

SECOND DIVISION

[G.R. No. 112972, April 24, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SAMBULAN, LUCAS SAMBULAN AND ALFREDO SAMBULAN, ACCUSED. ROMEO SAMBULAN AND LUCAS SAMBULAN, ACCUSED-APPELLANTS.

D E C I S I O N

REGALADO, J.:

Accused-appellants Romeo and Lucas Sambulan, together with their brother Alberto Sambulan, were charged with murder before the Regional Trial Court, Branch 16, Tangub City, in an information alleging -

That on or about the 28th day of August, 1998, at 6:00 o'clock in the evening, in Barangay Manga, Tangub City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating (with) one another and armed with bolos, did then and there wilfully, unlawfully and feloniously, attack, strike and stab one Antonio Roda, hitting and inflicting multiple wounds on the different parts of his body, resulting in his instantaneous death.

CONTRARY TO LAW, with the qualifying circumstance of evident premeditation.^[1]

Upon arraignment, the three accused pleaded not guilty to the charges filed against them.^[2] At the trial and after the prosecution had rested its case, the lower court, upon motion of the defense, ordered the dismissal of the case against Alberto Sambulan for lack of evidence.^[3] The trial then proceeded with regard to accused Romeo and Lucas Sambulan.

The prosecution presented five witnesses, namely, Antonia Roda, Saturnino^{*} Mabalod, Felix Ano-os, Dr. Sinforiana del Castillo and Delfin Lumingkit. Their version of the incident, culled from their testimonies in the trial court, constitute the bases for the findings of facts narrated hereunder.

On August 28, 1992 at about 4:00 o'clock in the afternoon, according to Saturnino Mabalod, appellants' father, Pedro Sambulan, and the victim, Antonio Roda, were at the store of Lourdes Gulahab situated at *Barangay Manga*, Tangub City. Shortly thereafter, Pedro Sambulan approached the victim and told him that he is a crocodile ("*buaya*"). Offended, the victim replied, "Do not say that word, Nong, because that will cause me shame." As a result, the two engaged in a fistfight, whereupon Saturnino intervened and pacified them. He then brought Pedro Sambulan home. Nobody was present at the Sambulan household when they arrived.^[4]

At about 6:00 o'clock in the evening of the same day, Felix Ano-os saw appellants Romeo and Lucas Sambulan at the cornfield of Esteban Gulahab hacking Antonio Roda with a bolo. This cornfield is situated at *Barangay* Manga, and witness Ano-os was then more or less 10 meters away from the crime scene. He later overheard Lucas Sambulan say, "We have already taken you, Ling," referring to the victim. From the cornfield, Felix Ano-os immediately went home and recounted what he saw to Delfin Lumingkit, the victim's brother-in-law who was his neighbor. The latter went to the house of his sister, Antonia Roda, and informed her about the incident. [5]

Thereafter, Delfin accompanied his sister to the *locus criminis*. There, Antonia Roda could hardly recognize her husband as his corpse lay on the cornfield covered with blood and bearing multiple wounds on the face and neck. She reported the incident to the police and then fetched Dr. Sinforiana del Castillo, City Health Officer of Tangub City, to examine the body of her husband. [6]

Dr. Del Castillo testified in court that the multiple mortal wounds on the face and neck of the victim were the immediate cause of his death. According to her findings, the victim sustained 13 wounds described in the necropsy report as follows:

1. Open incised wound at the base of the anterior neck above Angle of Louis, deep 7 centimeters long across the neck. Extremity of wound at the right is round and at the left is sharp.
2. Immediately above is another open gaping incised wound, deep, 9.3 centimeters long across the neck. Trachea, esophagus and blood vessels completely cut. Both extremities of the wound sharp.
3. Open gaping incised wound across submandibular region 15 centimeters long from right face towards the left side of the neck.
4. Open wound cutting bones from left eye towards the right posterior portion of the neck obliquely 30 centimeters long.
5. Open gaping incised wound at the left face 7.5 centimeters long longitudinally. Both extremities of the wound is sharp.
6. Open wound 10.5 centimeters long from left to right cheek across the bridge of the nose.
7. Open wound across frontal region cutting bones 16 centimeters long from left ear to right eyebrow.
8. Stab wound located at left chest anterior, mid-clavicular line at the level of the nipple obliquely 3.2 centimeters, both extremities of wound sharp.
9. Open incised wound, deep, bones exposed at the right elbow lateral aspect 5 centimeters long, lower extremity of the wound is sharp, upper extremity round with continuity 10 centimeters linear superficial wound upward to the right arm lateral aspect.
10. Open gaping wound at left shoulder 13 centimeters towards upper 3rd of arm. Both extremities sharp.

11. Incised wound 3 centimeters across left forearm posterior deep.
12. Superficial wound of skin only 5 centimeters across left forearm.
13. Open wound right arm lateral aspect 4 centimeters long. Both extremities sharp.^[7]

When asked on cross-examination if it could be possible that all the injuries found on the body of the victim may have been caused by one and the same kind of instrument, she answered in the negative because of the nature and shape of the wound found on his chest.^[8]

Testifying in his defense, appellant Romeo Sambulan^[9] admitted having killed the victim but invoked self-defense. He testified that on August 28, 1992, when he arrived home from Cagayan de Oro City after attending the fiesta, he found his father with hematoma on his face. When he inquired about the cause of the injuries, his father told him that he was boxed by Antonio Roda. Later, after taking a short rest, appellant went to the street crossing to buy cigarettes. On his way to the store, he met the victim by chance and he asked the latter why he boxed appellant's father. The victim got mad and said: "Are you going to defend him?" As the victim pulled out his long bolo, appellant kicked him in the groin. As soon as the victim fell, appellant grabbed the bolo and stabbed him, then hacked him several times, and ran away.

He immediately went to the house of his brother, Lucas, to ask the latter to accompany him to see their brother-in-law who was a councilman, so that appellant could surrender to the police. He thereafter did so and he also yielded to the police a bolo and its scabbard, claiming that it was the bolo he had wrested from the victim and the scabbard which he had removed from the latter's waist. He belied the claim of the prosecution that his brother, Lucas, took part in the killing of Antonio Roda. He insisted that it was he alone who committed the killing.

The foregoing testimony of appellant was corroborated by defense witness Rosalinda Undag Malig-on, an itinerant vendor of "*amahong*" shells, who allegedly happened to pass by the scene of the crime at the time of the killing. She claimed that she was then on her way home from Bongabong and passed by *Barangay* Manga at around 6:00 P.M. of that fatal day. She further confirmed that only appellant Romeo Sambulan and the victim were present at the time and place of the incident.^[10]

The other appellant, Lucas Sambulan, denied participation in the killing of the victim. He declared that he was in his house at the time of the commission of the crime when his brother, Romeo, arrived. The latter asked for help because of his fight with the victim whose bolo he was bringing with him.^[11] His testimony was echoed by Godofredo Dayo, who testified that on the day of the incident, he was in the house of Lucas watching television. He stated that at about 6:00 P.M., appellant Romeo Sambulan arrived and asked his brother, Lucas, to accompany him to the city in order to turn himself in to the authorities because he had wounded Antonio Roda.^[12]

On September 10, 1993, the trial court, presided over by Executive Judge Dominador B. Borje, rendered the questioned decision finding both accused guilty beyond reasonable doubt of the crime of murder and sentencing them to serve the penalty of *reclusion perpetua*, to indemnify the heirs of the victim in the sum of

P50,000.00, and to pay the costs.^[13] Not satisfied, both accused interposed the present appeal.

On July 15, 1995, this Court received a letter from the Assistant Director of the Bureau of Corrections informing it that on May 23, 1994, appellant Lucas Sambulan died at the San Ramon Prison and Penal Farm in Zamboanga City.^[14] Thereafter, appellant Romeo Sambulan manifested through his then counsel that he was no longer interested in pursuing his appeal.^[15] On the basis thereof, the Court issued a resolution on November 13, 1995 dismissing the appeal and declaring this case closed and terminated.^[16]

On January 12, 1995, however, the Court received a letter from appellant Romeo Sambulan, dated December 18, 1995, moving for the reconsideration of the said dismissal and requesting for the appointment of a new counsel to represent him.^[17] In a resolution dated July 8, 1996, his appeal was reinstated and the Public Attorney's Office was appointed as his counsel *de officio*.^[18]

On September 27, 1996, the new counsel filed appellant's brief with the following assignment of errors:

1. The trial court erred in disregarding the theory of the accused Romeo Sambulan that he acted in self-defense.
2. The trial court erred in finding that the killing is qualified by evident premeditation and treachery and failed to appreciate in favor of the accused the mitigating circumstances of voluntary surrender and vindication of a grave offense.
3. The trial court erred in finding accused-appellants Romeo and Lucas Sambulan guilty beyond reasonable doubt of the crime of murder.^[19]

There is obviously no need to discuss the merits of the appeal of appellant Lucas Sambulan. His criminal liability, as well as the civil liability based solely thereon, have been extinguished by his death. Upon the death of an accused pending appeal from his conviction, the criminal action is extinguished, and the civil aspect instituted therewith for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action alone.^[20]

As to the other appellant, Romeo Sambulan, we agree that his plea of self-defense was correctly rejected by the trial court. Long embedded in our jurisprudence is the decisional rule that where an accused admits having killed the victim but invokes self-defense to escape criminal liability, he assumes the burden of proof to establish his plea of self-defense by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.^[21] Further, the accused must this time rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself had admitted the killing.^[22]

On this score, for self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist said attack.^[23]

In the instant case, the defense failed to establish the primary element of unlawful aggression on the part of the victim. Even granting *arguendo* the truth of the version purveyed by appellant, the mere drawing by the victim of a bolo does not justify the acts of appellant of forthwith stabbing and repeatedly hacking the victim who was already lying immobilized on the ground after being kicked in the groin. From that moment, the supposed aggression had already ceased and the continuation of the offensive stance of the accused puts him in the place of the aggressor.^[24] When an unlawful aggression which has begun no longer exists, the one making a defense has no right to kill or even to wound the former aggressor.^[25]

Additionally, the nature, number and severity of the wounds sustained by the victim negate appellant's claim of self-defense. The necropsy report shows that the victim sustained 13 wounds, the majority of which were grave and inflicted on his neck and face, whereas appellant Romeo Sambulan suffered no bodily harm or injury whatsoever. The gruesome wounds sustained by the victim logically indicate that the assault was no longer an act of self-defense but a determined murderous aggression. Such wounds belie the exculpatory pretension of appellant and confirm the theory of the prosecution that appellant purposely and vigorously attacked the deceased in order to kill the latter.^[26]

It is both a statutory and doctrinal axiom that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non*. There can be no self-defense to speak of, whether complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.^[27]

Another consideration that undermines the claim of self-defense is the fact that there is physical evidence which casts serious doubt on the story given by appellant Romeo Sambulan to the trial court. From the testimony of the doctor based on her necropsy report, the wounds of the victim must have been inflicted by at least two kinds of instruments.^[28] This contradicts herein appellant's version of the incident that he used only the bolo of the victim in attacking him and that he alone killed the latter.

Ironically, the very submission of appellant that the bolo he used in hacking the victim belonged to the latter was rendered gravely doubtful by his own act of surrendering the bolo together with its scabbard to the police. His allegation that he removed the scabbard from the waist of the victim, so that he could also surrender it with the bolo^[29] is incredible. It is not in accord with human behavior and the natural course of things that despite the frenzied attack launched by appellant against the victim which virtually mutilated the latter in the process, as well as the extremely agitated emotional and psychological state of mind of appellant at that time, he could still have the meticulousness to think of the niceties of surrendering the death weapon without overlooking its scabbard.

Appellant also faults the trial court for holding that the killing was qualified by treachery and evident premeditation, hence constitutive of murder. We agree with appellant on these points.

It was error for the lower court to appreciate treachery as a qualifying circumstance for the simple and apparent reason that it was not so alleged in the information. Nor can it be appreciated as a generic aggravating circumstance, there being no showing