

FIRST DIVISION

[G.R. No. 131815, August 14, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR MENDEZ ALIAS "VICTOR", PABLO LANSANG ALIAS"
ABLOY", AND NOEL MURIAL ALIAS "LOLOY, ACCUSED. PABLO
LANSANG ALIAS"ABLOY", ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

On December 9, 1994, accused-appellant Pablo Lansang, along with Noel Murial and Victor Mendez, were charged with murder committed as follows:

That on the 3rd day of November 1994, at about 9:45 o'clock in the evening, more or less, in barangay Pandan, municipality of Sogod, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one Vidal Larita with the use of two (2) long sharp-pointed bolo and one (1) hunting knife, which the accused had provided themselves for the purpose, thereby inflicting upon the victim the following injuries:

x x x x x x x x x

which injuries caused the instantaneous death of the victim, to the damage and prejudice of his heirs and of social order.

CONTRARY TO LAW.^[1]

The case was docketed as Criminal Case No. 1812 of the Regional Trial Court of Maasin, Southern Leyte, Branch 25.

All of the three accused entered a plea of "not guilty."^[2] Subsequently, however, Victor Mendez and Noel Murial, with the assistance of their counsel de officio, withdrew their negative plea and pleaded guilty to the lesser offense of homicide.^[3] Thereafter, trial ensued against accused-appellant Pablo Lansang.

The prosecution established that on November 3, 1993 at 6:00 p.m., while the victim, Vidal Larita, was visiting his son, Antonio Larita, in Barangay Pandan, Sogod, Southern Leyte, Pablo Lansang and his wife passed by and invited them to attend the seventh day novena prayer for his mother-in-law, the wife of Nene Mendez. Vidal Larita declined since he was avoiding Nene Mendez, with whom he had an altercation the week before. Lansang's wife was persistent, so the victim went with his son. He attended the prayer and partook of the food and drinks that were served

thereafter. Antonio left his father at Mendez's house still engaged in a drinking spree.^[4]

Two hours later, Antonio heard Lansang's voice shouting, "*Ayaw paikyasa.*" (Don't let him escape.) Immediately, he went to Mendez's house and found his father being attacked by Lansang, Nene Mendez, Victor Mendez and others. His father was able to run away, while Antonio returned to his house.^[5]

Meanwhile, Vidal Larita went to the house of Sulpicio and Juana Olaco and recounted to them that he had been in a fight with Nene Mendez. Moments later, Lansang and Murial arrived, carrying unsheathed bolos. They greeted Larita good evening, which the latter acknowledged. Suddenly, Murial hacked Larita's arm with his bolo. Lansang then stabbed the victim several times. The victim ran away while his assailants pursued him. When he was about ten meters away, the victim fell.^[6]

Dr. Myrna C. Tan, who conducted the post-mortem examination of the victim, found that he was stabbed and hacked with a sharp-edged instrument and sustained a total of fifteen wounds on different parts of his body.^[7]

The defense presented the testimonies of Noel Murial and Victor Mendez. Accused-appellant Pablo Lansang did not testify.

Noel Murial testified that the victim, Vidal Larita, stabbed Nene Mendez on the chest so he and Victor Mendez retaliated by killing Vidal Larita. He claimed that Pablo Lansang took no part in the killing as he was with Nene Mendez at Sogod Emergency Hospital.^[8]

Victor Mendez, likewise, admitted that he and Noel Murial killed Vidal Larita and that Pablo Lansang was at the Sogod Emergency Hospital when the killing took place.^[9]

On August 25, 1997, the trial court rendered judgment as follows:

WHEREFORE, judgment is hereby rendered finding the accused PABLO LANSANG GUILTY beyond reasonable doubt of MURDER, the crime charged, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and its accessories as provided by law, and to pay the proportionate costs.

In addition, accused is jointly and severally liable with convicts Noel Murial and Victor Mendez in the amount of P50,000.00 as death indemnity.^[10]

Accused-appellant interposed this appeal assigning the following errors:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT PABLO LANSANG FOR THE CRIME OF MURDER DESPITE THE REASONABLE DOUBT OF HIS PRESENCE IN THE CRIME SCENE.

II.

ASSUMING THAT ACCUSED-APPELLANT PARTICIPATED IN THE KILLING OF VICTIM VIDAL LARITA, HE COULD ONLY BE GUILTY OF HOMICIDE,

MITIGATED BY THE IMMEDIATE VINDICATION OF A RELATIVE.^[11]

We are not persuaded.

Accused-appellant's defense that he was not at the crime scene deserves no credence, in light of his positive identification by two witnesses as one of the killers. It was shown that both of these witnesses, Juana Olaco and Barangay Tanod Cecilio Cabales, have personally known accused-appellant for a reasonable length of time and can even trace his relations to some persons belonging to their community. One of the accused, Noel Murial, admitted that Juana Olaco was present when the killing took place.

Hence, accused-appellant's defense of alibi must fail. The trial court was correct in stating that the positive identification of the accused-appellant by the prosecution witnesses cannot simply be overcome by the defense of alibi.^[12] Moreover, the place where accused-appellant claimed to have been staying at the time of the commission of the crime was so near the crime scene that it was not physically impossible for him to have been present at the place of the crime at the time of its commission.^[13]

Accused-appellant's second assignment of error lacks merit. The justifying circumstance of defense of a relative can only be raised where there is a concurrence of the requisites of unlawful aggression, reasonable necessity of the means employed to repel the aggression and that the person making the defense had no part in the provocation.^[14]

In the case at bar, the prosecution witnesses testified that after the fight between Vidal Larita and Nene Mendez, Larita immediately ran away. The unlawful aggression ceased from that moment. Therefore, accused-appellant's use of force was completely unjustified as there was no more hostility to be repelled.

However, we take exception to the trial court's finding of treachery, to wit:

There was treachery in this case and this is supported by the evidence on record when Noel and Pablo tried to be friendly with Vidal and deceptively respectful when they first greeted him a "Good Evening" which the latter answered also in a respectful way. Then, all of a sudden, Noel hacked Vidal and Pablo followed suit, without giving Vidal a fair chance to defend himself.^[15]

Treachery exists when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specifically to ensure its execution, without risk to himself arising from the defense that the offended party might make.^[16] In *People vs. Lab-eo*, (G.R. No. 133438, January 16, 2002) it was held that:

The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.

In the instant case, treachery cannot be properly appreciated as the accused-appellant's attack against the victim was not unexpected or without warning. In fact, prosecution witness Cecilio Cabales testified that he warned the victim about the assailants, viz: