, left shoulder, arm, nape, and other portions of his body while Rolly emerged unscathed. He suffered no lacerations or even abrasions despite his supposed vicious encounters not only with the armed Herminigildo but also with four (4) enraged women. A plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful by itself.^[5] Self-defense as a justifying circumstance must fail where unlawful aggression on the part of the person injured or killed was not properly established. According to accused-appellant, when Herminigildo Mendez barged into the room and accidentally struck his wife with a bolo, accused-appellant after a brief scuffle took possession of the weapon and hacked the deceased. At this point, it cannot be claimed that unlawful aggression existed. Granting that unlawful aggression initially existed, the same ceased as soon as the danger on the life and limb of accused-appellant vanished when he wrested the bladed weapon from the deceased.

Accused-appellant's testimony that Magdalena was accidentally boloed by her husband hitting her on the back is adverse to the testimonies of the four (4) prosecution witnesses where they said that accused-appellant repeatedly stabbed their mother at the back. The autopsy report showing that the deceased Magdalena Mendez sustained several hacking wounds could not in any way be characterized as accidental. Her wounds were more indicative of a deliberate and resolute attempt by the perpetrator to snuff out her life. The nature and number of wounds are constantly and unremittingly considered important *indicia* which disprove the plea of self-defense.^[6] Accused-appellant now bewails his conviction for triple frustrated murder notwithstanding the absence of any clear showing of any intent on his part to kill the three (3) private offended parties. He does not deny that he hurt Emily and Rosalinda but their injuries were not fatal. Intent to kill was not in his heart. As for Shirley, he emphatically stated that he never laid a hand on her. As far as he was concerned, Shirley was wounded when he and Herminigildo struggled for the possession of the bolo and fought each other to death.

The pivotal issue is to determine whether the court *a quo* correctly convicted accused-appellant of three (3) counts of frustrated murder. Let us examine the factual backdrop of each case.

As regards Rosalinda, we gather from her testimony that when she rushed out of her parent's room, accused-appellant stood up and chased her. Overtaking her, accused-appellant pulled her hair back which caused her to stumble. He sat on her stomach and tried to hack her on the face but she gripped the bolo with her two (2) hands. But her assailant pulled the bolo from her hands and hit her successively on the right ear and other parts of her body. If only to stop the relentless assault, Rosalinda pretended to be dead. Before finally abandoning his quarry, Rolly swung the bolo for the last time and hit her on the thigh. Going by the evidence for the