

FIRST DIVISION

[G.R. No. 124215, July 31, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEZE GALAPIN AND ERNESTO BEIRA, JR., ACCUSED-APPELLANTS.

D E C I S I O N

DAVIDE, JR., J:

To answer for the death of Roberto Pillora on 30 January 1994 due to a stab wound, accused-appellants Elezer Galapin (hereafter ELEZER) and Ernesto Biera, Jr. (hereafter ERNESTO) were charged with homicide in a complaint^[1] filed by the Chief of Police of Himamaylan, Negros Occidental, on 2 February 1994, with the Municipal Trial Court (MTC) of Himamaylan, Negros Occidental. The complaint was later amended to charge them with murder due to the "qualifying circumstances of alevosia, evident premeditation, taking advantage of superior strength and employing means to weaken the defense or means or persons to insure or afford impunity."^[2]

After appropriate proceedings and a finding of probable cause, the MTC forwarded the record of the case to the Office of the Provincial Prosecutor which, on 13 April 1994, filed an information^[3] before the Regional Trial Court (RTC) of Himamaylan, Negros Occidental (docketed as Criminal Case No. 653) charging ELEZER and ERNESTO with murder in that:

[O]n or about the 30th day of January, 1994, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, armed with a bladed weapon, conspiring, confederating and mutually helping each other, with evident premeditation and treachery and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and stab one ROBERTO PILLORA y RAFEL, thereby inflicting injuries upon the body of the latter which caused the death of said victim.

ELEZER and ERNESTO each entered a plea of not guilty upon their arraignment^[4] on 4 May 1994.

The prosecution's evidence in chief consisted mainly of the testimonies of Regemer Gutierrez, a 9-year old grade III student at the time of the incident, a nephew of the victim Roberto Pillora (hereafter ROBERTO) and resident of Rockcrusher, Barangay IV, Himamaylan, Negros Occidental; Lydia Pillora, the wife of ROBERTO; Pio Cabrillos, a friend of ROBERTO and Dr. Medardo Estanda.^[5] Their testimonies established the following facts:

At about 8:30 p.m. of 30 January 1994, Regemer Gutierrez was gathering empty bottles at the store of Paquito Aloro located at Rockcrusher, Barangay IV,

Himamaylan, Negros Occidental. From where he was situated, he saw Paquito Aloro, Regemer's uncle ROBERTO, ELEZER and ERNESTO inside the store. Regemer was only two and a half meters away from them and he saw them clearly because of the electric lights both inside and outside the store. ELEZER and ERNESTO were seated beside each other drinking Añejo Rhum 65 with ROBERTO, while Paquito, who was seated beside ROBERTO, did not drink but was conversing with the others. ELEZER and ROBERTO, while still seated, then had an argument; they exchanged words, but Regemer could not hear them clearly. Later, Paquito went outside the store to answer "the call of nature." At this juncture, as ROBERTO stood up to leave, ELEZER and ERNESTO likewise stood up. ERNESTO stood behind ROBERTO, held his hands then pulled down his jacket, which made ROBERTO kneel down on the ground. ELEZER then stabbed ROBERTO at the chest with a fan knife, after which, ELEZER and ERNESTO ran away. Regemer went home and told his mother about the stabbing incident.^[6] While he was on the witness stand, Regemer positively identified ELEZER and ERNESTO,^[7] the fan knife used by ELEZER and the jacket worn by ROBERTO during the incident.^[8]

At the time of the incident, Lydia Pillora, ROBERTO's wife, was at home, watching television with her grandson. She heard Elsa Gantalao, a neighbor, shout that ROBERTO had been stabbed at the store of Paquito. Lydia immediately ran towards the store where she saw ROBERTO in a "kneeling position while his head was leaning on the bench" and "his two hands being tied by a jacket." She then cradled ROBERTO, noticed the blood on his body and cried for help. Thereupon, Pio Cabrillos, Francisco Gantalao, Paquito Aloro and many others arrived. They loaded ROBERTO in a tricycle and brought him to the Governor Valeriano M. Gatuslao Memorial Hospital where he was declared "dead on arrival."^[9]

Lydia further disclosed that the family of ELEZER had a score to settle with ROBERTO; in fact, ROBERTO had told her that he had received threats from ELEZER's family. The conflict began sometime in 1983 when Abner Galapin, a brother of ELEZER, hacked ROBERTO with a bolo injuring the latter's shoulder. ROBERTO thus had to be confined in a hospital for three months. Subsequently, in the evening of 11 May 1987, Alex Galapin, also a brother of ELEZER, stoned the store of Lydia, leading to a criminal complaint for malicious mischief being filed against Alex before the MTC of Himamaylan, Negros Occidental and docketed therein as Criminal Case No. 458. While on 1 June 1987, an encounter took place between Rolly, the son of ROBERTO and Lydia, on one hand, and Abner and Alex Galapin, on the other. As a consequence, Rolly was charged with less serious physical injuries in Criminal Case No. 464, of the MTC of Himamaylan.^[10] Criminal Cases Nos. 458 and 464, however, were subsequently dismissed.^[11] In closing, Lydia declared that she suffered sorrow and pain because of the untimely death of her husband ROBERTO.^[12]

Pio Cabrillos corroborated the testimony of Lydia as to the ill-motive which moved ELEZER to kill ROBERTO. Pio further testified that he was among those who rushed to the scene of the crime after his wife Estelita informed him of what had happened to ROBERTO. Near the store of Paquito, Pio saw ROBERTO in a kneeling position, drenched with blood, and with hands at his back tied with a "maong" jacket. Pio, Francisco, Lydia and Estelita then loaded ROBERTO in a tricycle and brought him to the hospital. However, ROBERTO was declared dead on arrival at the hospital.^[13]

Dr. Medardo S. Estanda, of the Rural Health Unit of Himamaylan, Negros Occidental, whose qualifications as a medico-legal officer were admitted by the defense, performed an autopsy on the cadaver of ROBERTO on 31 January 1994. Estanda found a slanted lesion above ROBERTO's right nipple; that ROBERTO died of a stab wound caused by a single bladed weapon; and that the blow was delivered while the assailant was either in front or behind ROBERTO.^[14] Estanda's Necropsy Report^[15] disclosed the following findings:

Postmortem Findings:

Pale integuments and nailbeds.

Lesion 1 -- Wound, stab; 5.5 cm. long, 12.0 cm. deep; oriented medially, downward, and posteriorly; located at the right upper anterior chest, 4th right intercostal space 5.0 cm. from the anterior midline; blunt superior edge located laterally, 132.0 cm. from right heel; sharp inferior edge located medially, 130.5 cm. from right heel; causing communication to the right pleural cavity; right lung slightly collapsed; right pleural cavity filled with 500 ml. of blood and few blood clots; through and through the mediastinum; hitting portion of the arch of aorta 1.0 cm. from the left ventricle; creating an inverted V-shaped laceration, 3.5 cm. long; mediastinum filled with 500 ml. of blood and blood clots.

Cause of Death: Traumatic Shock Secondary to Internal Hemorrhage Caused by Physical Injury (Stab Wound).

The witnesses for the defense were ELEZER, ERNESTO, Jose Flores, Claudio Galapin and Mely Ardeña.

Expectedly, ELEZER had another version of the incident. At about 8:30 p.m. of 30 January 1994, ELEZER was drinking "whisky" with Paquito at the latter's store in Rockcrusher, Himamaylan, Negros Occidental. Later, ROBERTO arrived and joined them. When ELEZER was about to leave and while Paquito was urinating outside the store, ROBERTO remarked to ELEZER: "You are too young to rest," to which, ELEZER answered: "You are saying bad words." As ROBERTO stood up and pulled out a "Batangas knife," ELEZER likewise stood up and grabbed ROBERTO. As both of them were struggling, the knife fell to the ground. ELEZER somehow got hold of the knife and stabbed ROBERTO with it. Regemer Gutierrez was nowhere near the scene of the incident. ELEZER ran home where he told ERNESTO, Claudio Galapin and a niece about the incident. ELEZER then followed Claudio's advice to surrender to the police.

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On his part, ERNESTO, a brother-in-law of ELEZER and a resident of Hacienda Ballesteros, Caradio-an, Himamaylan, Negros Occidental, testified that at about 7:00 p.m. of 30 January 1994, he and Jose Flores were dining in the store of Mely, which was approximately sixty meters from the house of Claudio. They left the store at 7:30 p.m., more or less, and went to the house of Claudio in Rockcrusher, Himamaylan. Later, ELEZER arrived and told them that he had stabbed ROBERTO. They convinced ELEZER to surrender to the authorities. In the morning of 31 January 1994, despite his objection, ERNESTO was detained by the police officers.

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Jose Flores corroborated the alibi of ERNESTO and added that Michael, Jose's son, told Jose that ELEZER stabbed ROBERTO.^[18]

Claudio Galapin corroborated the testimony of ELEZER and ERNESTO.^[19]

Mely Ardeña, an operator of a "carinderia" at Rockcrusher, Barangay IV, Himamaylan, Negros Occidental, testified that at about 8:30 p.m. of 30 January 1994, she was at the kitchen of her "carinderia" facing the store of Paquito. While hanging a rug, her attention was drawn to an argument between ELEZER and ROBERTO taking place at the store of Paquito. She then witnessed ELEZER stab ROBERTO. Mely called Elsa, a neighbor, to summon the wife of ROBERTO. Mely also went to Pio Cabrillos to ask for assistance. Thereupon, Pio and many others carried ROBERTO outside the store.^[20] Mely insisted that only ELEZER and ROBERTO were present during the incident, and refuted the testimony of Regemer that after the incident, the latter inquired from her about the circumstances pertaining to the death of ROBERTO.^[21]

In a decision^[22] promulgated on 31 October 1995, the trial court convicted ELEZER and ERNESTO of murder and rendered judgment as follows:

WHEREFORE, in view of the foregoing consideration[s] and observations, the Court finds the two accused, Elezer Galapin and Ernesto Beira, Jr., guilty beyond reasonable doubt of the crime of MURDER qualified by treachery and taking advantage of superior strength attendant in the commission of the crime and, therefore, they are hereby sentenced to suffer the penalty of life imprisonment.

The Court hereby orders the two accused, Elezer Galapin and Ernesto Beira, Jr., to solidarily indemnify the family of the victim in the amount of P250,000.00 without subsidiary imprisonment in case of insolvency.

The trial court gave weight and credit to the evidence of the prosecution, describing Regemer's testimony as having been given "in a straightforward manner and in accord with the findings of the medico-legal officer," moreover, it found no proof whatsoever that this boy of tender age falsified his testimony or was ill-motivated in testifying against ELEZER and ERNESTO. It rejected ELEZER's claim of self-defense, thus:

The narration by the accused of the stabbing incident which resulted [in] the death of [ROBERTO] is unworthy of consideration. The findings of the Medico-Legal Officer Dr. Medardo S. Estanda, Rural Health Physician, clearly shows that ROBERTO, sustained one (1) fatal stab wound at the right upper anterior chest. There [were] neither bruises nor scratches found on [ROBERTO's] body to indicate that the stabbing incident was

preceded by physical struggle for possession of the knife. The ease with which the accused was able to wrestle possession of the knife is not supported by evidence. The accused did not adduce evidence to prove his superiority over [ROBERTO] with regards [sic] to his fighting prowess and physical built compared to [ROBERTO]. Evidence to be worthy of credit must not only proceed from a credible source but must, in addition, be credible in itself (People vs. Marti, 193 SCRA 57).

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The remark of the deceased, "you are too young to rest" followed by the pulling out of a knife, even if true, constitutes oral threat and a mere threatening stance or posture. They [did] not constitute unlawful aggression on the part of [ROBERTO], because unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent; it cannot consist [of] oral threats or a merely threatening stance or posture (People vs. Tac-an, 182 SCRA 601).

In self-defense, the presence of the requisite of unlawful aggression is indispensable. Its absence, as in this case, is fatal to the accused's defense because in the absence of the primordial element of unlawful aggression, self-defense, complete or incomplete, cannot be appreciated (People vs. Nulla, 153 SCRA 471).^[23]

The trial court also rejected ERNESTO's defense of alibi because he failed to prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime at the time it was committed.^[24] On this point, it held:

As testified to by witness Jose Flores and corroborated by Mely Ardeña, they were at the latter's "carinderia" eating sea foods [sic] after which they left at around 7:00 o'clock in the evening of January 30, 1994 and proceeded to the house of Claudio Galapin, the father-in-law of the accused Ernesto Beira, Jr. Although Jose Flores accompanied Ernesto Beira, Jr. to the house of the latter's father-in-law, he did not stay in said house as he immediately left and proceeded to his house and stayed thereat. In other words, he did not know what the accused, Ernesto Beira, Jr., was doing during the intervening period after he (Jose Flores) left the house of Claudio Galapin. Considering that the distance from Claudio Galapin's house to the store of Paquito Aloro is only sixty (60) meters, the accused [could] walk and reach the store within minutes. There [was] no physical impossibility for him (ERNESTO Beira, Jr.) to be there at said place when the stabbing incident happened. Under these circumstances, the defense of alibi will not prosper because it must be shown that it was physically impossible for the accused to be present at the crime scene or [in] the vicinity thereof, at the approximate time the