

THIRD DIVISION

[G.R. No. 148519, May 29, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLITO CABICAL @ LITO Y ESTEBAN, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Appellant Rolito Cabical was charged with the crime of Murder before Branch 27 of the Regional Trial Court of Bayombong, Nueva Vizcaya in an information which reads:

"That on or about 5:30 in the afternoon of December 3, 1996, at Barangay Pieza, Municipality of Villaverde, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was then armed with a piece of wood, with intent to kill, with evident premeditation, taking advantage of superior strength, and by means of treachery, did then and there willfully, unlawfully and feloniously, hit and strike the head of Reynaldo Fernando y Ramos, thereby inflicting upon him mortal wounds and injuries on his head which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW."^[1]

During arraignment, appellant Cabical entered a plea of not guilty and underwent trial.

The evidence shows that at about 5:30 in the afternoon of December 3, 1996, Joniper Pontino, riding on a carabao and heading south, was on his way home from the rice fields in Purok Namnama, Barangay Pieza, Villaverde, Nueva Vizcaya. He saw the victim, Reynaldo Fernando, going north and being closely followed by appellant Cabical. Cabical held a piece of wood and was walking faster than Fernando. When Pontino was around five (5) meters away from the two, he saw Cabical strike Fernando at the nape with a wood. Fernando slumped to the ground, snored, and blood came out from his nose and mouth. Pontino got afraid and rushed home.^[2] He encountered his father, Rodolfo, drinking with a group of people. He told them about the incident.^[3]

Rodolfo, in turn, reported the matter to Danilo Duro, the barangay captain of Pieza, Villaverde, Nueva Vizcaya. Duro, together with Kagawad Renato Martin, went to the scene of the crime and found Fernando lying in a prone position on the road outside the fence of the house owned by Cabical, and clenching a sapling or seedling in his right hand.^[4] Duro lifted Fernando and placed him in the vehicle that would bring him to the hospital. When he lifted Fernando, he said he did not smell any alcohol

on the victim. Instead, the victim had a fish-like smell ("malangsi").^[5]

The testimony of Duro that he did not smell any alcohol on the victim was corroborated by Dr. Elpidio Quines who performed an autopsy on Fernando. Quines stated that he did not smell any alcoholic breath, although he admitted that he did not take any gastric content from Fernando so as to actually determine the presence of alcohol in the body.^[6] He also declared that only one injury was inflicted on Fernando. The injury was located at the back of his head and could have been caused by any hard object, possibly a piece of wood.^[7]

Esperanza, the widow of Fernando, declared that she was working in Malaysia when her husband was killed. As a result of his death, she suffered endless sleepless nights and was not able to eat or think properly.^[8] She demanded P52,500.00 as actual damages.^[9] She also claimed that her husband earned a living from the buy and sell of pigs, cows and carabaos, and farming. He allegedly earned an annual income of P124,290.00.^[10]

The defense presented appellant Cabical and his wife, Alice Cabical, as witnesses. They justified the killing as an act of self-defense. Alice Cabical narrated that in the afternoon of December 3, 1996, appellant was working in the nearby house of Joel Calimlim. She was at their house cooking and watching over their kid when she heard Fernando, who was drunk, shouting "vulva of your mother" at the same time mentioning the name of her husband. She did not mind him until she heard him at their door, looking for Cabical and allegedly holding a stone in his back. She shouted for the appellant and beckoned with her hand for him to come to their house. Appellant came and told Fernando to go home because he was drunk. Instead, Fernando told him, "vulva of your mother I am always helping you but you are not helping me." With his husband calm, Alice went inside their house to continue cooking. When she went out again, she saw the bloodied body of Fernando.^[11]

Appellant testified that Fernando was drunk and passed by the place where he was working. Fernando shouted at him, "vulva of your mother you have a fault against me." He did not mind Fernando until his wife called for him to come home. When he arrived at their house, Fernando continued insulting him. He placed a hand on Fernando's shoulder but the latter suddenly faced him and struck him with his right hand which was holding a stone. He bent and evaded the blow. While bent, he was able to pick up a wood with which he struck Fernando. Fernando fell to the ground. After verifying that Fernando was still alive, appellant left him and looked for a vehicle to bring him to the hospital. When he returned, however, he saw that there was already a vehicle that would bring Fernando to the hospital. He no longer approached them and merely watched from a distance.^[12] In the morning of December 4, 1996, he surrendered to Barangay Captain Duro.^[13]

The trial court convicted appellant of murder. Thus:

"WHEREFORE, finding Rolito Cabical y Esteban GUILTY beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of *reclusion perpetua*, or 20 years and one day to 40 years; to pay the sums of P50,000.00 as civil indemnity; P20,000.00 as moral damages; P44,000.00 as actual damages, and to pay the costs of the

suit.

SO ORDERED."^[14]

Appellant interposed this appeal, raising the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONY OF JONEFER (*sic*) PONTINO INSTEAD OF THAT (*sic*) SELF-DEFENSE INTERPOSED BY THE APPELLANT.

II.

ASSUMING THAT ACCUSED-APPELLANT IS NOT ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, THE TRIAL COURT ERRED IN NOT CONSIDERING IN FAVOR OF THE ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCE OF SUFFICIENT PROVOCATION ON THE PART OF THE OFFENDED PARTY WHICH IMMEDIATELY PRECEDED THE ACT.

III.

THE TRIAL COURT ALSO ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY.

IV.

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED-APPELLANT IS GUILTY FOR THE DEATH OF REYNALDO FERNANDO AND TREACHERY WAS PRESENT, HE SHOULD NOW ONLY BE HELD LIABLE FOR THE CRIME OF HOMICIDE CONSIDERING THAT TREACHERY WAS NOT ALLEGED IN THE INFORMATION AS QUALIFYING AGGRAVATING CIRCUMSTANCE.^[15]

Murder, as defined in Article 248 of the Revised Penal Code, is committed by "(a)ny person who, not falling within the provisions of Article 246 (parricide) shall kill another, x x x with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x

x x x

x x x."

The justifying circumstance of self-defense is provided for in Article 11 of the Revised Penal Code, *viz*:

"Article 11. *Justifying circumstances.* — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x
x x x."

x x x

Appellant justifies the killing of Fernando as necessary to save himself. He claims that while he was working in the house of Calimlim, Fernando passed by and shouted insulting words at him. Thereafter, Fernando proceeded to his house, continued to insult him and then tried to strike him with his right hand which was holding a stone. He found a piece of wood, picked it up and used it to strike Fernando in the nape in self-defense.

In self-defense, the accused admits the killing of the victim. The burden to justify the killing shifts to him.^[16] The rule is that where the claim of self-defense is not corroborated by independent and competent evidence, and is extremely doubtful, it cannot prosper.^[17]

We cannot sustain appellant's claim of unlawful aggression. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent.^[18] In this case, it is clear from the testimony of appellant that the danger to his life was not actual or imminent when he faced Fernando, *viz*:

Q: As a matter of fact, are you in effect telling the Court that you did not have any reaction whatsoever when Reynaldo Fernando shouted those words to (*sic*) you during that time, is that correct?

A: No sir, he usually did (*sic*) that whenever he passed (*sic*) by our house and shouting (*sic*) those words, sir.

x x x x x x x x x

Q: In other words, you simply took for granted this untoward act of Reynaldo Fernando, is that correct?

A: Yes sir, I knew that he was drunk.^[19]

x x x x x x x x x

Q: And at that moment when Reynaldo Fernando faced you, the appearance of his face (*sic*) did not appear angry at that time?

A: He looked angry, sir.

Q: Are you telling the Court that when Reynaldo Fernando saw you at that distance of about 2 meters, did he already flare up or become very angry (*sic*)?

A: When we saw each other eye to eye, I could observe that his face was angry, sir.

Q: Actually, he looked very, very angry at that time, is that correct?

A: I could not state that he was very angry but I could observe that he was angry, sir.

Q: And your observation that he was angry was not based on the appearance of his face at that time but was gauged merely by your internal feeling, is that correct?

A: Because I observed that his physical appearance was angry, I calmed myself and went near him, sir.

Q: In fine, when you approached Reynaldo Fernando, you were not actually sure whether he was very angry at you, is that correct?

A: Yes, sir.

Q: Because according to you, it did not appear in his face, is that correct?

A: Yes, sir.

Q: And so since his face did not appear to be angry at you during that time, you immediately approached Reynaldo Fernando and placed one of your hands on his shoulder, is that correct?

x x x x x x x x

A: Yes, sir."^[20]

Assuming *arguendo* that there was unlawful aggression, the aggression already ceased at the time appellant struck him with a stone. In his testimony, appellant admits that when he struck Fernando at the back, the latter was no longer in possession of the stone. Thus:

"Q: Am I correct in saying that when you were actually in the process of picking (up) the piece of wood that Reynaldo Fernando had actually hit you with a piece of stone or I