

ALFREDO BITALAC, PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-45835. February 15, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision of the Court of Appeals in CA-G.R. No. 06817-CR and its Resolution denying reconsideration thereof.

I

From a tumultuous affray in the evening of March 30, 1962 at Barrio Guintas, Barotac Nuevo, Iloilo, resulting in the death of Serafin Saul and physical injuries to Rodolfo Padayao, Raul Mendoza, Selderico Saul and Serapio Saul, five criminal cases were filed in the Court of First Instance of Iloilo, to wit: (1) Criminal Case No. 9288 against Ernesto Millan, for the frustrated murder of Rodolfo Padayao; (2) Criminal Case No. 9289 against Ernesto Millan, Alfredo Bitalac, Augusto Baylas, Ramon Bayona, Jr., Leonardo Bayona, Crispin Bayona and Segundo Bayona, for the frustrated murder of Raul Mendoza; (3) Criminal Case No. 9290 against Augusto Baylas, for the frustrated murder of Selderico Saul; (4) Criminal Case No. 9291 against Alfredo Bitalac and Crispin Bayona, for the murder of Serafin Saul; and (5) Criminal Case No. 9292 against Segundo Bayona, for the frustrated murder of Serapio Saul (Rollo, p. 62).

After trial, all the accused were convicted by the trial court except Ramon Bayona, Jr. and Augusto Baylas, who were acquitted in Criminal Case No. 9289.

There being no aggravating or mitigating circumstances present and applying the provisions of the Indeterminate Sentence Law, appellant and Crispin Bayona were sentenced in Criminal Case No. 9291 to suffer an imprisonment "of no less than THIRTEEN (13) YEARS, NINE (9) MONTHS AND TEN (10) DAYS of reclusion temporal as minimum to no more than EIGHTEEN (18) YEARS, TWO (2) MONTHS AND TWENTY (20) DAYS of reclusion temporal, as maximum," and to pay indemnification and damages (Rollo, p. 61).

Leonardo Bayona, Ernesto Millan, Augusto Baylas, Alfredo Bitalac, Crispin Bayona and Segundo Bayona appealed the judgments against them to the Court of Appeals. However, prior to the elevation of the records to the appellate court, the first three appellants withdrew their appeal in Criminal Case No. 9289. The Court of Appeals dismissed the appeal of Segundo Bayona in Criminal Case No. 9292 on June 8, 1972. Thus, the only appeals passed upon by the Court of Appeals were the appeals of Alfredo Bitalac and Crispin Bayona in Criminal Cases Nos. 9289 and 9291.

The Court of Appeals acquitted Bayona in Criminal Cases Nos. 9289 and 9291 and Bitalac in Criminal Case No. 9289, but affirmed the conviction of the latter in Criminal Case No. 9291.

Hence, this petition.

II

The evidence against petitioner showed that at about 7:30 P.M. of March 30, 1962, there was a gathering under the house of Selderico Saul in Barrio Guintas, Barotac Nuevo, Iloilo to witness the draw of the gambling game locally known as "daily double." The gambling was maintained by Raul Mendoza, the son-in-law of Selderico. While Selderico, together with Rodolfo Padayao and Serafin Saul, was preparing the paraphernalia for the draw, petitioner, Ernesto Millan, Augusto Baylas, Leonardo Bayona, Segundo Bayona and Crispin Bayona arrived.

Upon their arrival, petitioner, Ernesto Millan, Augusto Baylas and Leonardo Bayona sat by the side of Serafin Saul, while Segundo Bayona and Crispin Bayona stood nearby. At that time, Selderico was seated on the first rung of the stairs of his house.

When Mendoza turned the roulette and was about to cast the ball, Ernesto Millan, holding a bolo, suddenly stood up and shouted: "Inaway con inaway" ("Fight if you want to fight"). At the same time, petitioner and Leonardo Bayona went near the roulette table. Leonardo accused Mendoza of cheating and snatched the ball from him. He then pulled out his pistol and thereupon shot Mendoza. Hit on the left shoulder, Mendoza fell face down and remained motionless, pretending to be dead. At this juncture, petitioner approached Mendoza and, from a distance of two-and-a-half meters, fired three successive shots at him. All three shots missed their target. Petitioner took another aim and pulled the trigger, but this time the gun failed to fire.

Serafin Saul approached petitioner from behind and pinned his shoulders. The two struggled furiously with petitioner using a knife to disable Serafin. Somebody then shot Serafin, with the bullet entering near his right nipple.

Dr. Estrella V. de Araneta, Rural Health Physician of Barotac Nuevo who performed the autopsy, described the injuries sustained by Serafin as follows:

"1. Bullet Wound -

Point of entrance - 2 inches from the right nipple toward the sternum, Diameter 1/2 inch.

Point of exit - Left posterior Chest at the level of the eight (sic) rib 6 inches from Spinal Column. Diameter 1/2 inch.

"2. Stab Wound -

At the level of the 3rd rib 3 inches from the left nipple. Mid clavicular going towards and downwards toward the 5th interspace.

Length of entrance - 1-1/4 inches

Depth of wound - 3-1/2 inches

Cause of Death ---- Hemorrhage Destruction of pleura and lung tissue" (Exh. "A", Records, p. 65).

III

Petitioner admitted stabbing Serafin Saul but claimed self-defense. According to him, he went to the house of Serafin on the night of March 30, 1962 to witness the "daily double" draw. Upon his arrival thereat, he saw many people scampering in all directions. When he saw his first cousin, Segundo Bayona prostrate on the ground, he rushed to his aid, but his way was blocked by Serafin who gave him a thrust with his knife. Petitioner was able to hold the hand of Serafin and wrest possession of the knife. They continued to fight for the possession of the knife until they reached a spot below the window of the house. At that juncture, someone fired a shot from the window hitting Serafin.

The burden shifts to petitioner to prove convincingly his claim of self-defense. (People v. Davis, 1 SCRA 473

[1961]). The accused must rely on the strength of his own evidence and not on the weakness of that for the prosecution (People v. Solano, 6 SCRA 60 [1962]).

The Court of Appeals was in error when it said that the claim of self-defense was implausible because petitioner did not sustain even a scratch during the struggle for the possession of the knife (Rollo, pp. 72-73). The fact was that a medical certificate submitted by petitioner (Exh. 7) showed that he sustained an injury. However, aside from petitioner's self-serving testimony, there is nothing in the evidence to show that the wound was actually inflicted by Serafin. The fact that petitioner sustained a wound does not prove that Serafin was the aggressor, a vital element of self-defense. Besides, all indications point to the fact that the aggression came from the group of petitioner, which virtually invaded the territory of Serafin, a rival gambling operator of petitioner's co-accused, Crispin Bayona.

In the absence of evidence showing that Serafin was the aggressor, the law will consider the aggression as reciprocal between the two combatants (People v. Bauden, 77 Phil. 105 [1946]; People v. Marasigan, 51 Phil. 701 [1928]).

Petitioner cannot exculpate himself by claiming that the victim died because of the gunshot, not the stab wound. The autopsy report prepared by Dr. Estrella V. de Araneta (Exh. "A", Record, p. 65) discloses that the victim suffered two wounds: a bullet wound with point of entry two inches from the right nipple toward the sternum (breastbone) and a stab wound at the level of the third rib, three inches from the left nipple.

Considering that both wounds were located in the region of the breast of the victim, the bullet wound could not have been inflicted while petitioner and the victim were grappling with each other. Otherwise, petitioner would also have been hit because he was then very close to the victim and was in the line of fire.

At any rate, in cases where the fatal wounds were inflicted by two accused acting independently, the burden is on each accused to establish that the wound inflicted was not the one which caused the death of the victim.

The Court of Appeals affirmed the decision of the trial court finding petitioner guilty of murder in violation of Article 248 of the Revised Penal Code. There is no evidence showing that the offense was committed with any of the attendant circumstances that qualify it to murder. We therefore find petitioner guilty only of homicide as defined and penalized under Section 249 of the Revised Penal Code. There being no mitigating or aggravating circumstance present, the said penalty provided for such offense, which is reclusion temporal, shall be imposed in its medium period.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED, with the MODIFICATION that petitioner is found guilty only of homicide, not murder. He is sentenced to suffer an imprisonment of not less than TEN (10) YEARS of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal. He is also ordered to indemnify the heirs of the victim in the amount of P50,000.00.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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