

THIRD DIVISION

[G.R. No. 133382, March 09, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN MENDOZA Y SALVADOR, ACCUSED-APPELLANT.

DECISION

PANGANIBAN, J.:

True, a father and husband has the duty and the right to defend himself, his family and his home. However, in order to successfully invoke self-defense and defense of relative, he must prove, by clear and convincing evidence, the concurrence of three elements, the most important of which is *unlawful aggression* on the part of the victim. Absent unlawful aggression, these defenses collapse and the accused must be convicted.

The Case

Efren Mendoza y Salvador was charged with murder for the July 14, 1993 killing of Anchito A. Nano. Before the Regional Trial Court of Daet, Camarines Norte, an Information^[1] was filed against him on September 9, 1993, alleging as follows:

"That on or about 7:30 o' clock [o]n the evening of July 14, 1993, at Brgy. Manlucugan, [M]unicipality of Vinzons, [P]rovince of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously with deliberate intent to kill, with treachery and evident premeditation, assault, attack and hack with a bolo one ANCHITO A. NANO, thereby inflicting upon the latter multiple hacking wounds, which were the proximate cause of his instantaneous death, to the damage and prejudice of the heirs of the victim.

"CONTRARY TO LAW."^[2]

During his arraignment on October 22, 1993, appellant, with the assistance of Atty. Leo Intia, entered a plea of not guilty.^[3] On November 6, 1997, after trial in due course, the court *a quo* rendered its assailed nine-page Decision,^[4] the dispositive portion of which reads:

"WHEREFORE, premises considered, this court hereby finds the accused, Efren Mendoza GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code. The mitigating circumstance of voluntary surrender will not affect the penalty imposed since it is offset by the aggravating circumstance of treachery. Wherefore, he is hereby ordered to suffer the penalty of RECLUSION

PERPETUA, and to pay the heirs of the deceased the following:

- a) P 50,000.00 as death indemnity; and
- b) P 30,000.00 as moral damages.

"The bond posted for the provisional liberty of said accused is hereby CANCELLED.

"SO ORDERED."^[5]

Hence, this appeal.^[6]

The Facts

The Version of the Prosecution

In the People's Brief,^[7] the Office of the Solicitor General presented the following statement of facts:

"At around 7:00 p.m. of July 14, 1993, in Barangay Manlucugan, Vinzons, Camarines Norte, Anchito Nano and Marianito Rafael passed by appellant's house and asked for a drink from appellant's wife, Emily Mendoza. Anchito began talking with Emily and they were about four arms-length from Marianito when appellant suddenly appeared. Appellant hacked Anchito on the nape, which prompted Marianito to flee out of fear for his life. (TSN, March 9, 1993, pp.10-14).

"Brgy. Kagawad Pedro Saman, together with Ernesto Cribbe and Trinidad delos Santos, arrived later at the scene of the crime. Kagawad Saman discovered Anchito in a kneeling position already dead. He also found (3) three hack wounds on the nape and two (2) hack wounds at the back of Anchito's body (TSN, March 10, 1997, pp. 7 and 18).

"At around 9:00 p.m. of that day, Trinidad delos Santos reported the hacking incident to the sub-station of Aguit-it, Vinzons. SPO2 Silverio Rafael proceeded to the crime scene and saw Anchito's body still in a kneeling position with hack wounds at the back of the neck and body (TSN, May 31, 1994, p. 5).

"SPO4 Rafael asked the people present who was the perpetrator of the crime. The Barangay officials led by Kgwd. Saman and Kgwd. Cribbe informed Rafael that the perpetrator was appellant Efren Mendoza. SPO4 Rafael later observed that the appellant's house was in total disarray and he surmised that things might have been taken in a hurry. He also noted that there was no weapon anywhere near the victim's body (Ibid., pp. 12-14 and 17).

"Later that night, appellant surrendered to Senior Police Officer Leonardo Almadrones who promptly turned him over to Chief Investigator Joel Guinto for the requisite investigation. During investigation, appellant claimed that Anchito ransacked his house and hacked his seven (7) year old son Ernie Mendoza (TSN, July 1, 1994, p. 5).

"Two days later, appellant's wife and son went to the Vinzon's police station to blotter Ernie Mendoza's wound. Investigator Guinto interviewed Ernie Mendoza and concluded that Ernie's wound was made by somebody other than the victim since the said wound was not deep enough. Also, when he questioned the child about the wound, the latter answered that when he woke up, he already had a wound. Investigator Guinto later filed the present charge against appellant after the victim's common-law wife brought several witnesses who each executed their corresponding sworn affidavits." (Ibid., pp. 7 & 11)."^[8]

The Version of the Defense

The defense presented six witnesses: Appellant Efren Mendoza, his wife Emily and his son Ernie; Bayani Aguilar; Dr. Gaudencio Albano and Carmen Herico. In his Brief,^[9] appellant summarized the defense witnesses' testimonies as follows:

"EMILY MENDOZA, wife of appellant, testified that at around 7:00 o'clock in the evening, the victim Anchito Nano and his companion Marianito Rafael arrived at their house and upon arrival, Anchito Nano destroyed the two (2) windows of their house. She saw afterwards that her son, Ernie Mendoza, was hacked by Anchito Nano while the former was peeping thru the destroyed window. She shouted for help and appellant, her husband, responded to her call and saw Anchito Nano who was about to attack her husband, but was hacked first by the latter. Marianito Rafael who was just watching subsequently fled from the place of the incident. She brought her son first to the faith healer for immediate treatment and the following morning to the Provincial Hospital for medical treatment. She learned later that her husband went to Vinzons Municipal Hall and surrendered voluntarily to the police authority on the same day of July 14, 1993. (TSN, December 8, 1994, pp. 3-11).

"EFREN MENDOZA, accused-appellant, testified that on July 14, 1993, at around 7:30 in [the] evening, he was at the comfort room 20 about meters away from their house when he heard his wife shouting for help. He ran immediately towards the direction of their house and saw Anchito Nano destroying the lock of their window[;] hence he looked for a piece of wood but found a bolo instead. He later heard his son shout, "Ama, tinaga ako." He approached Anchito Nano to prevent him from entering their house but the latter tried to hack him. He was able to deliver a hacking blow ahead of the victim on the right side of the neck. Thereafter, he immediately went to the Municipal Hall of Vinzons and surrendered voluntarily to the police authority (TSN, March 27, 1995, pp. 3-8).

"ERNIE MENDOZA, appellant's son, testified that on July 14, 1993, at around 7:30 in the evening, he noticed that somebody was hacking their house, hence, he peeped through the window and saw Anchito Nano who hacked him on the head, thereby resulting [in] loss [s] of consciousness while his mother [kept] on shouting for help. He was brought first to a quack doctor for immediate treatment and the following morning, to the provincial hospital where he was treated by Dr. Albano for the head injury

he sustained.

"BAYANI AGUILAR, police chief of Vinzons PNP testified that he issued a certification on August 3, 1993 about the voluntary surrender of appellant Efren Mendoza and another certification regarding one in the report made by Emily Mendoza relative to the hacking of his son by Anchito Nano which happened on July 14, 1993 at about 7:30 in the evening at their house (TSN, November 7, 1995, pp. 2-4).

"DR. GAUDENCIO ALBANO, the attending doctor who treated appellant's son testified that he treated Ernie Mendoza who suffered a wound laceration four (4) cm. long at the middle of the head which could have been caused by a blunt object. (TSN, July 31, 1996, pp. 4-6).

"CARMEN HERICO testified that on July 14, 1993, at around 7:30 in the evening, she heard her daughter, Emily Mendoza shouting for help, hence she ran towards her daughter's house and they met halfway along the road. They proceeded back to her daughter's house and she saw the fallen window. She and her daughter, subsequently proceeded to the house of Pedro Saman, a barangay kagawad and informed the latter about the incident. (TSN, October 22, 1996, pp. 3, 5-6)."^[10]

Trial Court's Ruling

The court *a quo* rejected appellant's plea of self-defense, ratiocinating as follows:

"To bolster his claim of self-defense, accused Efren Mendoza declared: when he heard the shouts for help of his wife, immediately he ran towards their house and saw the victim destroying their house. There, he heard his son [shout], "Ama, tinaga ako." He immediately approached the victim in order to prevent him from entering the house. He delivered the first blow by hacking the victim, hitting the victim at the right side of the neck, alleging that the victim, when they were facing each other, hacked the accused first.

"Indeed, a man's house is his castle. He has the right to protect it. He may repel force by force in defense of person, habitation or property against anyone who manifestly intends or endeavors by violence or surprise to commit a felony. But these circumstances surrounding the incident negates the allegations of the accused's self-defense. First, there is an eyewitness on the part of the prosecution, that the accused suddenly attacked and hacked the victim outside the house (tsn., March 9, 1994, pp. 12-13). Secondly, the physical evidence of the number, location and severity of the [hack] and incised wounds found on the body of the victim affirmed by the medical findings contained in the autopsy report that all the hack wounds [came] from the back of the victim's body (tsn., Feb. 4, 1994, p. 7), and the pictures presented in court (Exhibits "C" to "C-4") all indicate that the victim was hacked from behind. Clearly, accused's act was no longer one of self-preservation, but a determined effort to kill his victim."^[11]

Holding that appellant's claim was debunked by the prosecution witnesses' testimonies which were more credible, the trial court explained:

"Kagawad Pedro Saman was among the first persons who saw the vicinity of the incident. He noticed that the victim was not carrying any weapon or knife or a piece of wood and the house was in good condition (tsn, March 10, 1994, p. 14). It was corroborated by SPO4 Silverio Rafael that there was indeed no weapon within the vicinity where the corpse of the victim was found (tsn, May 31, 1994, p. 17) The allegations of the accused that the victim was the aggressor who hacked him first is contrary to human nature. There was no altercation, warning or even a challenge that [would] enable the victim to be aggressor. The aggression must be real, or at least, imminent and not merely imaginary. The aggressor's intent must be ostensibly revealed by his hostile attitude and other external acts constituting a real, material, unlawful aggression. A threat, even if made with a weapon or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual, material, unlawful aggression. This court finds that [since] the accused was not in imminent danger of death or great bodily harm, an attempt to defend himself by means which appeared unreasonable by using a long bolo is unjustifiable. Hence, the self-defense foisted by the accused is not well-founded, but an alibi to exonerate him from the offense he committed."^[12]

The Alleged Errors

In his Brief, appellant assails (1) the trial court's rejection of his plea of defense of relative and (2) its characterization of the crime committed. Thus, he submits:

"I

THE TRIAL COURT ERRED IN NOT UPHOLDING THE THEORY OF DEFENSE OF RELATIVE ESPOUSED BY THE ACCUSED-APPELLANT DESPITE CORROBORATIVE EVIDENCE SUPPORTING THE SAME.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE THE ABSENCE OF QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION AS ALLEGED IN THE INFORMATION."^[13]

The Court's Ruling

The appeal is partly meritorious. The mitigating circumstance of voluntary surrender should be appreciated in appellant's favor.

First Issue:

Self-Defense and Defense of a Relative

The appellant admits to having hacked Anchito Nano, but vigorously insists that he