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THIRD DIVISION

[G.R. No. 118504, May 07, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL SOL, ACCUSED-APPELLANT.
D E C I S I O N

PANGANIBAN, J.:

Despite appellant's lone assignment of error claiming that he should suffer only "eight (8) years and one day to ten (10) years of *prisión mayor*," instead of *reclusión perpetua* imposed by the trial court, this Court nonetheless resolved to review not only the length of the imprisonment adjudged against him, but also his very conviction pursuant to the doctrine that an appeal in a criminal case, particularly that mandated by the Constitution in regard to capital offenses, throws the whole case open for review.

This is an appeal from the Decision[1] dated October 3, 1994, rendered by the Regional Trial Court of Dumaguete City, Branch 33,[2] finding Appellant Joel Sol guilty of murder and sentencing him to *reclusión perpetua.*

Appellant was charged in an Information which reads:[3]

> "That at about 6:00 o'clock in the evening of May 24, 1992, at sitio Maladpad, Barangay Bonawon, Siaton, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab ROMEO PALADAR, in the different parts of the body using a knife with which the accused was then armed and provided, thereby inflicting the hereunder described injuries, to wit:

'1. Lacerated wound, approximately 2 cm. in length, lateral forehead, Right

2. Lacerated wound, approximately 4 inches in length, anterior neck

3. Stab wound, perforating, extending from the level of the right nipple to the level of the umbilicus, exposing some parts of the intestine

4. Stab wound, approximately 3 cm. in length, 5 inches in depth, lumbar area, Left

5. Stab wound, approximately 4 cm. in length, 4 inches in depth, mid-posterior chest, Right'

which injuries caused the instantaneous death of victim ROMEO PALADAR.

Contrary to Article 248 of the Revised Penal Code."

Assisted by counsel, he pleaded "not guilty" to the charge.[4] During the plea-bargaining stage and the course of the trial, he proposed to plead guilty to the lesser crime of homicide, claiming to have acted in self-defense.[5] But the prosecution rejected such offer. After trial, appellant was convicted as charged. The dispositive portion of the trial court's Decision reads:

> "WHEREFORE, finding the accused guilty beyond reasonable doubt of the criminal offense of Murder as charged in the Information, with one mitigating circumstance attendant in the commission of the offense, that of voluntary surrender, and the penalty imposable consisting of one divisible penalty of reclusion temporal and two indivisible penalties, that of reclusion perpetua to death, the accused is hereby sentenced to suffer a determinate penalty of reclusion perpetua; to indemnify the heirs of the victim Romeo Paladar, the sum of P50,000.00 as actual damages; P30,000.00 as moral damages; and P10,000.00 as exemplary damages; forfeiture of the weapon used in the commission of the offense in favor of the State; to suffer the accessory penalties imposed by law and to pay the costs."

Hence, this appeal.

The Facts

Version of the Prosecution

The trial court summarized the facts in this wise:[6]

> "It was a Sunday, May 24, 1992, the victim Romeo Paladar and his daughter Rafaela Dorothy Paladar, 8 years old then at the time, were on their way home. As this child of the victim declared, they were walking together following a human foot trail, with her ahead, followed by her father and then the accused. All of a sudden there was a loud enough outcry of her father saying: "Aray!" and when she turned her back she saw the accused Joel Sol stabbed (sic) her father at the back. She was not afraid though of the incident but she had to cry. The weapon used by the accused was a stainless knife. A series of stabbings ensued while the victim fell with his back on the ground. All that she could do was simply to run away, crying. Then only to know later that her father died because of this incident. (TSN, January 4, 1993, pp. 3-11, and May 20, 1993-morning hearing, pp. 15-21).
>
> x x x (T)wo weeks before this x x x incident x x x, the accused and the victim complained to the barangay captain having been mauled, but she did not know the result. (TSN, January 4, 1993, pp. 13-14)
>
> The barangay captain, Isabelito Lucero of Barangay Bonawon, Siaton, Negros Oriental, corroborated the testimony of this daughter of the victim by telling the Court that two weeks before the incident the victim complained to him that the accused mauled him and wanted the accused

summoned before him x x x which he did. The accused was summoned in the morning of May 24, 1992 for a conference, at 10:00 o'clock. Both protagonist (sic) appeared. The victim however, only requested for a reimbursement of the amount spent by him in treating his injuries which was a little over P200.00. But the accused refused. In the evening of the same day the stabbing incident occurred wherein the accused was allegedly the perpetrator of the offense. (TSN, May 20, 1993-afternoon hearing, pp. 2-11)

x x x x x
x x x x

The wounds of the victim were examined by the attending physician of the Siaton District Hospital, x x x Dr. Mitylene B. Tan, per her postmortem examination indicating the following wounds:

1st: Lacerated wound, approximately 2 cm. in length, lateral forehead, right; (which the doctor illustrated to be on top of the right eyebrow, and not fatal)

2nd: Lacerated wound, approximately 4 inches in length, anterior neck; (which the doctor illustrated to be in the neck and fatal to the body of the victim)

3rd: Stab wound, perforating, extending from the level of the right nipple to the level of the umbilicus, exposing some parts of the intestine; (which the doctor illustrated it to be from the right breast in the nipple to the level of the umbilicus, the center of the body, which wound was fatal to the victim)

4th: Stab wound, approximately 3 cm. in length, 5 inches in depth, lumbar area, left; (which the doctor illustrated it to be at the back, between the vertebrae and the sacrum and fatal to the body of the victim)

5th: Stab wound, approximately 4 cm. in length, 4 inches in depth, mid-posterior chest, right: (which wound is likewise fatal to the body of the victim)

All the wounds inflicted were revealatory (sic) of a sharp instrument used, either a sharp pointed knife or a sharp pointed bolo, in the infliction of the same. And there is no way (of) telling that the wounds 2, 3, 4 and 5 entries were not the cause of death, it was (sic)." (TSN, November 19, 1992, pp. 11-14)

Version of the Defense

Appellant, as the sole witness for the defense, presented a totally different story, to wit:[7]

"x x x He claimed that while he was on his way home from sitio Maladpad, Barangay Bonawon, Siaton, this province, starting from the house of his sister-in-law Rosita, following a human foot trail, he was called by Romeo Paladar who was then following him, to wait for him because he had something to tell. So, he obligingly stopped and wait(ed). But then Romeo Paladar challenge(d) him to a fight saying: 'Do you want that we kill each other Dong?...' To this challenge, the accused retorted

by simply saying: 'Why should we be killing each other when we don't have grudges.' Without much ceremony, the victim grabbed his hand and pulled him, struck him with his knees hitting him at the middle portion of his abdomen. Not noticing whether the victim had a weapon or not all he noticed was that he passed out, got dizzy. Continuously having held his hand, upon regaining consciousness, he pulled his knife and stabbed the victim Romeo Paladar. And at this precise moment of stabbing, the accused was already lying on the ground with his face up looking at Romeo Paladar. x x x (TSN-April 11, 1994, pp. 13, 14, 15 and 16)

x x x x x
x x x x

He went on to say that as he ran away he was still chased by the victim to a distance of fifteen meters after which he did not notice the victim anymore because of his speed in running."

Ruling of the Trial Court

The trial court found appellant's testimony incredible. It was contrary to human behavior and experience (a) for appellant to have noticed the deceased's daughter after stabbing the deceased, for it is unusual "to observe some unimportant activity" when "one is already preoccupied with a serious encounter";[8] (b) for appellant, who was lying on his back, to have stabbed the stomach of the victim, who was on his feet; (c) for the deceased to have allowed himself to be mortally stabbed several times before running away; and (d) for the deceased to have been capable of running away after being mortally stabbed. Further, the court a quo said:

"The theory of self-defense put up by the accused cannot be given credit. His 'denials being unsubstantiated by any clear and convincing evidence deserves no weight in law, it being negative and self-serving, as against the credible witnesses of the prosecution who testified on affirmative matters' (People vs. Martin, 193 SCRA 57), where the accused invokes self-defense it is incumbent upon him to prove by clear and convincing evidence that he did acted in defense of himself. He rely on the strength of his own evidence and not on the weakness of the prosecution. For even if the evidence of the prosecution is weak, it could not be disbelieved after the accused himself had admitted the killing. (People vs. Saxam, G.R. 89684, 18 Sept. 1990, Second Division, Regalado, J.)

Finally, the Court gives no credibility to the theory of self-defense invoked by the accused considering the number of wounds inflicted on the victim located at the different parts of the victim's body (five all in all). As our Supreme Court pronounced, now and then, 'in view of the number of wounds received by the deceased, nineteen (19) in number, the plea of self-defense cannot be entertained.' (People vs. Panganiban, 22 SCRA 817)"[9]

The trial court also appreciated one qualifying circumstance (treachery) and one generic aggravating circumstance (evident premeditation), as well as one mitigating

circumstance (voluntary surrender). Treachery, which was shown by appellant's attack from behind, qualified the crime to murder. Evident premeditation was proven by the fact that three days prior to the killing, appellant had mauled the deceased and the latter claimed restitution of his medical expenses which the former refused to pay. Voluntary surrender was appreciated in favor of appellant, but this was offset by evident premeditation. Thus, appellant was sentenced to *reclusión perpetua.*

Assignment of Error

In the Appellant's Brief, counsel for the defense raised this lone error: [10]

"The trial court gravely erred in imposing the penalty of reclusion perpetua against the accused-appellant x x x despite x x x the presence of modifying circumstances."

Appellant avers that the imposition of the penalty of *reclusión perpetua* is cruel and inhuman, per Section 19(1), Article III of the 1987 Constitution, in view of the presence of a mitigating circumstance in his favor and his not being a recidivist. He further claims that, with the suspension of the imposition of the death penalty by the same Constitution, the trial court should have imposed a penalty within the range of *prisión mayor* to *reclusión perpetua* considering that Article 248 of the Revised Penal Code prescribes a three-tiered penalty ranging from the maximum period of *reclusión temporal* to death.

The Court's Ruling

While appellant questioned only the penalty imposed, this Court, nonetheless, looked into appellant's conviction following the legal principle that an appeal in a criminal case throws the whole case open for review.[11] This is particularly true in constitutionally mandated appeals involving capital offenses. After examining the case in its entirety, the Court is satisfied that the guilt of the appellant had been proven beyond reasonable doubt. The Court holds, however, that the penalty imposed by the trial court should be reduced.

Consequences of Self-Defense

When an accused invokes self-defense, the burden of proof is shifted to him to prove that the killing was justified and that he incurred no criminal liability therefor. [12] Also, the requisites of self-defense must be proved by clear and convincing evidence.[13]

In this case, the evidence for the defense can hardly be characterized as clear and convincing. First, appellant's testimony is uncorroborated, as the defense presented no other witness. His testimony does not show unlawful aggression on the part of the victim. Absent such unlawful aggression, there can be no self-defense. Second, the number, location and gravity of the wounds inflicted on the deceased belie appellant's pretension that he acted in self-defense.[14] The deceased sustained five wounds according to the post-mortem examination report, two of which were at the back. If the deceased and appellant, according to the latter's testimony, were wrestling on the ground with the deceased tightly hugging him, how could appellant have stabbed the deceased at the back? Appellant vaguely answered that he could no longer remember because he had again lost consciousness. If indeed he lost