

THIRD DIVISION

[G.R. No. 102772, October 30, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO DOEPANTE Y CARILLO, ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

In deciding this appeal, the Court finds occasion to reiterate some well-settled doctrines in appreciating evident premeditation as a qualifying circumstance in the crime of murder, and in evaluating claims of self-defense, voluntary surrender and physical defect.

This is an appeal from the decision^[1] dated September 6, 1991 of the Regional Trial Court of Pasig, Metro Manila, National Capital Judicial Region, Branch 164,^[2] in Criminal Case No. 85155, convicting accused Rogelio Deopante y Carillo of the crime of murder and sentencing him to *reclusion perpetua*.

On January 11, 1991, an Information^[3] was filed against the appellant charging him as follows:

"That on or about the 10th day of January, 1991, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife (balisong), with intent to kill and with evident premeditation and treachery did then and there willfully, unlawfully and feloniously stab with a fan knife one Dante Deopante on the different parts of his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

Contrary to law."

Arraigned on March 8, 1991, the accused, assisted by counsel de oficio, pleaded not guilty to charge.^[4]

The Facts

According to the Prosecution

The facts as summarized by the Solicitor General, who added the page references to the transcript of stenographic notes, are as follows:^[5]

"At around nine o'clock in the evening (9:00 p.m.) of January 10, 1991 at Alkalde Jose Street, Barrio Kapasigan, Pasig, Metro Manila, Dante Deopante was having a conversation with his friend Renato Molina when

they saw appellant Rogelio Deopante coming towards their direction. Renato noticed that as appellant was fast approaching, the latter was drawing out an open fan knife (balisong) from his right back pants pocket. Sensing danger, Renato immediately called out to Dante and told the latter to flee the place. As Dante took flight, so did Renato in another direction. (pp. 3-4, 6, 8, t.s.n. June 3, 1991)

Appellant ran after Dante and overpowered the latter at basketball court located in a lot between Alkalde Jose and Pariancillo Streets. Appellant and victim grappled with each other and both fell on the ground. Appellant was able to assume the dominant position and as Dante lay flat on his back the former proceeded to stab the latter twice with his fan knife. Immediately thereafter, appellant stood up and fled the scene leaving Dante mortally wounded. Bystanders milling around Pariancillo Street then rushed victim to the Rizal Medical Center. (pp. 3-5, t.s.n., April 25, 1991; pp. 8, 9, 11, t.s.n. June 3, 1991)

At about the same time on the aforesaid date, the Pasig Police Station received a telephone call from the Rizal Medical Center informing them that a stabbing victim has been brought to said hospital for treatment. Patrolman Crispin Pio proceeded to the hospital and there received the information that appellant was the one who stabbed Dante. Said policeman later obtained the sworn statement of Nestor Deopante indicating that appellant stabbed the victim. Renato refused to give his sworn statement to the police, but insisted that indeed it was appellant who stabbed Dante. (pp. 5-7, t.s.n., May 15, 1991)

At around eleven o'clock (11:00 p.m.) of the same evening, Patrolman Crispin Pio and two (2) other police officers went to the house of appellant located at No. 12 Alkalde Jose Street, Barrio Kapasigan, Pasig, Metro Manila. After informing appellant of the allegation against him, they invited the former to the police station for investigation. Appellant went with the police officers and maintained his innocence throughout the investigation. Patrolman Crispin Pio recovered a fan knife from appellant measuring around ten (10") inches when opened. He sent the fan knife to the P.N.P. Crime Laboratory Service for examination. (pp. 8-9, t.s.n., May 15, 1991)

The autopsy report shows a total of seven (7) wounds all over victim's body. Of these wounds, two (2) were stab wounds (Wound Nos. 2 & 3) and the rest mere abrasions. Dr. Emmanuel Aranas, the medico-legal officer of the P.N.P. Crime Laboratory Service who conducted the autopsy testified that the stab wounds were caused by a sharp pointed object like a balisong or fan knife. He further declared that Wound No. 2, a stab wound located at the left side of the chest, lacerated the diaphragm, liver (left lobe) and stomach of the victim causing the latter's instantaneous death. Moreover, he concluded that the fan knife sent to him for examination could have been used in stabbing a person since it showed minute traces of human blood. (pp. 7-8, t.s.n., April 19, 1991; p. 17. t.s.n., May 30, 1991)

The prosecution presented six witnesses. Aside from Dr. Emmanuel L. Aranas, who testified on the results of the autopsy, the other witnesses included Manolo Angeles and Renato Molina, who gave eyewitness accounts of the stabbing. Patrolman Crispin Pio of the Pasig Police Station testified that he invited the accused for investigation after receiving a report on the killing, and that upon frisking the accused, he found and recovered from him a 10-inch fan knife which he submitted to the crime lab for examination. Alfonso Reyes, barangay captain of Barangay Kapasigan, Pasig, Metro Manila, testified that on August 19, 1989, Dante Deopante made a personal complaint to him as barangay captain, that Rogelio Deopante had threatened to kill him (Dante). He testified that his office kept a logbook of the all the incidents that happened in the barangay and that the same contained a record of the said complaint^[6] of Dante Deopante. However, on cross-examination, he admitted that he was not the one who personally made the entry.

Version of the Defense

In contrast to the prosecution's theory that the victim was killed with evident premeditation, the defense claimed that the fatal injuries inflicted by accused-appellant upon the victim were done in self-defense.^[7] The defense presented three witnesses, viz.: the accused himself, his longtime friend Benito Carrasco, and the son of the accused, Vladimir Deopante. Their version of the event was as follows:

"On January 10, 1991, at about 9:00 o'clock in the evening, in Alcalde Jose Street, Pasig, Metro Manila, while the appellant was allegedly on his way home he was seen by his nephew, the victim (Dante Deopante) and the witness for the prosecution, Renato Molina, who at that time were allegedly both drunk. (TSN June 6, 1991, page 3). The victim (Dante Deopante) suddenly boxed him and the said appellant ran away and (was) pursued by the victim and Renato Molina. The appellant was overtaken by the victim by holding the back portion of his shirt. Both of them fell. The victim pulled-out a knife which appellant allegedly wrested x x x away from Dante Deopante. After he (appellant) wrested the knife from the victim, they continued rolling over and over the ground and he does not know whether he stab (sic) the victim or not (TSN June 6, 1991, page 4). Said appellant sustained also injuries on (the) little finger of his right hand and abrasion on his right leg, left knee and left hand (sic). The said appellant was treated by one Dr. Leonides Pappa on January 11, 1991, and issued medical certificate, marked as Exhibits "1, 1-A. 1-B and 1-C" for the defense. (TSN June 6, 1991, pages 5-6); Appellant claimed that he placed behind bars (incarcerated) the victim for being a drug addict when he was still a policeman and member of the Police Department of Pasig. Renato Molina eluded arrest by him, for being a drug addict too. (TSN June 6, 1991, page 6)."^[8]

On cross-examination, accused Rogelio Deopante testified that he was a former member of the Pasig Police Department but was discharged for having been absent without leave, by reason of a complaint filed against him by Manolo Angeles before the National Police Commission, and in which case the victim, Dante Deopante, was presented as witness for complainant Angeles. He further testified that his left hand was completely severed at the wrist when it was hacked off by his brother Nestor Deopante.

The Trial Court's Ruling

On September 6, 1991, the trial court rendered a decision convicting the appellant of murder, the decretal portion of which reads as follows:

"ACCORDINGLY, the Court finds the accused Rogelio Deopante y Carillo GUILTY beyond reasonable doubt of the crime of Murder as charged; and therefore hereby imposes upon him the penalty of reclusion perpetua, there being no other generic aggravating or mitigating circumstance adduced; and to indemnify the heirs of the victim the amount of P50,000.00 as well as to pay the costs.

SO ORDERED."

The Issues

In his brief, the appellant charges that the trial court erred:

"I In considering the entry in the (barangay) peace and order chairman's blotter under entry no. 0097, page 58 (logbook) as a basis in holding the commission of the offense with evident premeditation.

II. In not affording the accused-appellant the mitigating circumstances of voluntary surrender and his physical condition.

III. In not considering appellant's claim of self-defense.

IV. In not considering the flaws and inconsistencies of the testimonies of the prosecution's witnesses and its biased character and wanting of credibility (sic).

V. In not considering the provision of Article 69 of the Revised Penal Code in the imposition of penalty."

The Court's Ruling

First Issue: Evident Premeditation

Very familiar by now to members of the legal profession are the elements which need to be proven before evident premeditation can be appreciated. These are: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof, to allow the accused to reflect upon the consequences of his act. Mere lapse of time is not enough, however, because premeditation is not presumed from the mere lapse of time.^[9] It must be "evident" from his overt act.

Considering the evidence on record, and the events leading up to the killing, we cannot agree with appellant's contention that the lower court based its finding of evident premeditation on the victim's report to the barangay captain that the accused-appellant had threatened to kill him. We hold that the record contains sufficient basis for the finding of evident premeditation. The first and third elements were proven by the testimony of the barangay captain, Alfonso Reyes, as to the

report made by the deceased about the threat on his life, taken together with the record of the report in the barangay logbook,^[10] all of which established the time when appellant decided to commit the crime. The period of time between the said report and the killing (January 10, 1991) constituted a sufficient lapse of time between the determination to commit the crime and the execution of the same, to enable the accused to coolly consider and reflect upon his resolution to do away with the victim. Finally, the second element was proven by the eyewitness testimony of Renato Molina, friend of the victim since childhood, who was present from the inception to the culmination of the assault launched by the appellant against the victim. We quote with approval the trial court's ratiocination, to wit:

"That at around 9:00 o'clock in the evening of January 10, 1991, he (Renato Molina) and Dante Deopante were conversing at Alkalde Jose St., Pasig, Metro Manila when the accused Rogelio Deopante arrived. He told Dante Deopante to run away. Both of them ran but in different directions.

That he told Dante Deopante to run away because the latter and the accused had a pervious (sic) misunderstanding and the accused always threatened Dante Deopante after the latter testified against the accused for shooting a certain Maning Angeles.

That he also told Dante Deopante to run away because he saw the accused carrying a fan knife in his back pocket. He saw it because the place was lighted as there was a lamp post.

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This witness (Molina) testified that when he saw the accused more than six feet away and was approaching them, he immediately warned his childhood friend and victim Dante Deopante to run away which the latter did. At the time, the accused was seen by this witness about to draw a knife from his back pant's pocket; and that he, too, ran away but took the opposite direction. Having traversed a short distance, he stopped and looked back and saw the accused chasing his victim and nephew until the former caught up with the latter, took hold of him and they both fell to the ground.

The accused could have desisted from carrying his plan to kill into effect had he stopped when his nephew took off and ran away from him. The latter did so because he knew in his heart that his uncle was about to kill him and this was also felt by eyewitness Molina because of the immediate warning given by him to his friend.

But then, although he saw his nephew sprinting away, he nevertheless did chase him for a distance and all the while he could have stopped and go home to his residence situated only a few meters away.

Again he could have let go the victim when he caught up and took hold of him. He did not, but on the contrary, when they both fell and rolled on