

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN MERCADO, DEFENDANT APPELLANT.

G.R. No. L-33492. March 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision[*] rendered by the defunct Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, dated 11 March 1971, in Criminal Case No. CCC-564-Rizal, entitled: "People of the Philippines, plaintiff, versus Efren Mercado, accused," the dispositive part of which reads as follows:

"WHEREFORE, finding the accused, Efren Mercado, GUILTY, beyond reasonable doubt, of the crime of Murder as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of the deceased Dominador Salvador, Jr., the amount of P12,000.00; to pay the amount of P5,000.00 as moral damages and another P5,000.00 as exemplary damages; and to pay the costs".

The facts of the case, as summarized in the People's Brief, are as follows:

"At about 10:00 o'clock in the evening of December 23, 1970, the deceased Dominador Salvador, Jr. and his friends were in their house preparing to go caroling. Among those with the deceased were Ding Cristobal, Rod Cristobal, Teody Pangilinan, Emilio Fuerte and Leonardo Calvento. (t.s.n., pp. 2-3, January 14, 1971) From the house of Dominador Salvador they proceeded to the house of Mr. Aguilar a place which is more or less 16 to 25 meters from the place of the deceased Dominador Salvador, Jr. (t.s.n., p. 3, January 15, 1971). In going to the place of Mr. Aguilar they were to pass through an "eskinita", a small road (t.s.n., p. 3 January 15, 1971). Mr. Aguilar lives in Real street, a national road.

"When they went to the place of Mr. Aguilar, Dominador Salvador, Jr. and Leonardo Calvento went ahead of the group. The group walked in a regular manner, not too slow but not too fast. On their way to Mr. Aguilar's place they heard slanderous words directed at them and when they looked around to ascertain who uttered the slanderous words, stones were suddenly hurled against them. Those who hurled the stones belonged to the group of the accused Efren Mercado (t.s.n., p. 4, January 15, 1971). Emilio Fuerte who was one of those who went caroling was hit by a stone about one (1) inch in a diameter (t.s.n., p. 5, January 15, 1971) and because he was not hurt very much and finding that the guitar which they brought along with them had a broken string, the group returned to the place of Dominador Salvador, Jr. to repair the guitar (t.s.n., p. 6, January 15, 1971). It took the deceased and his group ten (10) minutes to repair the guitar after which they proceeded to go caroling again.

"Upon reaching a corner, they saw the group of the accused Efren Mercado waiting for them (t.s.n., p. 6, January 15, 1971). The group of the accused again stoned the group of the deceased and because of this, deceased (and Leonardo Calvento) approached the group of the accused to inquire from them why they were stoned (t.s.n., p. 6-7, January 15, 1971).

"Deceased and Leonardo Calvento were followed by Emilio Fuerte. While Emilio Fuerte was in front of the store he saw Efren Mercado grab the deceased and gave him a thrust with his right hand. At first Leonardo

Calvento who was with the deceased thought that the deceased was not stabbed but when they were leaving the place of the incident the victim stated the following words, 'May tama ako', and later he saw blood on the right chest of the victim. The victim was brought to the San Juan De Dios Hospital where he died on arrival. A necropsy report was made on the victim by Dr. Roberto Garcia and the following wounds were found:

'POST-MORTEM FINDINGS Pallor, integument, conjunctivae and nailbeds, stab wound, chest, right, anterior aspect, infraclavicular region, at the level of the 1st intercostal space, right, 6.5 cms. from the anterior median line, 1.7 cm. in size, oriented downward and laterally, edges, clean-cut, upper extremity sharp, lower extremity, contused, directed downwards, backwards, and medially, involving among other things, the soft tissues, thru the 1st intercostal space, right grazing the lower order of the 1st rib, into the right thoracic cavity, perforating the upper lobe, right lung, into the middle mediastinum, penetrating the superior vena cava, with approximate depth, 12.0 cms.

Hemothorax, right - 1,920 cc.

Brain and other visceral organs, pale.

Stomach - 1/2 filled with partly digested rice and food materials

CAUSE OF DEATH - Stab wound of the chest, right"[1].

The accused-appellant admits having stabbed the deceased, but claims self-defense. His account of the incident is as follows:

"x x x It appears that in the evening of December 23, 1970, accused Efren Mercado had to go to the house of his employer, Larry Salvador, at Real Street, Las Pinas, Rizal. He had two companions at the time, who were left outside when he went into the house of his employer. When he came out, his two companions complained to him that they were 'napag-iinitan' by a group of persons, who were later identified to be Dominador Salvador and his 'barkada'. This group of Dominador Salvador threw firecrackers at the two companions of the accused. To avoid any incident, the accused told his companions to go home, and he himself went home. On the way home, he saw some persons, numbering twelve in all, chasing two other persons. He identified the pursued persons as his two companions so he intervened and tried to stop the pursuers. The pursuers turned on the accused, attacking him with piece of chain and a piece of bamboo. To defend himself, the accused whipped out a knife and brandished it before his attackers, to frighten them. He had no intention to injure anyone, only to stop his attackers and to defend himself. After the attackers ran away, the accused proceeded home. Later, in the evening, he was brought to the police department and subsequently charged for the death of one Dominador Salvador"[2].

The trial court, after analyzing the evidence, rejected the defense of the accused, because of the positive and unqualified identification by prosecution witnesses Leonardo Calvento and Emilio Fuerte that the accused-appellant was the unlawful aggressor and slayer of the victim; and, besides, according to the trial court, the act of the appellant of running away from the scene of the crime, after the commission thereof, is "repugnant" to the appellant's claim of innocence "for if it is really true that he was forced to slay the victim to save his life, then he could have surrendered to the police authorities right after the commission of the crime or given himself to any member of the barrio council, where he is residing as is ordinarily done in urban areas"[3].

We agree with the trial court that the accused-appellant has not convincingly proven his claim of self-defense. His defense is based solely upon his testimony, whereas, the version of the prosecution is supported by the testimonies of Leonardo Calvento and Emilio Fuerte both of whom were with the deceased on the night in question and witnessed the commission of the offense. It is well-settled that self-defense is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that precludes any vestige of criminal aggression on the part of the person invoking it[4], and the Court has ruled that the plea of self-defense cannot be

justifiably entertained where it is not only uncorroborated by any separate competent evidence but, in itself, is extremely doubtful[5], and cannot overcome the version of the prosecution supported by the testimony of two eye-witnesses who saw the incident[6].

The accused-appellant, in this appeal, assails the trial court for giving more weight to the testimony of the prosecution witnesses despite certain errors, inconsistencies and contradictions in their declarations.

We have examined the record of the case with great care and find no reason to set aside the findings of fact of the trial court, which are supported by documentary evidence and the testimony of witnesses who have no reason whatsoever to testify falsely against the accused-appellant. Moreover, the rule is well-settled that, where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case. Herein appellant failed to demonstrate that his case falls under such exception which would justify this Court to overturn the findings of fact of the trial court.

The accused-appellant further assails the trial court for denying his motion to dismiss dated 28 January 1971. The appellant contends that the prosecution failed to prove a prima facie case against him so that the trial court should have granted his motion to dismiss.

The contention is not well-taken. Judicial action on a motion to dismiss or demurrer to the evidence is left to the exercise of sound judicial discretion. Unless there is a grave abuse thereof, amounting to lack of jurisdiction, the trial court's denial of a motion to dismiss may not be disturbed. In the instant case, the trial court, after hearing the evidence presented by the prosecution, was convinced that said evidence was sufficient to warrant a finding of guilty vis-a-vis the accused. As a matter of fact, the Court is convinced that the accused-appellant is criminally liable for the death of Dominador Salvador, Jr. even without the admission of the accused-appellant.

The crime committed, however, as pointed out by counsel for the accused-appellant and confirmed by the Solicitor General, is Homicide and not Murder. We cite with approval the following disquisition of the Solicitor General:

"We agree that the defendant should have been convicted of Homicide instead of Murder. The circumstance alleged in the information to qualify the crime of murder is treachery. There is treachery or 'alevosia' if the 'offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make'.

"A perusal of the evidence adduced by the prosecution reveals that the stabbing incident was preceded by the 'uttering of slanderous remarks and followed by stoning'. (t.s.n., pp. 4, 5, January 14, 1971 and t.s.n., pp. 4, 5, 6, January 15, 1971). Because of the stoning, the deceased approached the group of the accused and (t.s.n., p. 6, January 14, 1971) it was at that time when the deceased was inquiring from the group of the accused the reason why they were stoned that he (deceased) was stabbed.

"The utterance of slanderous remarks followed by the stoning incident is a warning to the deceased and his group of the hostile attitude of the group of the appellant and these should have placed the deceased and his companions on their guard. (People vs. Gonzales, 76 Phil. 2173; People vs. Luna, 76 Phil. 107; People vs. Sagayno, 95 SCRA, 366.

"Further, the prosecution evidence also discloses that the place of the wound indicated that the accused was facing the deceased. (p. 8, t.s.n., January 12, 1971)

"All these circumstances negative 'alevosia'".

We also find merit in the submission of the accused-appellant that the trial court erred in finding that he (accused) had fled from the scene of the crime. Pat. Artemio Talampas of the Las Pinas police declared that he arrested the accused in the latter's house, which is located about 40 meters away from the scene of the stabbing incident: that the accused was at the time talking with his friends; and that when he confronted the accused with the knife, the accused readily admitted ownership, thereof, as well as his having stabbed Dominador[7]. These circumstances negate flight.

As recommended by the Solicitor General, the penalty to be imposed upon the accused-appellant shall be eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. However, the indemnity to be paid to the heirs of the victim shall be increased to P30,000.00, in line with recent decisions.

WHEREFORE, with the modifications above indicated, the judgment appealed from is hereby **AFFIRMED**. With costs against the defendant-appellant.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[*] Penned by Judge Onofre A. Villaluz

[1] Appellee's Brief, pp. 2-5

[2] Appellant's Brief, pp. 2-3

[3] Trial Court decision, p. 16, Rollo, p. 24

[4] People vs. Lebumfacil, G.R. No. L-32910, March 28, 1980, 96 SCRA 573

[5] People vs. Maranan, G.R. Nos. L-47228-32, L-46587, Dec. 15, 1986, 146 SCRA 243

[6] People vs. Empeno, G.R. No. L-27610, May 28, 1970, 33 SCRA 40

[7] t.s.n. of Jan. 12, 1971, pp. 17-18

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