

ERNESTO ANDRES, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-48957. June 23, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In an information that was filed in the then Court of First Instance (now Regional Trial Court) of Isabela, the petitioner, Ernesto Andres, was charged with the crime of homicide with frustrated homicide. Trial on the merits thereon ensued after the petitioner pleaded not guilty upon being arraigned. The petitioner invoked the justifying circumstance of self-defense under Article 11 of the Revised Penal Code as his main defense after it was indubitably proved that he stabbed the deceased and the other offended party.

On June 25, 1975, the trial court rendered a decision finding the petitioner guilty beyond reasonable doubt of the crimes of homicide and frustrated homicide. The trial court held that the petitioner failed to establish self-defense by clear and convincing evidence for no unlawful aggression on the part of the group of the deceased was attendant. Thus, in the dispositive portion of the said decision the petitioner was convicted and sentenced:

WHEREFORE, the Court hereby finds ERNESTO ANDRES guilty beyond reasonable doubt of the crime of HOMICIDE, as charged, for the unjustified killing of FEDERICO BAYYA, the commission of which was attended by the mitigating circumstance of passion or obfuscation without any aggravating circumstance to offset it, for which crime the said accused is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor, as minimum, and TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as maximum, and to indemnify the heirs of Federico Bayya in the sum of TWELVE THOUSAND (P12,000.00) PESOS, Philippine Currency, without subsidiary imprisonment in case of insolvency.

The Court also hereby finds the same accused ERNESTO ANDRES guilty beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE, as charged, for the frustrated killing of RODOLFO CUMARAT, the commission of which was attended by the lone mitigating circumstance of passion or obfuscation, without any aggravating circumstance to offset it. Accordingly, the said accused is also sentenced to suffer the indeterminate penalty of TWO (2) YEARS and FOUR (4) MONTHS of prision correccional, as minimum, and SIX (6) YEARS and ONE (1) DAY of prision mayor, as maximum, and to indemnify the said RODOLFO CUMARAT in the sum of ONE THOUSAND EIGHT HUNDRED FIFTY (P1,850.00) PESOS, as actual damages and in the sum of THREE THOUSAND (P3,000.00) Pesos, Philippine Currency, as moral damages, without subsidiary imprisonment in case of insolvency.

The knife (bread slicer) used in the commission of said crimes is ordered confiscated in favor of the Government.

The accused shall also pay the costs."^[1]

Not satisfied therewith, the petitioner elevated this case to the herein respondent Court of Appeals. The respondent Court affirmed in toto the decision of the trial court. However, in the ratio decidendi of its decision,

the respondent Court brushed aside a discussion, in relation to the case at bar, of the most important requisite of the justifying circumstance of self-defense, i.e., unlawful aggression, and merely proceeded in adjudicating the case based on the absence of the second requisite of self-defense, that of the "reasonable necessity of the means employed to prevent or repel it." [2] It held that:

"We are now called upon to rule on the appellant's plea of self-defense. Assuming for the sake of argument that the circumstances here as described by the witnesses for the defense are true, We cannot see our way clear to crediting appellant with the justification for taking the life of Federico Bayya and for inflicting upon Rodolfo Cumarat with a stab wound which nearly caused Cumarat's life for it is clear from the evidence that the four men were unarmed (the claim that one of them was carrying a club is hardly to be believed) and the accused himself stated that the attackers were only using their fists on him. His claim that there were 'many people' may be true in the sense that there were many passersby. But as far as persons attacking him were concerned there were only four, for which reason We find it hardly justifiable for him to use his breadknife against his attackers, a weapon which proved so lethal that only one thrust on the victim was fatal enough." [3]

In assuming for the sake of argument that the defense's version of the facts is true and then ruling on the case only on the basis of the second requisite of self-defense, the respondent Court paved the way for this petition for review on certiorari. The petitioner then saw the ripe opportunity to call for an interpretation and a correct application of the second requisite of self-defense.

The facts of the case as found by the respondent Court are herein reproduced, to wit:

"Facts Not Contested:

"It was the town fiesta of Santiago, Isabela and the streets were full of pedestrians. At 1:00 in the early morning of July 26, 1972, the accused in the company of three ladies, Eufemia Calso, his fiancée, who later became his wife, her sister Sally and one other were walking along the provincial road on their way home from a late movie. On the same road and going along the Same direction were four men, the deceased Federico Bayya, his cousin Fernando Bayya, Rodolfo Cumarat and one other, who too, were on their way home after having drunk one bottle of beer each in a nearby restaurant when Federico Bayya happened to bump Eufemia (defense says he kissed Eufemia) which displeased the accused causing the latter to box Federico. Federico tried to retaliate but due to the intervention of the lady companion of the accused, Federico was appeased and both groups proceeded on their way.

"Disputed Facts:

"According to the prosecution witnesses, after the bumping (kissing) incident Federico and his companions walked ahead of the group of the accused, but upon reaching the inter-section of the road where they were about to turn to go to their respective houses, the accused suddenly caught up with them, and without any word of warning stabbed first Rodolfo Cumarat on the left side of his abdomen, followed by another stab at Federico. Federico's stab wound proved fatal, while Rodolfo's, although likewise fatal, was attended to on time and fortunately treated effectively, thus averting his death.

"The defense on the other hand, thru witnesses Eufemia and Sally Calso offer a different version. They claim that after the 'first incident' they proceeded to walk ahead, with the four men trailing behind them; and when they were about to reach the inter-section, one of the four men who was later identified by the witnesses as Rodolfo Cumarat tried to catch up with Andres, and placing his hand over Andres' shoulder, boxed Andres twice. Andres tried to run away but all the four men chased him and started to pummel him with fist blows. Andres testifies that one of his attackers was carrying a club with which he sought to strike the accused. (t.s.n. pp. 3-11, April 2, 1975)

Q. Why were you not able to reach the house of Eufemia Calso on that particular night?

A. When we were about to reach the Kwikway, on the corner, a certain man put his arms on my shoulder.

Q After that man placed his arms on your shoulder what happened next if any?

A. That man when he placed his arm on my shoulder boxed me on my throat and then the arms which was placed on my shoulder boxed me at the back of my head.

Q. Do you know that man who placed his arms around your shoulder and boxed you?

A. Before I did not know the name of that man and I came to know him only during the investigation.

Q. And what is the name?

A. Rodolfo Cumarat, sir.

Q. After Rodolfo Cumarat boxed you in your throat and nape, what happened next if any?

May we make the observation that the trend of the question would lead the witness.

COURT:

Sustained.

Atty. Delizo:

Q. When Rodolfo Cumarat boxed you what did you do, if any?

A. After Rodolfo Cumarat boxed me I ran from here to that place and then his companions got near me with clubs and they started boxing me.

Q. How many persons have you seen with a club on that particular night?

A. Only one sir.

Q. And how many persons were boxing you?

A. I did not know, sir, because when they were boxing me I covered my face (witness demonstrating the way he placed both his hands in his face and crouch with his hands trying to protect his head and face). And when I put up my face I saw plenty of persons.

Q. Where did you see those persons?

A. The place where they overtook me, sir.

Q. When you were boxed by those persons whom you do not know the number what did you do, if any?

Fiscal Lopez:

Misleading.

Atty. Delizo:

I withdraw my question.

Q. You said you saw a man with a club what did that man do, if any?

A. The man with a club clubbed me.

Q. What part of your body was hit?

A. Right shoulder, sir.

Q. How many times were you hit by the club?

A. I don't remember how many times, sir.

Q. How about Rodolfo Cumarat what did he do, if any?

A. Rodolfo Cumarat also boxed me and when I crouched and covered my face, Rodolfo kept on boxing me and when I raised my face I saw already many people.

Q. Do you know how many times were you boxed by those persons who boxed you?

A. I don't know how many times sir.

Q. What did you do if any, when you were boxed and clubbed by those persons?

A. When I lifted my face I looked around and saw many people and they told me that they are going to kill me and I remember my knife bread slicer in my waist.”[4]

According to the respondent Court, the petitioner was not justified in using his knife as against the bare fists of the unarmed group of his alleged assailants. In addition, the respondent Court made the observation that “the accused was a little too fast and imprudent in the use of his breadknife, for there really was no imminent danger to his life and limb when he wielded it against the deceased and Rodolfo Cumarat.”[5] Consequently, it held that the second requisite of self-defense was absent in this case.

The petitioner claimed otherwise, hence, this petition.

It must be noted that the petitioner originally pleaded self-defense. In this kind of a defense, the burden of proof rests upon the accused. His duty is to establish self-defense by evidence clear and con-vincing, relying on the strength of his own evidence not on the weakness of the prosecution's.[6]

The first requisite of self-defense is indis-pensable. There can be no self-defense until it is proved that there has been unlawful aggression on the part of the person injured or killed by the accused.[7]

If there is no unlawful aggression, there is nothing to prevent or to repel. The second requisite of self-defense will have no basis. In the case of *People vs. Yuman*,[8] this rule was explained as follows:

“x x x it is evident that our conclusion will have to be that her act of mortally wounding her lover Marciano Martin had not been preceded by aggression on the part of the latter. There is no occasion to speak here of the 'reasonable necessity of the means employed to prevent or repel it', nor is it necessary to inquire whether or not there was 'sufficient provocation' on the part of the one invoking legitimate self-defense because both circumstances presuppose unlawful aggression which, we repeat, was not present in the instant case.”

Therefore, the inescapable conclusion is that the issue raised by the petitioner as to the second requisite of self-defense is rather premature for he must first establish the existence of unlawful aggression being perpetrated against his person.

Now, was there unlawful aggression on the part of the petitioner's alleged assailants?

We hold that there was none.

During the trial of the case, the prosecution and the defense presented two conflicting versions of the facts. Each one contended that the opposing party was the aggressor. Thus, the trial court's findings of fact and assignment of values as to the evidence ad-duced become relevant and decisive.

After a thorough perusal of the evidence on record, We find the trial court's findings and conclusions to be well in

accord. We thus agree with the following:

"From the testimony of the pro-secution witnesses Fernando Bayya and Rodolfo Cumarat, and that of the witnesses for the defense it is clear that the incident that happened in the early morning of July 26, 1972 which resulted in the fatal stabbing of Federico Bayya and the almost fatal stabbing of Rodolfo Cumarat by the accused consisted of two stages. The first stage was the "accidental bumping" or "kissing" of Eufemia Calso, the then sweetheart of the accused, by Federico Bayya in front of the store of the Singer Sewing Machine along the provincial road of Santiago. The accused boxed Federico Bayya on the face but before the latter could retaliate, Sally Calso intervened by pacifying Federico Bayya and holding his collar. Eufemia Calso also held the accused and pulled him away; while the companions of Federico Bayya apologized for their companion's conduct and also pulled away the latter. Thus, the trouble was peacefully settled and the two groups separated and continued walking along the road in the same direction. The second stage happened at the inter-section near the Kwik-Kway Engineering where the stabbing took place.

"As to who started the unlawful aggression in the second stage, the two sets of witnesses do not agree. The prosecution witnesses claim that when their group was at the intersection near the Kwik-Kway Engineering building, the accused suddenly attacked them with his knife and stabbed Rodolfo Cumarat and then Federico Bayya. The defense witnesses, however, testified that it was the group of the four men that first attacked the accused. They claim that Rodolfo Cumarat walked to the side of the accused, placed his arm on the shoulder of the accused and then boxed him on the back of his head and on his throat. The accused then ran but he was chased by the four men. When they were able to overtake the accused, they rained fist blows on all parts of his body and one of them clubbed him on the shoulders. The accused crouched and tried to parry the blows with his hand. Eufemia Calso told the accused to run but the latter could not run because he was wounded. The accused heard his attackers say that they were going to kill him, he remembered that he had his knife (bread slicer) tucked in his waist. He pulled it, closed his eyes and swung it indiscriminately against his attackers. Then he heard the whistle of a police-man and his assailants ran away. The policeman ran after his attackers and he also ran after the policeman to tell the latter his attackers. He did not, however, continue to run after the policeman and instead went to the house of his sweetheart, Eufemia Calso. He did not know if he was able to stab any of his attackers.

"The Court is not impressed by the testimony of the accused on this point and that of his sweetheart Eufemia Calso because they are full of contradictions and improbabilities.

"(1) The testimony of the accused that he ran away after he was boxed by Rodolfo Cumarat is contradictory to his sworn statement, marked Exhibit "3", in which he stated that after Cumarat boxed him, he immediately stabbed the latter.

"(2) The testimony at the trial of Eufemia Calso that the accused ran away after he was boxed by Cumarat is also contradictory to her sworn statement given by her to the police (Exhibit "1") and also to her testimony at the preliminary investigation (Exhibit "2") in which she stated that the accused did not run away.

"(3) The testimony of the accused at the trial that after he was overtaken by the four men, they boxed him and clubbed him and that he crouched to evade the blows is contradicted by his sworn statement, marked Exhibit "3", in which he stated that after Cumarat boxed him, he immediately stabbed the latter and when he saw that the companions of Cumarat were surrounding him he immediately attacked them by stabbing them indiscriminately, without stating that these companion boxed him and clubbed him.

"(4) The testimony at the trial of Eufemia Calso that it was Cumarat who first boxed the accused and then the former's companion also boxed and clubbed the latter is contradicted by her sworn statements, Exhibit "1" and Exhibit "2" in which she did not mention the boxing and clubbing of the accused by the other companions of Cumarat.

"(5) The testimony of the accused at the trial that the four men were armed is contradicted by his

aforementioned sworn statement, Exhibit "3", in which he did not mention any club at all. That the men had a club is also highly improbable and unbelievable because not one of them was armed with a club when they first met the group of the accused in front of the store of the Singer Sewing Machine and since the two groups walked together up to the intersection, it can safely be presumed that the four men were also unarmed when they reached the intersection since no evidence was presented to show that somebody else handed a club to one of the four men. Moreover, Eufemia Calso in her two sworn statements, Exhibit 'I' and Exhibit "2", stated that she did not notice any arm or weapon held by any of the four men. These statements also contradict Eufemia Calso's testimony at the trial that one of the four men was armed with a club.

"(6) The testimony of the accused at the trial that he suffered contusions on his face and other parts of his body is not only contradictory to his sworn statement, Exhibit "3", but also belied by the following facts: (a) he did not submit himself for medical treatment; (b) he was able to report for work as usual at 4:00 o'clock that same morning of July 26, 1972, only a few hours after the occurrence of the fatal incident; (c) he went to the municipal building at about 6:00 o'clock that same morning where he was investigated by the police, and nothing was mentioned about his physical condition or appearance during the investigation, which shows that the contusions that he claimed at the trial to have suffered is not true; otherwise, the police investigator would not have failed to notice said contusions, if any, and to ask him about it; (d) Eufemia Calso, in her aforementioned sworn statements did not also mention the wounds suffered by the accused.

"(7) If it is true as claimed by the accused that the four men ganged up on him, boxed him and clubbed him, it would seem unbelievable that the many people who were all around them on the road did not intervene to stop it by holding the alleged combatants and calling a policeman. An attack by several men did not seem to be probable on the crowded road, but a sudden and swift attack by a single person seemed possible.

"(8) The claim of innocence at the trial by the accused is negated by the fact that he ran away after having stabbed his victims and went to throw his knife away to another street and also by the fact that he did not surrender to the police right away." [9]

Even the respondent Court of Appeals added a piece of its opinion in withholding credence from the defense's version of the facts by stating that:

"Besides We are not quite con-vinced that the defense witnesses' story on the witness stand is a true recital of the incident as it really happened. x x x." [10]

In view of the foregoing, it is crystal clear that the defense's version of the facts, was discredited by both Courts a quo, proving without doubt that there was no un-lawful aggression on the part of the petitioner's victims. On the contrary, it was petitioner who was the unlawful aggressor. His pretension as to the presence of the second requisite of self-defense is obviously without basis.

The indemnity to the heirs of Federico Bayya is increased to P30,000.00

WHEREFORE, with the above modification as to the indemnity the petition for review on certiorari is hereby DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Sarmiento, JJ., concur.

[1] Pp. 273-274, Original Record.

[2] Article 11, paragraph 1, Revised Penal Code.

[3] Pp. 21-22, Rollo, pp. 6-7, Decision.

[4] Pp. 17-21, Rollo, CA Decision, pp. 2-6.

[5] Ibid., p. 23, Rollo.

[6] People vs. Talaboc, Jr., L-25004, October 31, 1969.

[7] People vs. Apolinario, No. 38562, October 18, 1933.

[8] 61 Phil. 786 (1935).

[9] Pp. 263-267, Original Record, Decision of the CFI.

[10] P. 22, Rollo, Decision of the Court of Appeals.

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