

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR SANTOS Y HALILI, ACCUSED-APPELLANT.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before this Court is an appeal from the 11 February 2011 Decision[1] of Branch 78 of the Regional Trial Court of Morong, Rizal for Criminal Case No. 00-4098-M, wherein the accused-appellant was found guilty beyond reasonable doubt for the crime of Frustrated Homicide defined and penalized under Article 249 in relation to Article 6 of the Revised Penal Code.

The accusatory portion of the Information[2] charging Nestor Santos y Halili reads:

“That on or about the 10th day of May 2000, in the Municipality of Teresa, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while being armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab with said bladed weapon one Basilio Balajadia y Sta. Catalina, thereby inflicting upon him a stab wound directly on the stomach, which could ordinarily cause his death, thus, performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of the will, that is, due to the timely and able medical attendance rendered to said Basilio S.C. Balajadia which prevented his death.

CONTRARY TO LAW.”

During the arraignment on 2 August 2000[3], accused-appellant, assisted by counsel, entered a plea of not guilty to the crime charged.

Trial on the merits ensued. The prosecution offered the testimonies of the following witnesses: (1) Basilio Balajadia, private complainant; (2) Dr. Angel Daquigan[4], physician who attended to private complainant who also issued the medical certificate submitted before the trial court; (3) Eliza Balajadia[5], wife of private complainant.

The prosecution formally offered[6] as documentary evidence the following: (1) Medical Certificate[7]; (2) Photographs of the accused-appellant attached to his personal bail[8]; and (3) Malayang Sinumpaang Salaysay ni Eliza Balajadia[9].

Thus, on 11 February 2011, the trial court promulgated the challenged Decision. The dispositive portion of which reads:

“WHEREFORE, the Court in finding the accused NESTOR SANTOS Y HALILI guilty of the crime of Frustrated Homicide without any aggravating and mitigating circumstances, sentences said accused to suffer an indeterminate prison term of one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years and 1 day of prision mayor medium, as maximum. He is also ordered to pay Basilio Balajadia the amount of P25,000.00 as temperate damages and P40,000.00 as moral damages.

SO ORDERED.”

On the other hand, the defense presented its lone witness herein accused-appellant Nestor Santos y Halili. Notably, no other evidence of any kind was offered by the defense.

THE FACTS[10]

On 10 May 2000, complaining witness Basilio Balajadia and some members of his family were preparing for the birthday celebration of his niece. While cooking “biko”, Basilio heard a revving tricycle parked along the street, which was just outside his residential premises.

While inside his yard in Calumpang, Sto. Kristo, Teresa, Rizal, Basilio asked the owner, herein accused, to stop revving his tricycle because his eldest daughter was sick and his wife has just given birth to their youngest child.

Herein accused got mad and entered the yard of Basilio with a knife measuring about a foot in length and by two (2) inches in width. Accused stabbed Basilio and the latter testified that he incurred wounds which left a scar between his ribs, another one which was below his navel, and on his left arm.

Basilio was initially brought to Morong General Hospital which is also known as Rizal Hospital. Thereafter, he was transferred to Queen Mary Hospital in Cardona, Rizal and confined therein for a week. Upon discharge, he returned once to the said hospital for a follow-up. Basilio claimed that his family incurred about P70,000.00 for his hospitalization.

At the time he testified in court, Basilio has not yet resumed working as a tricycle driver since he was still not feeling well. According to Basilio, he could still feel some pain due to the injuries he sustained. At that time, Basilio was earning an average daily income of P150.00.

During his cross-examination, Basilio testified that his parents and some visitors were with him at his residence at the time the incident took place. He has not yet joined those who were already engaged in a drinking spree since he was still cooking “biko”. Basilio added, however, that after he was stabbed by the accused, he went inside his house, got a bolo and threw the same to herein accused.

Eliza Balajadia, the wife of complaining witness Basilio corroborated the latter's testimony. She further testified that after Basilio uttered “lumabas ang matapang”, accused entered their premises and stabbed Basilio. Since then, and for a period of one year, Basilio was unable to drive his tricycle and earn a living.

The prosecution also presented Dr. Angel Daquigan, the general surgeon who attended to Basilio on 10 May 2000 at about 11:50 in the evening. He testified that on the said date, he also issued a Medical Certificate to Basilio which states that:

“This is to certify that Mr. Basilio Balajadia was seen and treated by the undersigned on May 10, 2000 because of stab wound.

Diagnosis: Hemoperitoneum Secondary to Liver Laceration Anterior Lobe Segment 5 Secondary to stab wound, “Epigastric Area” (6cm)

Treatment : Explore-lap; Repair of liver laceration Evacuation of Hematoma

This certification is being issued upon the request of Mr. Balajadia for whatever purpose it may serve.

SGD. ANGEL DAQUIGAN,
M.D. Attending Physician
License No. 60639”

Dr. Daquigan explained in layman's term the above findings as follows:

A: When he was admitted, there is an indication explore, when we open (sic) the wound of the patient there was a blood. We noted blood about 400 cc in the peritoneum that is in the abdominal area. We also noted liver laceration and that is (sic) the source of blood. Your, Honor, there is still one, that is still injury sustain (sic) in the left arm.

Q: What kind of injury did this patient sustained (sic)?

A: Incized (sic) wound about 4cm.

Q: Are you in in (sic) a position to tell this Court, (sic) what kind of instrument did cause of (sic) the injury sustained by this patient?

A: It might be a sharp object, sir.

Q: So, do you find the nature of the injuries to the claim that the witness was stab (sic)?

A: Probably, sir.

The physician added that Basilio incurred frontal injury which if not attended early, would have been fatal.

VERSION OF THE DEFENSE

On the other hand, accused testified that herein complaining witness, who was his relative, bears a personal grudge against him. It resulted after Basilio was told by somebody that accused had uttered unfavorable remarks against him. Since then, Basilio would always attempt to provoke and confront him. However, accused had chosen not to pay attention to the provocations and confrontations previously made by Basilio.

On 10 May 2000, however, while he was revving his tricycle, somebody threw an empty bottle which fell in front of his tricycle. He alighted from his tricycle to ask Basilio and his visitors who among them threw the bottle. However, he was unable to ask the latter since Basilio, who was then armed with a bolo, immediately confronted him.

According to the accused, he fell on the ground upon being hit by a bolo by Basilio. Thereafter, he was also kicked by Basilio and while the latter was attacking him in front, the father, on the other hand, was attacking him from behind. He also claimed to have been stabbed with a knife by the father of Basilio.

The incident, which, according to the accused, took place along the street and not inside the yard of Basilio, ended upon the arrival of police officers. Accused was brought to Morong Provincial Hospital, and thereafter, he was taken to the jail in Teresa, Rizal.

Aggrieved by the decision of the court a quo, the accused-appellant is now before this Court interposing this appeal and assigning the following errors[11]:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF SELF-DEFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF FRUSTRATED HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ACCUSED-APPELLANT'S INTENT TO KILL THE VICTIM.

THIS COURT'S RULING

To begin with, an accused who asserts self-defense admits his infliction of the fatal blows and bears the burden of satisfactorily establishing all the elements of self-defense.[12] Otherwise, his conviction for the felony of murder or homicide will be affirmed.[13]

Article 11 of the Revised Penal Code provides that -

Article 11. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself."

xxx xxx xxx

Apparently, unlawful aggression is the condition sine qua non for the justifying circumstances of self-defense and xxx.[14] There can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.[15] From Our review of the records of this case, there was no unlawful aggression on the part of the private complainant. The accused-appellant clearly testified during his direct examination that private complainant confronted him with a "taga"[16] which is negated by his inconsistent statement during the cross-examination that during the incident, private complainant was not holding a knife[17] and that they were engaged in a "rambulan".[18] We agree with the Office of the Solicitor General (OSG) that accused-appellant failed to prove the first element of self-defense - that there was unlawful aggression on the part of the private complainant.[19] In fact, what was sufficiently established by the prosecution was that it was accused-appellant who was the unlawful aggressor having confronted the private complainant with a "bolo" at hand. Apparently, it was accused-appellant who attacked the private complainant and inflicted a fatal wound.[20]

Moreover, the second element of self-defense that there was reasonable necessity of the means employed to prevent or repel the unlawful aggression is also absent considering that no apparent life threatening attack on his person happened.[21] Noteworthy is the fact that accused-appellant testified that someone threw a bottle which landed in front of his tricycle. He also testified that he does not know who in particular threw the bottle. Significantly, to reiterate, he testified that private complainant was not holding any knife during their "rambulan". His act of drawing a "bolo" and stabbing the private complainant during the confrontation is not a means necessary to repel his alleged unlawful aggression on the part of the private complainant which he also failed to establish.

Indeed, upon invoking the justifying circumstance of self-defense[22], herein accused-appellant assumed the burden of proving the justification of his act with clear and convincing evidence.[23] This is because his having admitted the inflicting of wound required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission.[24]

Moving on, Article 249 of the Revised Penal Code states -

ART. 249. Homicide. - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

In relation thereto, Article 6 of the same Code provides that -

ART. 6. Consummated, frustrated, and attempted felonies. - Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and produce the felony by reason of some cause or incident other than his own spontaneous desistance. (Emphasis Ours.)

Accordingly, the elements of the crime charged, i.e., Frustrated Homicide are[25]:

- (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault;
- (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and
- (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present.

All of the aforementioned elements are present and were duly established in the case under consideration.[26]

First, accused-appellant's act of confronting the private complainant with a "bolo" in his hand and suddenly stabbing the latter clearly indicated his intent to kill him. Second, a vital organ of Basilio, that is, his liver was lacerated by the said stabbing. Dr. Angel Daquigan testified that the laceration in the liver of the private complainant secondary to his stab wound on his stomach was fatal and would have caused his death were it not for the timely medical attention given him. And third, none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code was alleged in this case.

Verily, the trial court is correct in convicting accused-appellant of frustrated homicide.

WHEREFORE, the questioned Decision is hereby AFFIRMED.

Salazar-Fernando, (Chairperson) and Bruselas, Jr., concur.

[1] Records, pp. 143-149.

[2] Records, p. 1.

[3] Records, p. 29.

[4] TSN, 04 July 2001.

[5] TSN, 17 June 2003.

[6] Records, p. 110; TSN, 6 June 2006.

[7] Records, p. 110.

[8] Records, p. 59.

[9] Records, p. 113.

[10] Records, pp. 146-147.

[11] Rollo, P. 16.

[12] People vs. Mediado, G.R. No. 169871, February 02, 2011.

[13] Ibid.

[14] Id.

[15] Id.

[16] TSN, 13 March 2007, p. 5.

[17] Ibid, p. 8.

[18] Ibid, p. 7.

[19] Rollo, p. 55.

[20] Ibid.

[21] Rollo, p. 55.

[22] Ibid.

[23] Id.

[24] Id.

[25] Mahawan vs. People, G.R. No. 176609, December 18, 2008.

[26] Ibid.

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