

SECOND DIVISION

[G.R. No. 125923, January 31, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TORADIO SILVANO, ACCUSED-APPELLANT.**

D E C I S I O N

DE LEON, JR., J.:

Before us on appeal is the Decision^[1] of the Regional Trial Court of Cebu City, Branch 13, in Criminal Case No. CBU-30317 convicting appellant Toradio Silvano of the crime of murder.

Appellant Toradio Silvano was charged with the crime of murder defined and penalized under Article 248 of the Revised Penal Code in an Information that reads:

That on April 14, 1993 at 6:30 o'clock in the evening, more or less, in Barangay Lambug, Municipality of Badian, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and hack one Ildefonso Palabrica with the use of a sharp bladed weapon, thereby hitting the latter multiple hack wounds at the back of his neck which resulted his instantaneous death.

CONTRARY TO LAW.

Upon being arraigned on July 6, 1993, appellant Toradio Silvano, assisted by his counsel, entered the plea of "Not guilty" to the Information in this case. Pre-trial was waived by the defense. Thereafter, trial on the merits ensued.

On March 20, 1995, the trial court rendered a decision finding the appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused TORADIO SILVANO GUILTY beyond reasonable doubt of the crime of MURDER, and sentences him to a penalty of Reclusion Perpetua.

He is directed to indemnify the heirs of Ildefonso Palabrica the sum of P50,000.00.

SO ORDERED.

Aggrieved by the decision, Toradio Silvano interposed the instant appeal.

It appears that in the late afternoon of April 14, 1993, Ildefonso Palabrica and his 15-year old son, Richard, left their house in Sitio Manay-as, Barangay Lambug, Badian, Cebu.^[2] Ildefonso was going to meet his wife, Leonarda, at the corner of the Green Island Beach Resort which was about one (1) kilometer away from his house.^[3]

During the day Leonarda sold biscuits locally known as "salvaro" in the Badian Public Market. After selling her goods in the afternoon of April 14, 1993, Leonarda bought fifty (50) kilos of flour that she loaded in a tricycle en route to the corner of Green Island Beach Resort where Ildefonso would fetch her.^[4] After a while Leonarda spotted Ildefonso being followed by their son. She had no idea of the impending tragedy that would befall her husband.

From a distance of one hundred (100) meters, Leonarda saw her nephew, Toradio Silvano, approached Ildefonso from behind and suddenly hacked the latter on the nape with a bolo locally known as "pinute". Ildefonso staggered before he fell down on his face. Toradio sat beside the fallen victim and hacked him three (3) times before delivering another hacking blow on his forehead. Leonarda and her son Richard, who also witnessed the incident, were helpless and could only manage to cry for help.^[5]

Richard was trailing behind his father by twenty (20) meters when Toradio emerged among the pandan plants that were growing by the roadside. After catching up with Ildefonso, Toradio suddenly delivered successive hacking blows on the nape and on the forehead of the victim.^[6]

Incidentally, Richard's cry for help drew the attention of Arnolfo Coronel who was on his way home after gathering fodder for his cow. Arnolfo witnessed Ildefonso staggered on the road and fell down on his face after he was hacked by Toradio on the nape. Toradio turned the victim's face upward and hacked him again on the forehead.^[7]

Leonarda, Richard and Arnolfo approached the lifeless body of Ildefonso after Toradio hurriedly left the crime scene. The head of Ildefonso was almost severed due to the wounds that he suffered on his nape.^[8] Jaime Silvano also arrived as he became curious upon accidentally meeting his uncle along the road carrying a bolo and was walking hurriedly while he kept looking behind him as if he was in trouble.^[9]

Leonarda disclosed, during the trial, that her husband and the appellant had a quarrel when the latter attempted to occupy a portion of their land three (3) years before the hacking incident on April 14, 1993. Since then the two were not in good terms. On April 10, 1993, Ildefonso reprimanded Toradio for intruding into the land of Eutiquia Silvano who was an aunt of the appellant.^[10]

Dra. Urduja Espiritu, M.D., Municipal Health Officer of Badian, Cebu conducted a post mortem examination on the cadaver of Ildefonso Palabrica. The autopsy report^[11] that was prepared and signed by Dra. Espiritu, shows the following findings:

FACE:

1. Lacerated wound located on the right side of the forehead 6 cm. above the right eyebrow measuring 3 cm. in length gaping about 0.5 cm. wide going deep down and cutting a little the skull surface.
2. Multiple abrasions and purple red discoloration of the skin, contusion.

EAR:

Avulsion of the inferior lobe of the R pinna.

NECK:

Multiple hack wounds from the level of the inferior portion of the ears running horizontally about 8 inches in length gaping about 1 inch wide cutting through the muscles at the back of the neck. Going down below is a portion of the skin measuring about 1 inch wide. Next to it is another hack wound gaping about 3 inches wide cutting deep down through the muscles, blood vessels and almost $\frac{1}{2}$ of the depth of the cervical vertebra.

ELBOWS:

Abrasions on both sides L and R.

HANDS:

1. Lacerated wound, 2 cm. in length at the proximal 3rd of the left thumb.
2. Lacerated wound, 1 cm. in length at the distal 3rd of the left thumb.

KNEES:

Abrasions on both left and right.

PROBABLE CAUSE OF DEATH:

Hypovolemic Shock, Irreversible

Hemorrhage, Severe, External

Multiple hack wounds at the back of the neck.

Meanwhile, at 11:00 o'clock in the evening of April 14, 1993, appellant Toradio Silvano surrendered to Teofilo Delubio, a distant relative of the appellant and a barangay councilman in Barangay Lambug, Badian, Cebu. Toradio admitted that he had killed Ildefonso Palabrica for the reason that the latter allegedly took advantage of him ("gilupigan"). Consequently, Teofilo brought Toradio to the Municipal Police Station in Badian, Cebu and turned him over to Pat. Vicente Suerte, Jr. for investigation.^[12]

Appellant Toradio Silvano admitted killing Ildefonso Palabrica in the late afternoon of

April 14, 1993 but interposed self-defense. Based on his testimony, Toradio was going to fetch his wife in Badian Public Market in Badian, Cebu when he met Ildefonso in the middle of the road leading to the corner of the Green Island Beach Resort. As Toradio approached, he called Ildefonso "Santaran" which was the name he used to address the victim, and the latter merely asked what he (Toradio) wanted. Subsequently, Ildefonso attempted to stab him with a short bolo that was previously hidden behind the victim's right leg, but missed. After wresting the bolo, Toradio hacked Ildefonso successively on the forehead and on the nape causing him to stagger before falling down on his face. Thereafter, he surrendered to Teofilo Delubio who turned his person over to the police.^[13]

Toradio also admitted that the wife of Ildefonso is a second cousin of his father. However, he denied that anyone had witnessed the incident in the late afternoon of April 14, 1993.^[14] He also denied harboring any grudge against the deceased victim although Toradio admitted that he regarded Ildefonso as a land grabber.^[15]

In his Brief,^[16] appellant Toradio Silvano interposed the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE THEORY OF SELF-DEFENSE INTERPOSED BY ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING AND CONTRADICTORY TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR ATTENDANCE IN THE COMMISSION OF THE CRIME CHARGED.

IV

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME ALTHOUGH THE HACKING INCIDENT WAS COMMITTED ON DAYTIME.

We cannot sustain appellant's plea of self-defense. By invoking self-defense, appellant Toradio Silvano admitted killing the victim, Ildefonso Palabrica. The burden is, therefore, upon him to prove the existence by clear and convincing evidence of its essential requisites which are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.^[17] He must rely on the strength of his own evidence and not on the weakness of that of the