

## EN BANC

[ G.R. No. 134003, January 19, 2000 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT NAGUM, ACCUSED-APPELLANT.

#### DECISION

##### MELO, J.:

Once again we are given the heavy task of reviewing the imposition of the capital punishment, this time in a case involving the death of a detained prisoner.

Accused-appellant, ALBERT NAGUM, and the victim, AURELIO AGUSTIN, JR., were both detention prisoners at the Nueva Ecija Provincial Jail. That accused-appellant killed the victim is not in dispute. At issue is how the victim was killed. The People charged murder while the accused cried self-defense. The trial court believed the People and imposed the death penalty. Hence, this automatic review.

The case for the prosecution shows that on January 24, 1997, the victim's wife, JOLLY AGUSTIN, together with their son, visited her husband who was on solitary confinement (*bartolina*) at the Nueva Ecija Provincial Jail in Cabanatuan City where he was detained for the crime of frustrated homicide. The three of them had lunch together inside her husband's cell. After eating, her husband went out of the room to wash his hands. Their son followed. Moments later, she heard her husband shouting, "*Tulongan n'yo ako! Tulongan n'yo ako!*" Rushing out, she saw accused-appellant stabbing her husband with a *balisong*. Frantic, she sought the help of the other inmates who rushed her husband to the hospital. Unfortunately, her husband expired before he could be medically attended to.

Aurelio's body was brought to Muñoz, Nueva Ecija where it was autopsied by Dr. Ma. Teresa Fernandez. The results show that Aurelio died of cardio-pulmonary arrest due to multiple stab wounds inflicted by a sharp pointed object. The following were the injuries sustained by him:

1. wd. Stabbed + nagus 2 cm x 3.5 cm penetrating;
2. wd, stabbed, 3 cm 3rd ICS AAL;
3. wd stabbed, 2.5 cm 4th ICS AAL;
4. 3 cm penetrating wd incised;
5. wd incised, cm, m/3;
6. 3 cm D/3 media;
7. 2 cm D/3 lat. Epicondiple wd, incised;
8. wd stabbed, 3 cm x 2.5 cm periumbilical;
9. wd incised, 1.5 cm D/3 forearm lateral;
10. 1.25 cm hypithenar wd, incised;
11. wd, incised, 1.5 cm D/3 forearm lateral;
12. 1 cm PIPJ;
13. 1 cm dipj;

14. 1 cm DIPJ;
15. 2 cm x 7 cm penetrating supra scapular (L); and
16. 4.5 cm wd., incised, D/3 posterior.

(p. 57, Rollo.)

Dr. Fernandez testified that – based on the above-described wounds – the assailant could have been positioned at the back of the victim.

Accused-appellant had a completely different version of the incidents that led to Aurelio's death. He contended that at around 2 o'clock in the afternoon of January 24, 1997, he was at the *bartolina* of the Provincial Jail in Cabanatuan City where he himself was detained for another crime of murder. Aurelio arrived fuming mad and cursing him. Then Aurelio boxed him and he retaliated. While they were exchanging punches, Aurelio pulled out a knife but he was able to wrestle the knife from Aurelio. He thereupon likewise stabbed Aurelio. He could not remember how many times he stabbed Aurelio, but he admitted that he had to be restrained by another inmate, Francisco Caballero, from inflicting further injuries on Aurelio. However, the intervention came too late as the fatal blows had already been delivered on Aurelio.

The trial court did not give credence to the plea of self-defense as the evidence showed that it was the accused who provoked Aurelio by giving him menacing looks, and because the 16 stab wounds suffered by Aurelio negate self-defense, manifesting instead a determined effort to kill the victim.

On appeal by way of automatic review, accused-appellant assigns the following as the errors allegedly committed by the trial court, to wit:

- A. THE COURT ERRED IN NOT APPLYING THE PRINCIPLE OF SELF DEFENSE;
- B. THAT EVEN FOR THE SAKE OF ARGUMENT BUT NOT ADMITTING THAT SELF DEFENSE IS NOT APPLICABLE, THE COURT ERRED IN NOT APPLYING INCOMPLETE SELF-DEFENSE;
- C. THE COURT ERRED IN APPLYING TREACHERY IN THIS CASE.

(p. 52, Rollo.)

We find the appeal partly meritorious.

For self-defense to prosper, the accused must positively show that there was a previous unlawful and unprovoked attack which placed his life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the attack (*People vs. Real*, G.R. No. 121930, June 14, 1999). In the case at bar, accused-appellant did not suffer any injury, not even a slight scratch, from the hands of the victim. His life could not have been in danger and the butchering of Aurelio can not in any way be justified as defense of one's self. The intent to kill was patent. That there was a determined effort to kill Aurelio is glaring from the 16 stab wounds sustained by the victim, a number of which were located in some vital parts of his body. Thus, in *People vs. Baniel*, (275 SCRA 472 [1997]), we held that the nature, location, and number of wounds inflicted on the victim belie and negate the claim of self-defense. In *Baniel*, there were 11 wounds