

## FIRST DIVISION

[ G.R. No. 175315, August 09, 2010 ]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZER  
BEDUYA AND RIC BEDUYA, APPELLANTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

In this appeal, we are tasked to determine whether the appellants killed the victim with abuse of superior strength for which they were convicted of murder.

#### ***Factual Antecedents***

For our review is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 00161 which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 12, Oroquieta City, Misamis Occidental, finding appellants Elizer Beduya (Elizer) and Ric Beduya (Ric) guilty beyond reasonable doubt for the crime of murder. The Information against the appellants contained the following accusatory allegations:

That on or about the 6<sup>th</sup> day of May 2002, at about 12:15 o'clock midnight, more or less, in barangay Baga, Municipality of Pana-on, province of Misamis Occidental and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to kill, with abuse and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, box and then stab one DOMINADOR S. ACOPE[,], SR. with the use of a knife hitting him on the left hypochondriac area which caused his death.

CONTRARY TO LAW, with the qualifying circumstance of taking advantage of superior strength[.]<sup>[3]</sup>

Both appellants were arrested. They entered separate pleas of "not guilty" during their arraignment.<sup>[4]</sup> After the termination of the mandatory pre-trial conference,<sup>[5]</sup> trial ensued.

#### ***The Prosecution's Evidence***

Culled from the evidence presented by the prosecution, the following case against the appellants emerged:

On May 6, 2002, at around 11:45 p.m., Roy Bughao (Bughao) was carrying a torch on his way home from the birthday celebration of his cousin when Elizer and Ric suddenly appeared. Ric went around him while his brother Elizer pointed a knife. He drew back and swung the torch at them and shouted, "Why do you hurt me, what is my fault?"<sup>[6]</sup> The Beduya brothers did not reply and continued their assault. Bughao then scrambled for safety and ran towards the yard of victim Dominador S. Acope, Sr. (Acope, Sr.) and hid in a dark area.

At around 12:30 a.m. of May 7, 2002, the victim and his son, Dominador Acope, Jr. (Acope, Jr.), were roused from their sleep by a voice coming from the road in front of their house. The victim went outside while his son peeped through the window. The victim saw Bughao who readily identified himself and said that Elizer pointed a knife at him. As the Beduya brothers entered the yard of the victim's house, Bughao hid himself. While in hiding, he saw the Beduya brothers approach the victim after they were advised to go home since it was already late. The Beduya brothers did not heed the advice and instead Ric slapped the victim while Elizer stabbed him. The victim retaliated by striking them with a piece of wood he got hold of. Elizer and Ric ran away but one of them stumbled on the pile of firewood and the clothesline in the yard before they succeeded in departing from the premises.

Acope, Jr. immediately proceeded to his uncle's house which was 40 meters away and sought his help. The incident was also reported to their *Barangay* Captain, who responded by going to the residence of the victim. Upon arrival, he saw the victim lying on the ground and bleeding from a stab wound. The victim told him that, "I will die because of this. x x x I was boxed by Ric and I was stabbed by Elizer."<sup>[7]</sup> He also told the *Barangay* Captain that he had no previous quarrel with the Beduya brothers.

The *Barangay* Captain took the victim to the Jimenez Medicare Hospital but was later advised to proceed to the MHARS General Hospital in Ozamis City, where the police officer took the statement of the victim and Acope, Jr. On the next day, May 8, 2002, the victim died due to "septic and hypovolemic shock secondary to stabbed wound."<sup>[8]</sup>

### ***The Appellants' Version***

Elizer maintained that he did not commit any crime. On May 6, 2002, he went to Baybay, Punta, Panaon, to buy fish. He usually carried a knife to slice and eat the fish while it is still raw. While on his way home at 10:30 p.m., he was suddenly attacked and struck by the victim and Bughao. He got hit several times with a piece of wood and Bughao smashed his right foot. To defend himself, he pulled out his knife and struck randomly. He had no knowledge if he hit someone but his assailants fled. Eduardo Eltagon (Eduardo) testified that he witnessed the event but he did not interfere since he did not want to get involved.

Elizer continued to walk, and arrived home at 12:15 a.m. At 1:30 a.m., policemen came to his house and took him to a hospital. They passed by the house of his brother Ric before proceeding to their destination.

For his part, Ric testified that he was asleep at the time of the incident. He stated

that he went to sleep at eight o'clock in the evening on May 5, 2002 and woke up at four o'clock in the morning of the following day, May 6, 2002, when the *Barangay* Captain and policemen came to his house with his brother and asked him to come with them to the hospital.

### ***The Trial Court's Decision***

The trial court rendered judgment in favor of the prosecution, whose witnesses testified candidly on the events that resulted in the death of the victim. On the other hand, the trial court found as unreliable the witnesses presented by the defense. It held that Eduardo, at 86 years of age, could not have seen the victim and Bughao attacking Elizer 30 meters away with a flashlight as his only source of illumination in the dead of night since a test on his vision showed that he could not "see at a distance little more than beyond his nose."<sup>[9]</sup> Moreover, it ruled that the injuries suffered by Elizer were more consistent with the defensive blows from a piece of wood the victim used to defend himself, rather than the alleged assault on him by the victim and Bughao.<sup>[10]</sup>

The trial court also held that the circumstance of abuse of superior strength that qualifies the killing of the victim to murder is present in this case. According to the trial court, the appellants' combined assault gave them the advantage over the victim who must have been taken by surprise. The retaliation of the victim with a piece of wood was done only after he had already been stabbed.<sup>[11]</sup>

In disposing of the case, the trial court ruled as follows:

WHEREFORE, finding accused Elizer Beduya and Ric Beduya guilty beyond reasonable doubt of murder qualified by abuse of superior strength without other modifying circumstances, the court sentences them to **reclusion perpetua** and orders them to pay *in solidum* the heirs of Dominador Acope P50,000.00 as death indemnity, P6,000.00 as funeral expenses, P9,411.85 as medical expenses, and P264,000.00 as lost earnings. With costs.

Accused are credited with the full time spent under preventive detention since May 7, 2002.

SO ORDERED.<sup>[12]</sup>

### ***The Decision of the Court of Appeals***

The case was forwarded to this Court on automatic review and docketed as G.R. No. 158473. However, we referred it to the CA in accordance with our ruling in *People v. Mateo*.<sup>[13]</sup> The appellate court affirmed with modification the trial court's decision and disposed as follows:

WHEREFORE, the appeal is hereby DENIED. The assailed decision is hereby AFFIRMED with the MODIFICATION of increasing the award of the victim's heirs for the loss of earning capacity of the victim [to]

P408,000.00.

SO ORDERED.<sup>[14]</sup>

### ***The Assignment of Errors***

Still aggrieved, the appellants sought a final review of their case raising the following as errors:

#### **I**

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

#### **II**

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE FAILURE [OF] THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

#### **III**

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.<sup>[15]</sup>

During the pendency of the appeal, appellant Ric died of cardio pulmonary arrest secondary to bleeding peptic ulcer as shown by his certificate of death.<sup>[16]</sup> Accordingly, we dismissed<sup>[17]</sup> the appeal insofar as said appellant is concerned. However, judgment shall be rendered as to Elizer.

### **Our Ruling**

There is partial merit in the appeal.

### ***Abuse of Superior Strength as a Qualifying Circumstance in the Crime of Murder***

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Article 248<sup>[18]</sup> of the Revised Penal Code is present. Abuse of superior strength is one of the qualifying circumstances mentioned therein that qualifies the killing of the victim to murder.

In this case, the trial and appellate courts commonly concluded that there was intent to kill on the part of the appellants and that they employed abuse of superior strength to ensure the execution and success of the crime. The appellate court even adopted the trial court's finding and conclusion that as Ric punched the victim in the

shoulder and appellant Elizer delivered the fatal stab wound, this combined assault "gave them the advantage over the victim who must have been taken by surprise. Although the victim struck at accused with a piece of wood, he did so only after he had been stabbed, causing the two accused to run away."<sup>[19]</sup>

This reasoning is erroneous.

"Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime."<sup>[20]</sup> "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim."<sup>[21]</sup> The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.<sup>[22]</sup> "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."<sup>[23]</sup> The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.<sup>[24]</sup>

The prosecution in this case failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that two assailants, one of them (Elizer) armed with a knife, assaulted the victim. The presence of two assailants, one of them armed with a knife, does not *ipso facto* indicate an abuse of superior strength.<sup>[25]</sup> Mere superiority in numbers is not indicative of the presence of this circumstance.<sup>[26]</sup> Neither did the prosecution present proof to show that the victim suffered from an inferior physical condition from which the circumstance can be inferred. In fact, there is evidence that the victim was able to get hold of a piece of wood and deliver retaliatory blows against the knife-wielder, Elizer.<sup>[27]</sup>

The events leading to the stabbing further disprove any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim. The testimonies of the prosecution's witnesses, on the whole, show that the incident between the victim and his assailants was unplanned and unpremeditated. The assailants were in pursuit of Bughao when the victim advised them to go home since it was already late at night. There was indeed no conscious attempt on the part of the assailants to use or take advantage of any superior strength that they then enjoyed. Particularly, it has not been clearly established that the appellants, with an advantage in number, purposely resorted to punching the victim and delivering a fatal stab wound. Neither has it been shown that the victim was simply overwhelmed by the fist blows delivered by Ric and Elizer's act of stabbing him. The evidence on this matter is too insufficient for a definitive conclusion. What has been shown with certainty and clarity is the appellants' intent to kill, as shown by the stab wound in the left side of the victim's body which resulted in his death two days later. As the knife wielder, Elizer is guilty of assaulting and killing the victim.

In view of the foregoing, we are compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. Hence, appellants' guilt must be limited to the crime of homicide.