

THIRD DIVISION

[G.R. No. 129254, July 22, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO JANAIRO Y BACOMO, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

When self-defense is invoked, the accused must establish clearly and convincingly *all* of the following: 1) unlawful aggression on the part of the victim, 2) reasonable necessity for the means employed to prevent or repel it, and 3) no sufficient provocation on the part of the defendant. Having admitted responsibility for the killing, the accused has the burden of proving the foregoing elements. Self-defense collapses upon failure to discharge this burden.

The Case

Ricardo Janairo appeals the December 12, 1996 Decision^[1] of the Regional Trial Court (Branch 49) of Puerto Princesa City, which convicted him of homicide and sentenced him to *reclusion perpetua*.

On November 13, 1992, an Information^[2] was filed charging appellant with murder allegedly committed as follows:

"That on or about the 24th day of October, 1992, in the afternoon, at the Palawan State College [PSC] Compound, Barangay Tiniguiban, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, with intent to kill and while armed with a deadly weapon, did then and there willfully, unlawfully and feloniously assault, attack and stab one Bencibeis^[3] Aguilar, thereby inflicting upon the latter [a stab] wound on the chest, which was the direct and immediate cause of his death."^[4]

Upon his arraignment on November 27, 1992, appellant entered a plea of not guilty.^[5] Thereafter, Counsel *de Parte* Perfecto de los Reyes filed a Motion for Reconsideration^[6] praying for reinvestigation, insisting that the charge should be changed to homicide. During the pre-trial on January 11, 1992, the lower court denied this Motion. Subsequently, the assistant city prosecutor filed a Motion to downgrade the crime charged from murder to homicide. Noting the conformity of the wife of the deceased, the court *a quo* issued an Order amending the Information by crossing out the phrase "with treachery and evident premeditation."^[7] Arraigned again^[8] on April 13, 1993, appellant pleaded "not guilty." Trial ensued. Thereafter, the lower court promulgated its assailed Decision,^[9] the dispositive part of which reads:

"WHEREFORE, premises considered, the Court finds that the [p]rosecution has proven Ricardo Janairo guilty beyond reasonable doubt of the crime of [h]omicide and sentences him to suffer the penalty of RECLUSION PERPETUA with all its accessory penalties and to pay the heirs of Bencibeis Aguilar actual damages in the amount of P39,789.26 and P50,000.00 as compensation for the death of Bencibeis Aguilar."^[10]

Hence, this appeal.^[11]

The Facts

Version of the Prosecution

In its Brief,^[12] the prosecution presents its version of the facts of the case in this wise:

"At about four o'clock in the afternoon of October 24, 1992[,] Bencebeis `Pakay' Aguilar was walking towards his house inside the PSC Compound, Puerto Princesa City. Ricardo Janairo was walking towards Aguilar. When the two met at a certain point near Aguilar's house, Janairo suddenly stabbed Aguilar with a blade and immediately ran away.

"Aguilar managed to walk to his house where he fell in front of the stairs. He was brought to the hospital in San Pedro but he [eventually] died of the mortal wounds he sustained. The blade entered through the anterior left chest penetrating the heart.

"Previous to said incident, the two men had figured in an altercation. Janairo had asked permission from Aguilar, who was the guard on duty at the PSC gate, if he could bring a tricycle inside the compound. The request was denied by the latter. An exchange of words followed and ended with Janairo making a threat: `Babalikan ka namin.'"^[13] (citations omitted)

Version of the Defense

On the other hand, the Appellant's Brief^[14] narrates the facts in the following manner:

"The case arose out of an incident which transpired on October 24, 1992 while accused was on his way out of the PSC Compound, where the accused met Bencebeis Aguilar. Bencebeis Aguilar berated Ricardo Janairo by calling the latter `son of a bitch, you are a brat'.

"Mr. Aguilar, by his words and facial expression, was drunk[.] This triggered an altercation between the two. For as testified by witness Elma Denalo,^[15] at about 4:00 o'clock in the afternoon of October 24, 1992, while she and Dina Mediodia were passing by [the] PSC compound, they saw two persons having an altercation as their action and tone of their voice [showed]. Elma Denalo came to know that the bigger one was Pakay Aguilar and the small one Ricardo Janairo. They were having an altercation facing each other. When Elma Denalo and companion were

more or less 1 1/2 meters near the two persons having an altercation, she saw the two grapple for the possession of the knife.

"Ricardo Janairo testified that Bencebeis Aguilar likewise stabbed him with a knife, but he was able to parry the same. Thereafter, they both grappled for the possession of the knife. Ricardo Janairo was holding the hand of Bencebeis Aguilar and the latter likewise. Thereafter, Ricardo Janairo fell on top of Mr. Bencebeis Aguilar. After [that], the former stood up as did the latter[.]

"It was when the two of them fell that Bencebeis Aguilar was wounded. And afterwards, Ricardo Janairo stood up. Bencebeis Aguilar did likewise[,], after which, the latter again stabbed the former.

"Fortunately, Ricardo Janairo was not hit[.] Bencebeis Aguilar was drunk, as per his acts, voice and physical appearance[.] Had Ricardo Janairo wanted to kill Bencebeis Aguilar, he could have done it while the latter was down on the ground. Ricardo Janairo ran away after the second stab because he was afraid to be wounded and, because he had no intention to kill Bencebeis Aguilar[.]"^[16] (citations omitted)

Ruling of the Trial Court

The lower court pointed out that the "more crucial issue is whether or not the stabbing was intentional." In convicting appellant, the trial court ratiocinated as follows:

"Examining the evidence for both parties, the Court finds [the p]rosecution evidence to be the more credible. The occurrence of the fight is [actually] not inconsistent with [p]rosecution's version of the event, because it [was] not improbable that before Janairo was actually able to stab Aguilar, they had grappled for possession of the knife. At any rate, Aguilar must have put up some resistance, which constituted the fight witnessed by [d]efense witnesses. The more plausible flow of events then, was that, upon encountering each other along the path, both accused and victim had an exchange of words which led [the] accused to draw a knife and stab the victim after the scuffle. The testimony of the accused is evasive and inconsistent. At first, he testified that after he and Aguilar had fallen to the ground, Aguilar got up and tried to stab him again, prompting him to run away. He claimed that at the time he ran away, he did not know that Aguilar had been wounded. Yet, he later testified that when arrested by authorities, he protested because he 'had no intention to kill' Aguilar which could only [im]ply that he knew that Aguilar had been wounded. In fact, he knew enough to recall that when he fell on top of Aguilar, the blade of the knife was facing towards Aguilar.

"The testimony of Elma Denaco, the only witness who claims to have seen Aguilar produce the knife which eventually killed him, ha[d] its share of improbabilities. By her own account, when she and her companion saw accused and Aguilar grappling for the knife, they ran away through the PSC gate. Apparently, they did not bother to report the violent incident to the police, or even to the security guards [at] the PSC

gate where they passed going home. Then, when she learned that Janairo was accused of killing Aguilar, she immediately went to have her statement taken by Atty. Perfecto de los Reyes. She was told to return in December to have her statement taken. The witness provides no explanation for her apparent reluctance to report the incident to the police authorities, which would have been the more natural course of action, considering the violent and serious nature of the incident.

"Given the evasiveness and improbability contained in defense witness testimonies, [the p]rosecution has presented the clearer and more credible case. Between the [p]rosecution eye-witnesses who [were] disinterested and [did] not stand to gain or lose by Janairo's conviction, and the accused himself, it [was] the former who would probably give the more accurate version of the incident."^[17] (citations omitted)

The Issues

Appellant raises the following issues:

"The lower court erred:

1. In holding that the accused stabbed the victim intentionally;
 2. In not holding that the accused stabbed the victim in self-defense;
 3. In upholding the validity of the proceedings, when at one point in time, the accused was assisted by a lawyer who was an American citizen;
 4. In imposing the penalty of reclusion perpetua upon the accused."
- ^[18]

The main issue is whether or not he proved the elements of self-defense.

The Court's Ruling

The appeal is partially granted. The trial court correctly convicted appellant of homicide, but erred in sentencing him to *reclusion perpetua*.

Preliminary Issues: **Validity of Court Proceedings**

The Information

After the arraignment on November 27, 1992, the Information was amended. The charge was "down grad[ed]"^[19] from murder to homicide, and the phrase "with treachery and evident premeditation" was crossed out from the Information. Without questioning the amendment, appellant entered a plea of not guilty. Under Rule 110 of the Rules of Court, however, only formal amendments are allowed after the arraignment of the accused.

"SEC. 14. *Amendment*. --- The information or complaint may be amended, in substance or form, without leave of court, at any time

before the accused pleads; and thereafter and during the trial as to all matters of *form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.*

xxx xxx xxx" (emphasis supplied)

By implication, amendments as to substance are precluded after the accused has entered a plea.^[20] The amendment made here was undoubtedly a matter of substance, for the nature of the crime was altered from murder to homicide. Nonetheless, the Court sustains the validity of the proceedings.

Section 14, Rule 110 of the Rules of Court, does not bar substantial amendments that are beneficial to the accused. Consistent with the constitutionally enshrined rights to be informed of the nature of charges and to be accorded due process, the rule aims to protect the accused from prejudicial machinations that change the game midstream.^[21] In this case, the amendment benefited^[22] the appellant. The amendment did not prejudice him or deprive him of defenses available before the amendment.^[23]

Moreover, appellant not merely consented to the amendment; in fact, he sought it. Indeed, the defense counsel had filed a Motion for Reinvestigation, praying that the charge of murder be changed to homicide. "Objection to the amendment of an information or complaint must be raised at the time the amendment is made[;] otherwise [appellant's] silence would be deemed consent on his part to the amendment."^[24]

Right to Counsel

Appellant contends that he was deprived of his right to counsel, arguing that he was represented by Atty. de los Reyes, who was an American citizen with no authority from the Supreme Court to practice law. He was in fact prohibited by the court *a quo* from appearing before it.^[25]

We disagree. It should be noted that the appellant was present when the lower court issued its Order prohibiting Atty. de los Reyes from appearing before the court. Appellant, however, insisted on being represented by the said counsel. As pointed out by the Office of the Solicitor General, appellant "took full advantage of the one year gap between the hearing held on May 19, 1995 and the last hearing held on March 1, 1994, banking on the short memory of the court and the fact that: 1) at the time this case was heard on May 19, 1995, a new judge had been assigned to RTC Branch 49, Judge Panfilo Salva and, 2) Atty. Vigonte of the PAO was no longer the counsel assigned to this case."^[26]

More important, appellant was not prejudiced in any way by his own disregard of the court Order. In all stages of this case, he was represented by counsel either *de parte* or *de oficio*. When he was arraigned again under the Amended Information, he was assisted by *Counsel de Oficio* Atty. Reynaldo Vigonte. During the trial that followed, the said lawyer continued defending him. In any event, all the pieces of evidence presented by the defense were considered by the lower court.

Because the appellant was neither prejudiced nor deprived of his right to counsel,