

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. NELSON DELA CRUZ ALIAS 'RICKY', ACCUSED-APPELLANT.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

This is an Appeal,[1] filed under Rule 122 of the 2000 Revised Rules of Criminal Procedure, seeking the reversal of the Decision,[2] dated February 10, 2012, rendered by the Regional Trial Court of Iba, Zambales, Branch 71 in Criminal Case No. RTC-4701-1, entitled "People of the Philippines vs. Nelson Dela Cruz alias 'Ricky'."

THE CASE

In an Information,[3] dated June 14, 2006, accused-appellant Nelson dela Cruz, alias "Ricky," was charged with murder as follows:

"That on or about the 10[th] day of June 2006, at about 7:30 o'clock in the evening, in Brgy. Burgos, Municipality of San Antonio, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, and accompanied by the qualifying circumstance of treachery, did then and there, willfully, unlawfully and feloniously, attack, assault and hack with a bolo one Efren Manglicmot, thereby inflicting upon the latter fatal hacking wounds, which directly caused the death of said Efren Manglicmot, to the damage and prejudice of the family and heirs of said deceased Efren Manglicmot.

CONTRARY TO LAW."

Upon arraignment, accused-appellant entered a plea of "not guilty." [4] Trial ensued.

PROSECUTION'S VERSION

At around 7:30 in the evening of June 10, 2006, Lovely Rose Nerona and her fifteen-year-old sister, Jovelyn, were playing in the rain, when accused-appellant arrived in front of the store by their house in Brgy. Burgos, San Antonio, Zambales. The victim Efren Manglicmot subsequently arrived and proceeded to the house of their Uncle Jomar which was about eighty (80) meters away. The said property was separated by a fence where the accused-appellant, armed with a bolo,[5] positioned himself. The rain had stopped thus, the sisters rinsed off at a nearby water pump.[6] While they were doing so, they noticed that accused-appellant was peeping through the fence but ignored him and thereafter, they went inside to change their clothes.

As they were dressing up, Lovely Rose heard someone shouting "amang ko po" from her Uncle Jomar's house and recognized the victim's voice. She turned to Jovelyn and said "kinawawa si Uncle Efren." [7] This caused Jovelyn to rush to their Uncle Jomar's house and about seven (7) meters therefrom,[8] she saw accused-appellant leaving with the bolo in his right hand, running with a bicycle.[9] She then saw the victim lying near the fence thus, she and Lovely Rose called their Uncle Allan Flores who lived approximately five (5) meters away.[10] Allan brought the victim to the hospital who was treated by Dr. Rebecca Lonzanida but later on pronounced as dead. Dr. Lonzanida also conducted the post-mortem examination on the cadaver of the victim, revealing the following

results:

"POST-MORTEM EXAMINATION:

EXTERNAL FINDINGS:

- Hacked wound, 8 inches length, 1.5 inches depth, Mandibular, left extending lateral neck, injuring the blood vessels carotid, Jugular
- Hacked wound, 6 inches length, 1.5 inches depth, Nasal, left extending mid Auricular, left
- Hacked wound, 4 inches length, 1 inch depth, Temporal, left
- Hacked wound, 6 inches length, 1.5 inches depth, Parietal, left
- Fracture, Parietal bone, left
- Hacked wound, 4 inches length, 1.5 inches depth, Occiput
- Fracture, Occipital bone
- Laceration of the Brain tissues and blood vessels
- Incised wound, 2 inches, upper quadrant abdomen, right

CAUSE OF DEATH:

- Hemorrhage due to multiple injuries, head and neck
- Laceration Brain tissue"[11]

On the same night, SPO1 Rowell Esposo was on duty who received a report about a hacking incident in Brgy. Burgos, San Antonio, Zambales, prompting him and his colleagues to proceed to the site to verify the report.[12] There was then no one in the area but they soon found out that the victim was taken to Dr. Lonzanida. They were also told by Jovelyn and Lovely Rose that accused-appellant Nelson dela Cruz had hacked the victim.[13] The witnesses were taken to the police station and their statements were taken by SPO1 Esposo and the incident was recorded in the police blotter.[14] A few days later, on June 13, 2006, chief investigator SPO2 Roberto Llorico told him that accused-appellant voluntarily surrendered himself.

In support of its accusations, the prosecution presented the testimonies of Lovely Rose and Jovelyn Nerona, SPO1 Esposo and Dr. Edcel Lonzanida, son of the deceased Dr. Rebecca Lonzanida who treated the injuries of the victim. Documentary evidence was also presented consisting of the following: (1) Sinumpaang Salaysay of Germana Torres,[15] sister of the victim; (2) Sinumpaang Salaysay of Lovely Joy Nerona;[16] (3) Sinumpaang Salaysay of Jovelyn Nerona;[17] (3) Death Certificate[18] of the victim; (4) copy of the police blotter where the incident was recorded;[19] (5) photographs[20] of the injuries sustained by the victim; and (6) receipts of funeral expenses.[21]

VERSION OF THE DEFENSE

Accused-appellant, meanwhile, invoked self-defense.

Accused-appellant testified that he and the victim knew each other and had no grudges against each other. On the evening of June 10, 2006, accused-appellant claimed he was working in the garbage area at Brgy. Burgos, San Antonio Zambales at around 8:00 o'clock and thereafter, he went home. While walking towards his house, he noticed a man wearing a hooded raincoat walking in the direction of the residence of Jomar Gonzales but

remained outside the house. As accused-appellant approached the man, the latter started to walk towards him and it seemed to accused-appellant that they were going to collide, thus, accused-appellant evaded the man but in his effort to do so, he fell on the grassy shoulder of the road.

While accused-appellant was down, the man in the hooded raincoat tried to stab accused-appellant who was able to jump away. The hood of the raincoat fell from his attacker's head and it was at this point that accused-appellant recognized the victim Efren Manglicmot.[22] However, accused-appellant stepped on a piece of bamboo causing him to fall again. Efren tried to stab him a second time but accused-appellant parried the thrust with his leg, injuring the same. Efren continued to attack accused-appellant, forcing the latter to pull out his own bolo and raising his hand to parry the thrust. When Efren saw the weapon, he moved backward and accused-appellant stood up.

As soon as accused-appellant was back on his feet, the victim approached him again. Accused-appellant raised his bolo and thrust the same forward and backward. Out of anger, accused-appellant hacked at Efren several times and only stopped when he saw Efren fall to the ground covered in blood. Accused-appellant then ran away from the scene but claims that Efren was still alive when he left him. According to accused-appellant, he got scared thus, he did not take the victim to the hospital.

The following day, accused-appellant sought medical treatment for his leg at the San Marcelino District Hospital, as reflected in a Medico-Legal Certificate,[23] dated June 14, 2006, the findings of which read:

"THIS IS TO CERTIFY that according to the records of this Hospital, it appears that one Nelson dela Cruz, 45 year (sic) of age, Male, Married, _____, Filipino, with given address at Maligaya, Burgos, San Antonio, Zambales, has/had been examined, treated/operated and confined in this hospital as fallows (sic):

Date Admitted : ____x__x____ Time: _____

Date Examined : __June 11, 2006__ Time: _08:05__

Date Discharged : ____x__x____ Time: _____

DIAGNOSIS/FINDINGS:

Stabbed (sic) wound 8cm (R) foot.

xx xx"[24]

Upon hearing that a manhunt operation was being conducted against him, he surrendered to the mayor of Zambales who advised him to go to the police station and turn himself in to the chief of police.

To corroborate accused-appellant's claims, the defense presented the following evidence: (1) Certification[25] from the San Antonio Police Station to prove accused-appellant's voluntary surrender; (2) Sinumpaang Kontra-Salaysay[26] executed by accused-appellant; and (3) the Medical Certificate, dated June 14, 2006.

FINDINGS OF THE TRIAL COURT

After weighing the evidence presented before it, the trial court rendered the appealed Decision,[27] dated February 10, 2012, convicting accused-appellant of homicide in this wise:

"WHEREFORE, judgment is hereby rendered finding accused NELSON DELA CRUZ alias 'Ricky' guilty beyond reasonable doubt of the crime of homicide and he is sentenced to suffer the penalty of 10 years and 1 day of prision mayor as minimum, to 17 years and 4 months of reclusion temporal as maximum, with accessory penalties provided by law; and to pay the heirs of the victim, the amount of P50,000.00 as civil

indemnity, another P50,000.00 as moral damages, and P62,933.00 as actual damages.

SO ORDERED."[28]

Hence, this appeal.

ASSIGNMENT OF ERRORS

Accused-appellant ascribes the following errors on the part of the trial court:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED;

II.

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.[29]

RULING

Accused-appellant maintains that he attacked the victim in self-defense, considering the peril posed by the latter who tried to stab him with a bolo.

The justifying circumstance of self-defense was discussed in *People of the Philippines vs. Placer*,[30] to wit:

"The consequence of the plea of self-defense was to shift to Ramon's shoulders the burden of evidence, that he must then prove clearly and convincingly the following elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although the elements must concur, self-defense must rest firstly on proof of the unlawful aggression on the part of the victim." (Emphasis Ours)

The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.[31] Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.[32]

Here, accused-appellant claims that the victim came at him with a bolo for no reason at all and that in his effort to protect himself, he injured his leg.

While the accused-appellant's explanation may be logical, there is an absence of evidence that would support his version of events.

First, the account of the children Lovely Rose and Jovelyn did not mention that the victim was armed at the time of the attack, negating accused-appellant's claim that the victim initiated the same with a bolo. Moreover, accused-appellant himself admitted that he and the victim had a good relationship and held no grudges against each other[33] thereby making it more incredible that the victim would just hack him for no apparent reason.

It is a long standing rule that matters affecting credibility are best left to the trial court because of its unique opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, an opportunity denied the appellate courts which usually rely only on the cold pages of the mute

records of the case.[34] Here, there is no reason to doubt the testimonies of Jovelyn and Lovely Rose that accused-appellant was armed with a bolo when he followed the victim to the house of their Uncle Jomar. Again, there is no proof that Efren Manglicmot was armed at the time of the attack hence, there is nothing to corroborate the claim that he drew first blood. The weapon allegedly used by the victim was never found in the scene where the incident took place and the defense could not present any witness that would attest to his/her presence at the time of the attack.

Even if the victim indeed initiated the attack on accused-appellant, his own testimony reveals that despite the cessation of the unlawful aggression, he continued to hack the victim, to wit:

"Q

So Mr. Witness, you hit him to (sic) the head with you (sic) bolo, is that correct?

A

I do not know, sir.

Q

But Mr. Witness, is it not a fact that you hacked him with your bolo several times, more than five (5) times, Mr. Witness, right?

A

Maybe out of my anger, I have stabbed him, sir.

Q

So Mr. Witness, out of your anger, you hacked Mr. Efren Manglicmot several times, right?

A

Yes, sir."[35] (Emphasis Ours)

The post-mortem examination reveals that the blows made by accused-appellant landed on the victim's head therefore, the first blow itself would have incapacitated the latter, ceasing the unlawful aggression. Thus, the case of *People vs. Gamez*,[36] finds application in this situation, where the Supreme Court emphasized that "[w]hen unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him; while in self-defense the aggression still existed when the aggressor was injured by the accused." The above-quoted portion of accused-appellant's testimony betrays the existence of unlawful aggression when he still continually hacked at the victim after the initial blow. He admitted that the subsequent injuries he inflicted upon the victim were already out of anger, contradicting his claim of self-defense. Hence, the trial court was correct in holding that:

"In this case, accused failed to prove the element of unlawful aggression. There is nothing in his testimony which shows that Efren Manglicmot had initially the possession of any deadly weapon. The vague and confusing declarations of accused as to how the victim allegedly tried to stab him while he was walking that fateful night appear contrived to deserve any credence. For instance, he said after coming home from work at

the garbage site, he met a man (wearing a raincoat), coming from the opposite direction. To avoid bumping the man, he (accused) evaded him but he fell on the road's shoulder. It was while he was down on that grassy area when this man tried to stab him but he was able to jump, in so doing, he again fell down but he accidentally stepped on a piece of bamboo. While he was down, the man tried to stab him for the second time but he managed to raise his leg to be able to parry the thrust, as a result his leg was injured. On the victim's further attempt to stab him, accused allegedly was provoked to defend himself, he pulled out his bolo and struck t (sic) the victim with it.

Under the circumstances shown, there can be no sufficient provocation on the part of the victim. It was not clearly proven if the victim had really committed an actual physical harm that posed an imminent danger to the life of accused. Granting arguendo, the victim made stabbing thrusts on accused, the same appear not to be sufficient to warrant accused to inflict as he did multiple fatal hacking stab wounds on his victim. A mere injury on the leg purportedly inflicted by the victim on the accused does not constitute unlawful aggression nor sufficient provocation. With the absence of these elements, even incomplete self-defense is ruled out in the present case. Accused should be made liable for the death of Manglicmot." [37] (Emphasis Ours)

As regards the penalty, however, the trial court failed to consider the fact that accused-appellant voluntarily surrendered himself at the San Antonio Police Station on June 13, 2006, as shown in the Certification, [38] dated April 29, 2011, issued by SPO1 Rowell Esposo, a fact which was never questioned nor disproved by the prosecution. Under Article 13, paragraph 7 of the Revised Penal Code, the voluntary surrender of the accused-appellant is a mitigating circumstance which results to a reduction of the penalty. In *People vs. Placer*, [39] which dealt with homicide, the Supreme Court ruled:

"Upon taking the mitigating circumstance of voluntary surrender into consideration, the imposable penalty is the minimum period of reclusion temporal, that is, from 12 years and one day to 14 years and eight months. The range of the indeterminate penalty under the Indeterminate Sentence Law is prision mayor in any of its periods, as minimum, to the minimum period of reclusion temporal minimum, as maximum. Accordingly, Ramon's indeterminate penalty is eight years and one day of prision mayor, as minimum, to 14 years of reclusion temporal, as maximum."

Given that the accused-appellant in this case was also convicted of the crime of homicide with the same attendant mitigating circumstance of voluntary surrender, the imposition of the same penalty upon herein accused-appellant is in order.

WHEREFORE, in view of the foregoing, the Appeal is DENIED. The Decision, [40] dated February 10, 2012, rendered by the Regional Trial Court of Iba, Zambales, Branch 71 in Criminal Case No. RTC- 4701-1, is AFFIRMED with MODIFICATION as follows:

Accused-appellant NELSON "Ricky" DELA CRUZ is sentenced to suffer the indeterminate penalty of IMPRISONMENT from EIGHT YEARS AND ONE DAY of prision mayor as minimum, to FOURTEEN YEARS of reclusion temporal as maximum.

SO ORDERED.

Gonzales-Sison[*] (Acting Chairperson) and Baltazar-Padilla, JJ., concur.

[*] Vice Justice Noel G. Tijam, per Office Order No. 284-14-ABR dated June 16, 2014

[1] See Order, dated march 12, 2012, Rollo, p. 29

[2] Rollo, pp. 14-24

[3] Records, pp. 2-3

[4] See Order, dated August 24, 2006, Records, p. 19; See also Certificate of Arraignment, dated August 24, 2006, Records, p. 20

[5] TSN, October 25, 2007, p. 10

[6] TSN, October 25, 2007, p. 8

[7] TSN, October 25, 2007, p. 8

[8] TSN, October 25, 2007, p. 11

[9] TSN, October 25, 2007, pp. 11-12

[10] TSN, October 25, 2007, p. 14

[11] Records, p. 11

[12] TSN, July 7, 2009, p. 5

[13] Ibid.

[14] TSN, July 7, 2009, p. 7

[15] Records, pp. 270-271

[16] Records, pp. 272-273

[17] Records, pp. 274-275

[18] Records, p. 276

[19] Records, p. 278

[20] Records, pp. 279-281

[21] Records, pp. 282-288

[22] TSN, June 14, 2011, p. 6

[23] Records, p. 352

[24] Records, p. 353

[25] Records, p. 349

[26] Records, pp. 350-351

[27] Rollo, pp. 14-24

[28] Rollo, p. 24

[29] See Brief for Accused-Appellant, Rollo, p. 99

[30] G.R. no. 181753, October 9, 2013

[31] People vs. Roman, G.R. No. 198110, July 13, 2013, citing People vs. Nugas, G.R. No. 172606, November 23, 2011

[32] *People vs. Roman*, G.R. No. 198110, July 13, 2013, citing *People vs. Nugas*, G.R. No. 172606, November 23, 2011

[33] TSN, May 24, 2011, pp. 3-4

[34] See *People v. Ortega*, G.R. No. 186235, January 25, 2012

[35] TSN, June 14, 2011, p. 7

[36] G.R. No. 202847, October 23, 2013

[37] Rollo, p. 22

[38] Records, p. 349

[39] G.R. No. 181753, October 9, 2013

[40] Rollo, pp. 14-24

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