

SECOND DIVISION

[G.R. No. 107715, April 25, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISIDRO ALBA Y MANAPAT, ACCUSED-APPELLANT.

DECISION

MENDOZA, J.:

This is an appeal from the decision^[1] rendered by the Regional Trial Court, Branch 10, Cebu City in Criminal Case No. CBU-24377, finding accused-appellant guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of the deceased, Constancio Marata, in the sum of P50,000.00 and to pay the costs.

Isidro Alba, accused-appellant herein, Constancio Marata and Gregorio Lelis were laborers working on the construction of a two-storey building at Sunny Hill, Casabella, Lahug, Cebu City. The laborers lived in bunkhouses provided by the construction company, with the exception of Constancio Marata, a bandsaw operator, who preferred to sleep near the bandsaw, using a plank for a bed.^[2]

On December 19, 1991, Marata was found dead with stab wounds in several parts of his body. Gregorio Lelis, the lone eyewitness to the incident, identified Isidro Alba as the assailant. Alba was subsequently charged with murder in an information filed on January 2, 1992.^[3]

Upon being arraigned Alba pleaded "not guilty,"^[4] whereupon he was tried.

The prosecution presented three witnesses: Gregorio Lelis, Senior Police Officers Allan Kintanar and Rogelio Q. Cortel, and Dr. Crisostomo C. Abbu. It also presented in rebuttal Vianny Cadungog, assistant engineer of MBA Construction which undertook the construction job.

Gregorio Lelis testified that on December 18, 1991, at 6:00 P.M., Alba and Constancio Marata, together with co-workers Pabling and "Junior" Salgado, were having drinks. Lelis was invited by Marata to join the group, but Lelis declined, as he was then cooking his dinner. Lelis later repaired to his bunkhouse 30 meters away from the place where the group was having drinks.^[5]

Even after Lelis had gone inside his bunkhouse and tried to go to sleep, he could still hear the group boisterously drinking. He later sensed a quarrel in the group as he heard Salgado pleading with someone in the group, "Don't stab him, Bay. We're all co-workers. If you want to stab, stab me instead."^[6]

Around 11:00 P.M., the group broke up. Lelis heard accused-appellant and Marata

laughing together as they walked back to the bandsaw area after accompanying Pabling and Salgado to the gate of the compound. Then the two became quiet, making Lelis think that they had gone to sleep.^[7]

On the night in question, Lelis had difficulty getting sleep. While lying in his bunkhouse awake, he was startled by the sound of what seemed to be an "exploding ball"^[8] coming from the bandsaw area. He peeped through the door of his bunkhouse and saw accused-appellant standing over Marata who was down on the ground.^[9] Lelis had a good view of the bandsaw area as it was illuminated by a 40-watt fluorescent bulb. According to him, accused-appellant was wielding a stainless knife, about 6-7 inches long, which he plunged into Marata several times, moving it "sidewise, forward and backward" each time he hit his victim.^[10] Afterward Lelis saw accused-appellant go inside the bathroom which was ten meters away from the bandsaw.

Fearing for his safety, Lelis stayed inside his bunkhouse until other workers were already about. At 3:30 A.M. he went to Dario Donaire, the trustee of Joseph Tan, owner of the building under construction, and reported the matter.^[11] The two then proceeded to Tan's residence and called up the police.

At 6:30 A.M., December 19, 1991, police officers Rogelio Cortel and Alan Kintanar of the Mabolo Police Station arrived at the compound and found the lifeless body of Marata. SPO1 Alan Kintanar interviewed several workers at the scene of the crime, but remembers Lelis in particular as the one who identified accused-appellant as the assailant.^[12] Other workers reported that accused-appellant was seen waiting for a jeep outside the compound. Together with Lelis and other workers, the policemen went to Sudlon and found accused-appellant waiting for a jeepney.^[13] They arrested him and brought him back to the compound.

On their way to the compound, accused-appellant admitted to the policemen his having stabbed Marata. He led them to the place where he threw away the knife. The knife was recovered, identified by the accused-appellant, and tagged by SPO1 Cortel. Accused-appellant was then taken to the Mabolo Police Station.

Dr. Crisostomo C. Abbu performed an autopsy on December 19, 1991 at 12:30 P.M. He found Marata to have suffered the following wounds:^[14]

1. Stab Wound, 4cm. x 1cm., located at the epigastric region of the abdomen, perforating the stomach, resulting to an intensive hemorrhage.
2. Stab Wound, 2cm. x 1cm., located at the left upper quadrant of the abdomen, 6cm. to the left from the anterior median line of the abdomen and 17cm. below the left nipple, hitting the small and large intestines and the spleen resulting to a massive hemorrhage.
3. Stab Wound, 5cm. x 3cm. located 3cm. above the left nipple. The wound passed through the left intercostal space hitting the left lung resulting in a massive hemorrhage.

4. Hacking Wound, 13cm. long and 4cm. at its widest gap located perpendicularly at the left side of the neck up to the left jaw. The major blood vessels of the left side of the neck were cut, resulting to a massive hemorrhage.
5. Incised Wound, 3cm. x 1cm., located at right deltoid region. It involved only the muscles.
6. Incised Wound, 4cm. x 1cm., located 4cm above the left elbow. It involve the skin and muscles.
7. Incised Wound, 5cm. x 1cm., located horizontally at the back of the neck, involving the muscular tissues.
8. Incised Wound, 2cm. x 0.5cm., located horizontally and 2cm. below Incised Wound Number 7, involving the muscles.

Dr. Abbu identified the cause of death as irreversible shock secondary to massive hemorrhage due to multiple stab wounds.

Testifying as lone defense witness, accused-appellant claimed he acted in self-defense. His version of the incident is as follows:^[15] On the night of December 18, 1991, as he was cooking dinner in the hall, he was invited by Marata to join the latter and their co-workers Pabling and "Junior" Salgado who were drinking *tuba* near the bandsaw. According to accused-appellant, at first he refused to have a drink as he had not yet eaten dinner but as the group was insistent, he took a drink and then went back to his cooking.

Minutes later, however, Marata was back to borrow money in order to buy some more liquor for the group. Accused-appellant said he had no money, but Marata invited him to join the group anyway. Accused-appellant went with Marata but refused to have a drink, saying he had to sleep because he was very tired. Marata again asked him if he could spare some money to buy some liquor. Accused-appellant again answered he had none. Since they had no more to drink, Pabling and Salgado left, leaving Marata and accused-appellant behind.^[16]

But even after the two had left Marata still asked accused-appellant for money so that they could continue drinking. When accused-appellant said he really had no money, Marata became angry and chided him, saying that for a newcomer accused-appellant was already trying to be smart. He called accused-appellant a braggart,^[17] even as he gave him a blow on the left breast. Marata then allegedly pulled out a hunting knife, about 6-7 inches long, and tried to stab the accused-appellant but the latter was able to hold Marata's hand, twist it and then kick him in the groin with his right knee, causing Marata to loosen his hold of the knife. Accused-appellant was thus able to wrest the knife with his left hand.

Marata then picked up a 2" x 2" x 14" piece of wood and struck accused-appellant on the left back portion of his body.^[18] Accused-appellant pleaded with Marata to stop beating him but the latter struck him again with the piece of wood. Accused-

appellant parried the blow with his left arm. He showed a scar, about 2 inches in length, near his wrist, which was allegedly caused by the blow.^[19]

Accused-appellant claims that as he backed off, he lost his balance and fell to the ground. For this reason he used his right leg to parry the blows.^[20] As he cringed in pain from the injury on his right leg, which he cradled in his chest with his right arm, Marata sat astride him and pinned down his right arm to the ground. In that position, accused-appellant stabbed Marata in the stomach, with his left arm which held the knife. This forced Marata to disengage from accused-appellant. According to accused-appellant, he warned Marata not to come near him but Marata rushed towards him just the same. Accused-appellant therefore stabbed him in the lower right portion of the stomach. Marata twirled as he cried for help and fell to the ground.

Accused-appellant said he then went to the building under construction and holed himself up in a room on the second floor for fear of reprisal from Marata's friends. He stayed there until 5:00 A.M. when he decided to go to the police station to surrender. As he was waiting for a jeepney, he was arrested. He told the police officers upon questioning that he stabbed Marata but did not kill him. He also showed them his wounds, but they allegedly ignored him.^[21]

Accused-appellant claimed that prosecution witness Gregorio Lelis bore him a grudge because he reported Lelis for making a mistake in installing a molding. Accused-appellant said that based on his report, Lelis was dismissed from the company on October 20, 1991.^[22]

In rebuttal, the prosecution presented Vianny Cadungog, assistant engineer of the construction project, who testified that he did not know of any quarrel between the accused-appellant and Gregorio Lelis prior to or on the day of the incident. The prosecution also presented the certification of Project Engineer Acocoro who stated that Gregorio Lelis worked at the construction project until its completion on January 15, 1992.

On September 28, 1992, the trial court rendered a decision finding the accused-appellant guilty as charged. Hence this appeal.

First. Accused-appellant insists on his claim below that he acted in self-defense. However, his evidence to prove this is not clear and convincing. Having admitted the killing of Marata, the burden was on accused-appellant to prove by means of clear and convincing evidence the elements of self-defense, to wit: (1) unlawful aggression; (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.^[23]

Unlawful aggression is an essential and primary element of self-defense. Without it there can be no self-defense. In the case at bar accused-appellant's claim that Marata was guilty of aggression is difficult to believe. According to accused-appellant when Marata asked him for the third time for money so that they could buy some drinks and accused-appellant said he had no money, Marata became angry. Marata allegedly gave him a blow on the chest and pulled out a knife, but accused-appellant was able to wrest it from Marata. Accused-appellant allegedly backed off even as