

FIRST DIVISION

[G.R. No. 118091, October 03, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO VIERNES, JOEL SOSA, CORNELIO INCIANO, AND
ROMY PATULAY, ACCUSED-APPELLANTS.**

D E C I S I O N

PADILLA, J.:

Accused-appellants appeal from the decision of the trial court convicting them of the crime of murder qualified by evident premeditation and aggravated by abuse of superior strength and nighttime.

On 27 February 1992, the provincial prosecutor of Cagayan filed an information against Wilfredo Viernes, Joel Sosa, Cornelio Unciano and Romy Patulay for the crime of murder. The information^[1] reads:

"That on or about December 19, 1991, in the municipality of Buguey, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Wlifredo Viernes, Joel Sosa, Cornelio Unciano, and Romy Patulay, taking advantage of their superior strength, armed with a sharp, pointed instrument, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there wilfully, unlawfully, and feloniously attack, assault, and stab one Herminio Doniego inflicting upon him stab wounds on his body which caused his death.

CONTRARY TO LAW."

In the arraignment on 18 June 1992, appellant Wilfredo Viernes pleaded guilty but requested that he be allowed to explain his plea. Appellants Cornelio Unciano and Romy Patulay pleaded not guilty. Appellant Joel Sosa who, prior to arraignment evaded arrest, appeared in court and pleaded not guilty.

On 15 April 1994, the Regional Trial Court, Branch 9 of Aparri, Cagayan rendered a decision,^[2] the dispositive part of which states:

"WHEREFORE, the Court hereby finds the accused Wilfredo Viernes, Joel Sosa, Cornelio Unciano and Romy Patulay (guilty) of the crime of murder defined and penalized by Art. 248 of the Revised Penal Code, qualified by the aggravating circumstance of evident premeditation. The aggravating circumstances of abuse of superior strength and night time were also present."

The decision was amended on 11 May 1994, to read as follows:

"x x x

'The accused are therefore sentenced to suffer imprisonment in reclusion perpetua, there being two aggravating circumstances and except for Wilfredo Viernes who pleaded guilty, no mitigating circumstance, with all its accessory penalties. They are further directed to indemnify the heirs of the deceased jointly and severally Fifty thousand (P50,000.00) pesos, to pay them twenty thousand (P20,000.00) pesos in moral damages and Ten thousand (P10,000.00) pesos in exemplary damages.'

While Wilfredo Viernes is entitled to the beneficial effects of one mitigating circumstance, the same is nullified by the aggravating circumstance of night time. There remains one other aggravating circumstance against him, that of abuse of superior strength. The penalty therefore is the same as the other accused.

SO ORDERED."^[3]

In this appeal, appellants raise the following assignments of error:

"FIRST

ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT FINDING THAT THE ACCUSED WILFREDO VIERNES ACTED IN SELF-DEFENSE.

SECOND

ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY AND EVIDENT PREMEDITATION IN THE COMMISSION OF THE OFFENSE.

THIRD

ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN THE FINDING THAT THE AGGRAVATING CIRCUMSTANCES OF NIGHT TIME AND ABUSE OF SUPERIOR STRENGTH WERE ALSO PRESENT IN THE COMMISSION OF THE CRIME."^[4]

The prosecution presented five (5) witnesses, but only two (2) of them claim to have seen the incident, namely, Sonny Doniego, brother of the deceased, and Dionisio Crisostomo, Sonny's friend. They testified that at about 8 p.m. of 19 December 1991, Sonny Doniego, Dionisio Crisostomo and Herminio Doniego went to the house of one Nanding Tomas who was showing films for a fee. The house of Nanding Tomas is located about twelve (12) meters away from the road. About seven (7) meters from the road is a fence and three (3) meters from the fence is a concrete wall of an improvised terrace.^[5] When the three (3) arrived, several adults and children were already seated inside the house. Others who could not be

accommodated inside the house were crowded outside of the house. Witnesses Dionisio Crisostomo and sonny Doniego were standing between the fence and the improvised terrace outside the house^[6] while the would-be deceased was standing at the entrance of the improvised terrace.^[7]

Accused-appellant Viernes was also situated outside the house, two (2) persons away from witness Dionisio.^[8] The latter, however, changed his testimony saying that accused-appellant Viernes was not present at the house of Nanding Tomas.^[9] Viernes, according to Dionisio, approached Herminio Doniego "from the feeder of the road" as the latter was coming out to urinate.^[10] Viernes allegedly stabbed Herminio frontally while co-accused Joel Sosa, Romy Patulay and Cornelio Unciano held him (Herminio). After the incident, all the four (4) accused ran away and left the assaulted lying on the ground. Dionisio declared that he saw Viernes stab the deceased only once^[11] while Sonny Doniego testified that he saw Viernes stab his brother twice.^[12] The municipal health officer of Buguey, Dr. Teddy Unida, made a post-mortem examination of the body of deceased Herminio.^[13] His findings reveal two (2) stab wounds: one located on deceased's left breast which caused his death and the other located on his left thigh.

Accused Viernes' version of the incident is, on the other hand, as follows: he (Viernes) alone went to the house of Nanding Tomas in Buguey, Cagayan to watch a betamax movie. He was seated in one of the benches near the door but outside the house of Nanding Tomas.^[14] Five (5) minutes later, some persons arrived to watch the movie and placed themselves behind him (accused Viernes). These persons smelled of liquor.^[15] The person immediately behind Viernes, namely, Herminio Doniego, pushed his (Viernes) head so that the former could watch the movie. Viernes obliged but after a while returned his head to its former position so that he could also watch the movie. Herminio pushed his head a second time after which Viernes heard Herminio's companion say "*tiroemon*" (hit him). Herminio slit Viernes' back with a razor to which the latter immediately responded by facing Herminio and stabbing him on his left breast.^[16] (Viernes testified during the cross-examination that he stabbed the deceased twice.^[17]) After stabbing Herminio, Viernes ran away for fear that he would be harmed by Herminio's companions Sonny Doniego and Dionisio Crisostomo.

He (Viernes) went home to take a rest, then proceeded to the house of Hermenigildo Rugal, the barangay captain of Quinawegan, Buguey, Cagayan, to seek shelter and to surrender. The barangay captain treated his wound by placing a piece of cloth over it. The next day, he accompanied Viernes to the police department to surrender. As they reached the precinct, Viernes requested SPO1 Teddy Unciano to accompany him to a doctor.

Dr. Teddy Unida's findings reveal that an incise wound measuring six (6) inches in length and one-half (1/2) inch in depth was located at the lumbar region at the back of accused Viernes. No vital organs or veins were affected.^[18]

The testimonies of co-accused Cornelio Unciano and Romy Patulay were defenses of alibi. Unciano declared that on 18 and 19 December 1991, he was in their house in Buguey, Cagayan as he had been suffering from sore eyes and an impacted tooth.

He told the court that accused Viernes became his friend only after they had both been detained by authorities after the subject incident. However, he knows Viernes because they are barriomates.^[19]

Romy Patulay also raised the defense of alibi and averred that on 19 December 1991, he went to watch a betamax movie at the house of Sonny Doniego. The latter was at the time operating the betamax. Upon arriving at Sonny's house, he (Patulay) discovered that he had previously viewed the film. Patulay left Sonny's house with three (3) companions and passed by the house of Nanding Tomas on the way home. He then learned from a second cousin who was at the premises that there had been a commotion (a stabbing incident). Upon advice, they went home.^[20]

In the decision of the trial court, no findings of fact in regard to the commission of the offense, were made and the conclusion of the court was contained in one paragraph, to wit:

"From the evidence on record, the Court believes and so holds that the prosecution has sufficiently established the guilt of accused Joel Sosa, Cornelio Unciano and Romy Patulay of the crime of Murder as charged in the Information beyond reasonable doubt. The prosecution's witnesses were more credible. They testified in a direct straightforward manner. Their testimonies bear the ring of truth. Independent of this finding but in addition to it, it bears noting that accused Wilfredo Viernes pleaded guilty on 18 June 1992. From this, conspiracy assumes on all important role, if conspiracy attended the commission of the offense, the act of accused Wilfredo Viernes is the act of all the other accused, namely: Joel Sosa, Cornelio Unciano and Romy Patulay. The location and nature of the fatal injury which from all indications was inflicted last, gives added credence to the testimony of the prosecution witnesses that the other accused helped and held the deceased as he was stabbed by the accused Wilfredo Viernes. The Court is satisfied that there was conspiracy. The Court is further disinclined to credit accused Wilfredo Viernes with the mitigating circumstance of voluntary surrender. His own witness testified that he surrendered out of fear for his life. His surrender could not therefore be considered voluntary."^[21]

In their appeal, appellants Viernes, Sosa, Unciano and Patulay would urge this court to review the decision of the trial court which found them guilty of conspiracy to kill the deceased Herminio Doniego. They strongly except to the conclusion that appellants Sosa, Unciano and Patulay held deceased Herminio while Viernes stabbed him. No evidence was allegedly presented by the prosecution to support its theory of conspiracy.^[22]

Upon a close review of the records, the court is inclined to believe the version of appellants.

It cannot be denied that appellant Viernes was slashed or slit at the back with a razor, as this fact was testified to by Doctor Unida and documented on a medical certificate^[23] dated 2 June 1992 that was made apart of the evidence for the defense. It can neither be impugned that appellant Viernes was the one who fatally stabbed Herminio Doniego, as he readily admitted this in court. The only question

that can be raised from these circumstances is whether or not Viernes acted in complete and valid defense of his person when he stabbed Herminio.

To be sure, there are two (2) versions of the incident: the prosecution endeavored to prove that appellant Viernes met deceased Herminio from the road outside the house of Nanding Tomas and stabbed him while his three (3) co-accused held the deceased, as the latter was coming out of the yard; on the other hand, accused-appellant Viernes maintained that while he was watching a betamax movie inside the yard of Nanding Tomas, Herminio, who was at his back, pushed his head twice in order to see the screen, and as his head again obstructed Herminio's line of vision, the latter slit Viernes' back causing him (Viernes) to turn around and stab Herminio twice.

During the trial, the prosecution never presented any explanation as to the fact that on 19 December 1991, Viernes' back was slashed with a razor. Neither did it deny that such incident took place. It was totally silent on the matter.

This Court thus finds itself confronted with this issue: was appellant Viernes' act of stabbing deceased Herminio done in complete self-defense?

It is well-settled that in cases where the accused pleads self-defense, the burden of proof shifts to said accused to prove by clear and convincing evidence the elements of the plea before he can avail of the benefits of the justifying circumstance of self-defense,^[24] otherwise, conviction is inevitable. The Revised Penal Code requires convincing proof of three (3) indispensable elements of complete self-defense,^[25] to wit:

1. unlawful aggression against the pleader of self-defense;
2. reasonable necessity of the means employed to prevent or repel the unlawful aggression; and
3. lack of sufficient provocation on the part of the person defending himself.

The Court is persuaded that appellant Viernes has sufficiently overcome the burden and proved self-defense in his favor. The three (3) elements of a valid self-defense are present in this case.

The attack made on appellant Viernes was, to his mind, so serious that he had to act swiftly in order to repel the attack; otherwise, the assault on him would not cease. However, it is the prosecution's view, advanced by the Office of the Solicitor General, that there was no more unlawful aggression by the deceased when Viernes stabbed him "as there is no showing that the man had continually attacked him or had persisted in hurting him until he delivered the stab blow. x x x In fact, the wound sustained by appellant (Viernes) which provoked him to stab Herminio Doniego was, according to Dr. Unido only very shallow to affect his vital organ or veins".^[26]

We find the foregoing statement to be radically opposed to normal human experience, i.e., that a man who is threatened with an assault or is physically attacked would instinctively fight back to save himself from any or further injury. It has been said that "the law on self-defense embodied in any penal system in the civilized world finds justification on man's natural instinct to protect, repel, and save