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SECOND DIVISION

[G.R. No. 130608, August 26, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTHUR DELA CRUZ, ACCUSED APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

ARTHUR DELA CRUZ was charged with murder before the Regional Trial Court of Kalibo, Aklan, for the death of Marbel Baptista on 24 October 1994 allegedly committed with treachery and evident premeditation.[1] On 19 June 1997 the trial court adjudged him guilty as charged but qualified only by treachery. Appreciating the mitigating circumstance of voluntary surrender, the trial court sentenced him to *reclusion perpetua* and ordered him to pay the heirs of the victim P50,000.00 as death indemnity and P35,000.00 as funeral and burial expenses, and to pay the costs.[2]

On 24 October 1994 Diego Pelonio planned an evening party to celebrate the birthday of his younger child. The party was to be held in his house in Brgy. Bay-ang, Batan, Aklan. Arthur dela Cruz, nephew of Diego, helped prepare the food. The guests started to arrive at around 7:30 in the evening. Among them were Arthur's father Felix and townmates Marbel Baptista, Romeo Bitamor, Jerry Paclibare, Felipe Bustamante, Nestor Prado and Pepito Dalipe. They drank *tuba* and beer. A few minutes past 8:00, Carlita dela Cruz, mother of Arthur, arrived to fetch her husband Felix, after which, the spouses proceeded home.

Before long, screams of a woman were heard from the national road. Diego and Jerry rushed to where the sound seemingly came from. Arthur followed. When Diego and Jerry returned, they told the other guests in the yard that Felix was boxed by somebody. Arthur thereafter reappeared and approached them clutching a knife. Without uttering a word he stabbed Marbel Baptista several times. Marbel was then sitting with his left leg raised on the bamboo bench and about to light a cigarette. Thus, with this position when stabbed, Marbel was unable to thwart the attack. Marbel fell lifeless on the ground. Arthur ran away. This startling occurrence was witnessed by Diego, Romeo, Jerry and some other guests. The autopsy conducted on the cadaver of Marbel disclosed these findings: (a) chopped wound, 4 x 4 inches, upper posterior left arm; (b) stab wound, 2 x 6 inches, left chest, directed medially along the posterior left axillary line; (c) stab wound, 2 - 1/2 x 3 inches, left lateral chest, below the tip of the left scapula; (d) stab wound, 1-1/2 x 6 inches, below wound No. 2, directed downwards and medially; (e) incised wound, 3 x 1/2 inches, 2 inches below the left ear; (f) stab wound, 2 x 6 inches, 2 inches below the midclavicle, left side, directed downwards; (g) stab wound, 1 x 4 inches, right chest along anterior right axillary line directed downwards; (h) chopped wound, right palm, cutting the right small and ring finger; (i) incised wound, 2 x 1/2 inches, mid forearm, right side; (j) incised wound, 1/2 x 3 inches, anterior right thigh; and, (k)

stab wound, 1 x 3 inches, left costal arch directed upwards.[3] According to the examining physician, of the eleven (11) wounds inflicted on Marbel five (5) were mortal since they involved the heart, lungs and abdomen, and all the wounds could have been brought about by a knife or a sharp, bladed and pointed instrument.

Precy Baptista, widow of Marbel, testified that she spent P35,000.00 for the funeral and burial expenses of her husband.

Accused Arthur dela Cruz, on the other hand, claimed that while watching television in the house of his uncle Diego at the time of the incident he heard his mother shouting for help. Immediately, he ran towards the direction from where his mother's voice was coming. Some forty (40) meters away from the house of his uncle Arthur found his father lying on the ground being kicked by Marbel. Arthur told Marbel to stop but the latter replied, "*Ikaw, maapin ka pa.*"[4] Simultaneously, Marbel drew a knife. Arthur ran. Marbel pursued him and lunged his knife at Arthur. While Arthur was able to foil the blow, Marbel slipped and fell down. Arthur, taking advantage of the situation, wrestled with Marbel for the possession of the latter's knife. Arthur succeeded and stabbed Marbel four (4) times. Marbel ran towards the house of Diego. Arthur chased him but desisted when several persons went to the rescue of Marbel upon reaching Diego's house. Arthur had to hide himself behind the bamboo groove until he went home. Later, Arthur surrendered to the Barangay Captain who accompanied him to the police station. Arthur admitted to the Barangay Captain and to the police that he stabbed Marbel but claimed he forgot where he placed the knife.

The trial court accorded full credence to the testimonies of the prosecution witnesses, especially that of Arthur's uncle Diego Pelonio, regarding the manner of the attack on Marbel by Arthur and the place of its commission. On the other hand, it found Arthur's claim of self-defense to have been contrived since he failed to raise it when he surrendered to the authorities. Besides, he also failed to establish the elements of self-defense.

In this appeal, the question to be resolved is which version should be believed - that of the prosecution asserting that the victim was treacherously killed within the yard of the house of Diego Pelonio, or that of the defense contending that the killing was prompted by defense of one's self and the immediate vindication of a wrong done to the accused's father Felix dela Cruz?

Accused-appellant maintains that he was justified in stabbing Marbel since he only repelled the aggression of Marbel against Felix dela Cruz, his father. And because of the claimed unlawful aggression, he submits that the deceased was sufficiently forewarned and placed on guard thus destroying the theory of treachery in the killing. He also insists that the testimony of Diego Pelonio should be completely disregarded having failed to submit himself to cross-examination, while Romeo Bitamor should be considered a biased witness being a friend and *compadre* of the victim. He attacks the credibility of Jerry Paclibare as he gave contradictory narrations in court and in his affidavit regarding the identity of the person who shouted for help.

That accused-appellant is guilty for the death of Marbel stands on solid ground. The testimony of Romeo Bitamor is clear on this point. He was only three (3) meters

away from accused-appellant and his victim and the place was adequately illumined by an electric light. Romeo was afforded the opportunity to view at close range the incident as it unfolded -

Q: And while you were drinking outside of the house of Diego Pelonio, and at around 8:30 that evening, did you hear any shout?

A: Yes, sir, at the road.

x x x x

Q: And how far is (sic) that from the house of Diego Pelonio?

A: About 80 meters away.

Q: And whose shout was that? Was that a shout of a man or that of a woman?

x x x x

A: The woman was shouting that her husband was boxed.

Q: At that time you heard that shout where was Marbel Baptista?

A: He was still sitting. We were together.

x x x x

Q: And when you heard that shout afterwards, did anything happen?

x x x x

A: Arthur dela Cruz arrived and immediately and successively stabbed Boy.

Q: You are referring to Boy or Marbel Baptista?

A: Yes, sir x x x x

Q: How were you able to recognize Arthur dela Cruz as the person who stabbed the victim because it was nighttime?

A: Because there was an electric light.

Q: Now, what weapon did Arthur dela Cruz use in stabbing Boy Baptista?

A: It is (sic) a knife.

Q: And was there any exchange of words between Boy Baptista and the accused Arthur dela Cruz immediately prior to the stabbing?

A: They had not talked to each other.

Q: And how far were you from the victim Marbel Baptista when you saw Arthur dela Cruz stabbed (sic) the said victim?

A: About three meters away.

Q: And about how many times did the accused stab Boy Baptista?

A: About five times or more.

Q: Now, can you tell the Honorable Court how the victim was seated on that bench immediately prior to the time that he was stabbed?

A: His left foot was raised on the bench while he was about to light a cigarette.

Q: Was the victim able to fight back?

A: No, sir.

COURT TO THE WITNESS:

Q: Was he able to evade the first blow?

A: No, Your Honor.

Q: How about the successive blows?

A: No, your Honor.

Q: Why?

A: Because he was seated.

Q: So, he was not able to stand up?

A: Only when he fell to the ground x x x x

Q: After he fell down what did the accused do?

A: He ran away.

Q: How about the knife that he used what did he do with it?

A: He brought it with him.[5]

During the cross-examination Romeo clarified that -

Q: When you heard that shout(s) what were you and your companions doing?

A: Diego Pelonio went to the feeder road x x x x

Q: Nobody accompanied or went after Diego Pelonio after he left to go to that feeder road?

A: Jerry Paclibare x x x x

Q: You also testified that after a while Diego Pelonio returned. When Diego Pelonio returned to the house after going to the road did he have any companions with him when he went back?

A: Yes, sir, Jerry Paclibare.

Q: And of course, you yourself asked Diego Pelonio what was happening on the road after he went back?

A: Yes, sir.

Q: Did they tell you if who was boxed?

A: It was Felix de la Cruz who was boxed x x x x

Q: And of course when Diego Pelonio and Jerry Paclibare told you that Felix dela Cruz was boxed what came to your mind was to ask them who boxed Felix dela Cruz, is it not?

A: They do not know who boxed Felix dela Cruz x x x x

Q: You mean to tell us that all the while that there were shouts there on the road and after Diego Pelonio and Jerry Paclibare returned to the house Arthur dela Cruz was watching TV in the house of Diego Pelonio?

A: When the shout was heard Arthur dela Cruz went down the house of Diego Pelonio and followed Diego Pelonio x x x x[6]

Equally able to fix his eyes on the incident was Jerry and his narrations were as graphic -

Q: How about Marbel Boy Baptista have you seen him that evening of October 24, 1994?

A: Yes, sir.

Q: Where did you see him?

A: Also at Diego Pelonio's house.

Q: When you arrived there in the house of Diego Pelonio was he already there?

A: Yes, sir x x x x

Q: x x x x Have you observed anything at about 8:30 that evening?