PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY SUMAGAYSAY AND BAMSON GAMELON, ACCUSED.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal of Randy Sumagaysay seeks for the reversal of the November 6, 2008 Decision rendered by the Regional Trial Court (RTC), Branch 61, Kabankalan City, Negros Occidental convicting him of Homicide in Criminal Case No. 2001-2844.

Factual Antecedents

Randy Sumagaysay (Sumagaysay) together with Bamson Gamelon (at-large) stand charged of Homicide pursuant in an Information[1] dated November 23, 2001, the accusatory portion of which is as follows:

> "That on or about September 21, 2001, in the City of Kabankalan, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, said accused, with intent to kill, conspiring, confederating and mutually helping one another, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab DANILO TREMBIBILIA y RAMOS, thereby inflicting injuries on the body of the latter which caused his death.
>
> CONTRARY TO LAW."

On January 7, 2002 (Sumagaysay) was arraigned in the Ilonggo dialect, which he spoke and understood. He, with the assistance of his counsel, entered the plea of "Not Guilty" to the crime charged.[2]

Trial on the merits against Sumagaysay only, ensued after the pre-trial conference on May 13, 2002[3]. His co-accused Bamson Gamelon remains at-large up to this date.

Version of the Prosecution[4]

On September 21, 2001 at around 8:00 in the evening in Purok 6, Barangay 1, Kabankalan City, Negros Occidental, Sumagaysay, who was armed with a bolo about two feet long, suddenly went to house of Danilo Trembibilia and challenged him to come out. Sumagaysay was moved with jealousy. He disliked that the victim would stay in his (Sumagaysay) house with only his wife around. Sumagaysay's wife pulled him away saying that the victim had done nothing wrong to her. After few minutes, Sumagaysay went back and pointed a bolo to Teofila Trembibilia (mother of Danilo) who was standing at the gate of the house. Seeing what the accused did to his mother, Danilo went down and chased Sumagaysay. Danilo tripped. Bamson Gamelon (co-accused) who was waiting, held both hands of Danilo as Sumagaysay stabbed the latter several times.

After he was stabbed, Danilo returned and told his mother, who met him, that he was stabbed. Danilo continued walking and later fell down. The two accused went near to stab Danilo again but seeing that the latter was already prostrate to the ground, the two went home. Danilo was brought to Riverside Hospital, Bacolod City and died after three days.

Version of the Defense[5]

In his testimony, Randy Sumagaysay, 30 years old, married and a resident of So. Utod, Brgy. Hilamonan, disavowed the accusation against him and invoked self-defense. He testified that he was working in the Public Market selling fresh fruits which he peddled around. He worked in the morning and went home after selling his goods. His wife had no work and only stayed at home.

Trembibilia (victim), who was a bachelor, lived just across Sumagaysay's house, some five arm's length away. Sumagaysay always saw Trembibilia in the market because the latter worked at the stockyard. The victim used to stay at Sumagaysay's house. Sumagaysay claimed that he did not permit the victim to stay in his place. He felt that the victim was in his house every time he was not around. His wife would go to their neighbor when the victim was in their house.

Sumagaysay warned the victim again after he was told that the latter was still staying in his house. Sumagaysay caught the victim sleeping in his house (on September 21, 2001). When he confronted the victim and warned him not to stay or sleep in his house, the victim, Trembibilia instead chased him with a bolo.

According to Sumagaysay, the victim was outside his house near the fence on the road. The fence was about two arm's length from his house and the victim an arm's length from the fence. The victim hacked him with the bolo but he parried the thrusts. Then, the victim hacked Sumagaysay's wife, thus prompting the accused to return and hack the former with a knife. Sumagaysay did not notice if the victim was hit because he ran away with his wife and sought refuge in the residence of his in-laws.

On November 6, 2008, the RTC rendered the assailed Decision, the decretal portion of which reads:

> "WHEREFORE, the Court finds accused Randy Sumagaysay guilty beyond reasonable doubt of the crime of Homicide as charged and applying the Indeterminate Service Sentence Law hereby sentences said accused to suffer the penalty of imprisonment of eight (8) years, as minimum to fifteen (15) years, as maximum, and to indemnify the heirs of Danilo Trembibilia the amount of P50,000.00 by reason of his death and to pay the cost.
>
> It is ordered that said accused be immediately remitted to the National Penitentiary.
>
> Let this case be placed in the archive to be revived upon the apprehension of accused Bamson Gamelon.
>
> SO ORDERED."

On November 14, 2008[6], Sumagaysay filed a Motion for Reconsideration and Motion to Reduce Bail. On November 20, 2008[7], the RTC modified the penalty due to the mitigating circumstance of voluntary surrender and denied the Motion to Reduce Bail. The accused then posted a cash bond[8] in lieu of the surety bond as the surety company was no longer accredited.

Aggrieved, the appellant filed his Notice of Appeal[9] on November 26, 2008.

Assignment of Error

Randy Sumagaysay (accused-appellant) interposes a lone assignment of error, that is:

> THAT THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT RANDY SUMAGAYSAY DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The accused-appellant expounds on this assigned error in his Brief by pointing out that since the victim died four days after occurrence of the incident, the possibility of his death to have resulted from other causes cannot be brushed aside. Before the victim's death can be attributed to him, it is paramount that its cause should be

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determined first. In this case, while the Medical Certificate was marked and referred to in the Decision, the issuing physician was never presented to establish the connection between the injuries sustained and the cause of death. The non-presentation of the doctor, while not raised as an issue in the RTC, does not preclude him (accused-appellant) from raising it in this appeal.

In addition, the testimonies of prosecution witnesses Teofila Trembibilla (sic) and Julieta Bantang are inconsistent and contradictory with each other. Teofila said that Bamson Gamelon, together with the accused-appellant, were waiting for her son Danilo (victim) who was running towards the house in Puntataytay. But Julieta said that the accused-appellant was chasing Danilo (victim). If Julieta was behind the victim, she could not have seen Bamson Gamelon.

Based on Teofila's account, it was her son (victim) who was poised to attack the accused-appellant with a bolo. The accused-appellant withdrew and took refuge in their residence upon seeing the victim going down with a bolo. Per testimony of the accused-appellant, the victim pursued him even when he (former) reached their residence. Once there, the victim hacked Bamson Gamelon (co-accused who is at-large) who intervened to pacify them. If ever wounds were inflicted upon the victim, it was reasonably necessary considering the impulsive actuation of the victim.

The Solicitor General posits the contrary in his Brief[10]:

> THE LOWER COURT DID NOT ERR WHEN IT FOUND APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE, DEFINED AND PENALIZED UNDER ARTICLE 249 OF THE REVISED PENAL CODE.

It is the Solicitor General's contention that all the elements of homicide are present in this case. The victim died as a result of the stab wounds he sustained from the concerted stab wounds inflicted by the accused-appellant and his co-accused and without justification for doing so.

The sequence of events frustrates accused-appellant's claim of self-defense. There was no unlawful aggression on the part of the victim. The mere act of sleeping in a neighbor's home, even when one had been repeatedly requested not to do so, while indeed shameless, is not the unlawful aggression referred to in the law. The accused-appellant and his co-accused were armed with deadly weapons which they used to repeatedly stab the victim. The location of the wounds which were concentrated on the victim's chest shows shows intent to kill. Also, there was sufficient provocation by the appellant when he, armed with a bolo, tried to force his way inside the victim's residence and in the process hit the victim's elderly mother.

On the assertion that the physician who attended the victim should have been presented, the Solicitor General states that this contradicts the accused-appellant's claim of self-defense. An accused who asserts self-defense admits his infliction of the fatal blows and bears the burden of establishing all the elements thereof. Besides, on the face of the Medical Certificate, it is apparent that the stab wounds inflicted by the accused are the proximate cause of the victim's death.

Contrary to the averment of accused-appellant that the testimonies of prosecution witnesses are riddled with inconsistencies and contradictions, these actually corroborate with each other. If the testimonies of the victim's mother and sister are read in their entirety, it would reveal that when the victim chased the accused-appellant, the latter “baited”[11] himself while Gamelon was waiting to strike. During that short period of time when the events unfolded, one should not discount the possibility that the witnesses were merely recounting the events at different times.

However, the Solicitor General asks that the Decision regarding the civil liability be modified to include moral

damages of P 50,000.00, temperate damages of P 25,000.00 with 6% interest thereon from finality of the judgment and with costs.

Our Ruling

We affirm the conviction of the accused-appellant.

In essence, the accused-appellant pointed out three exculpatory points that would warrant the reversal of his conviction, viz:

> 1. For failure to present the physician who issued the Medical Certificate, the cause of death of the victim has not been determined to have resulted from the injuries he sustained four days earlier on September 21, 2001.
>
> 2. The testimonies of prosecution witnesses Teofila Trembibilia and Julieta Bantang are inconsistent and contradictory. For instance, Teofila said that Bamson Gamelon, together with the accused-appellant, was waiting for her son Danilo (victim) who was running towards the house in Puntataytay. Julieta on the other hand said that the accused-appellant was chasing Danilo (victim).
>
> 3. If ever wounds were inflicted upon the victim, these were reasonably necessary considering the impulsive actuation of the victim. Teofila said that it was her son (victim) who was poised to attack the accused-appellant with a bolo. The accused-appellant withdrew and took refuge to their residence but the victim pursued him. There, the victim hacked Bamson Gamelon (co-accused).

The accused-appellant argues that he can raise the question on the cause of death even if it was not taken up in the judgment because as a rule, an appeal in a criminal case throws the whole case open for review.

There is no quibble about the observance of such rule in deciding a criminal case on appeal. What bothers Us is how it is made to appear from the sequence of the arguments that the cause of death is the core issue of this appeal.

Nowhere can We ascertain in accused-appellant's Brief, a clear elucidation of the theory of self-defense that he so assiduously advanced during the trial. As a matter of fact, We detect his lack of earnestness and the half-hearted approach in pursuing the theory as he has equated if not reduced the essential and indispensable element of unlawful aggression with the other element of reasonable necessity.

Self-defense in homicide and murder cases assumes a fact a priori that the killing of the victim is admitted by the accused. However, he attributes his killing to a justifiable cause, that is, that he acted in self-defense. In People v. Alfredo Gallego[12], the Supreme Court said- Where the accused interposes self-defense as a justifying circumstance, he thereby admits having killed the victim; the burden of evidence shifts from the prosecution to the accused to prove with clear and convincing evidence the confluence of the following essential requisites: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.

Logical reasoning entails that this admission of killing by the accused-appellant necessitates his acknowledgment of the cause of death of the victim. For him to deny the cause of death of the latter while admitting authorship of the killing is to engage in grave contradiction of his theory of self-defense. Such is the tenor of counter-argument raised by the Solicitor General. By asserting that he acted in self-defense, the accused-appellant admits his infliction of the fatal blows on the victim which led to the death of the latter. It does not matter if the physician who attended to the victim was not presented during the trial. The rule in People v. Alfredo Gallego[13] is again most applicable. The accused must rely on the strength of his own evidence and not on the weakness of the prosecution because even if the evidence of the prosecution are weak, the same can no longer be disbelieved after the accused has admitted killing the victim; hence, the conviction of the accused must ensue as a matter of

consequence.

What ought to be decisive in this case for homicide is thus whether the accused-appellant was able to adduce clear and convincing evidence to prove that he acted in self-defense. Perusing over the records, We agree with the finding of the trial court that the claim of self-defense is unavailing.

One. The evidence of unlawful aggression, which is a condition sine qua non in self-defense is not clear. We are not readily convinced that the victim is the unlawful aggressor just because the accused-appellant claimed that the former had chased him with a bolo and had hacked him with it. Obviously, the accused-appellant chose to be mum on the circumstances as narrated by Teofila Trembibilia, the victim's mother; that is, it was he, who entered in the house of Teofila and was the one who was carrying a bolo (plamingco)[14]. The accused-appellant was not also able to controvert Teofila's claim, that he came back to her house and challenged her son (the victim) again, thus, causing the latter to run towards the house in Puntataytay[15]. Exacerbating further the deficiency of his efforts to prove unlawful aggression, the accused-appellant did not rebut what Teofila said, that the victim told her that he was stabbed and ganged up by the two accused, Randy and Bamson[16].

For want of the requisites of a dying declaration, this statement made by the victim to his mother may be considered as part of res gestae. A declaration is deemed part of the res gestae and admissible in evidence as an exception to the hearsay rule, when the following concur: 1) the principal act, the res gestae, is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and 3) the statements concerned the occurrence in question and its immediately attending circumstances[17].

All the requisites of res gestae declaration are present in this case. The stabbing was a startling occurrence. Immediately after, while the victim was still under the exciting influence of the startling occurrence, the victim uttered the statement without any prior opportunity to contrive a story implicating the petitioner. Reverting to the issue at hand, We can deduce that the act of stabbing by the accused-appellant (and by his co-accused) could not be justified as self-defense as it conveys in fact the mens rea in homicide, the intent to kill the victim.

Two. It is significant to mention that the victim sustained multiple stab wounds[18], while the accused-appellant, none[19]. To Us, this physical fact equally contradicts the claim that the victim was the unlawful aggressor. The gravity and location of the wounds suffered by the victim is a clear indication of the appellant's determined effort to kill and not just to defend. In the assailed decision, the trial court cited as adequate authority, People v. Ganut[20] where the Supreme Court held that the nature and number of wounds inflicted by an assailant has been constantly and unremittingly considered important indicia which disprove a plea of self-defense.

Three. Anent the assertion that the testimonies of prosecution witnesses- Teofila Trembibilia and Julieta Bantang, are contradictory and inconsistent with each other, We agree with the Solicitor General's remark, that these two witnesses were merely recounting the incident from their point of view. If the testimonies are read entirely, it would show their personal knowledge of the incident, on how the confrontation ended up violently when the accused-appellant and his co-accused stabbed the victim. It does not diminish the credibility of Teofila and Julieta who are mother and sister, respectively of the victim. It is a fundamental precept that relationship per se does not ipso facto impair the credibility or tarnish the testimony of a witness[21].

Withal, We are mindful of what precipitated the incident. Thrice the accused-appellant caught the victim sleeping in their house and thrice the latter was warned; but the victim ignored these admonitions. He continued to intrude into the privacy of the accused-appellant and his wife. At times when the victim was around, the accused-appellant's wife opted to go to the neighbor's house just to avoid him. It was unavoidable for the accused-appellant to imagine these intrusions every time he was out. When he was told that fateful date that the victim still slept in their house and when the latter even taunted him if he wanted to fight, the accused-appellant

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became furious. In that moment of uncontrolled and obfuscated anger, the accused-appellant, armed with a bladed weapon, and with the assistance of his co-accused (Bamson Gamelon), attacked and stabbed the victim. For this reason, passion or obfuscation should be appreciated in favor of the accused-appellant. Passion or obfuscation is a mitigating circumstance because the offender who acts with passion or obfuscation suffers a diminution of his intelligence and intent[22].

In the assailed decision, the trial court merely noted that the accused-appellant, after the stabbing incident, ran away and sought refuge in the residence of his in-laws. It failed to consider the testimony of the accused-appellant that he surrendered to the police the following day. However, in its Order dated November 20, 2008[23], the trial court then took cognizance of the fact that the accused indeed surrendered after the incident and that such circumstance should be accorded in his favor. For purposes of determining the penalty to impose, voluntary surrender shall be taken also into consideration.

Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. However, paragraph 5, Article 64 of the Code states that xxx when there are two or more mitigating circumstances and no aggravating circumstances xxx the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

Due to the mitigating circumstances of passion or obfuscation and voluntary surrender, the penalty to be imposed is that next lower to reclusion temporal which is prision mayor. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty shall be that which, in view of the attendant circumstances, may be properly imposed, which in this case is prision mayor medium with an imprisonment range of eight years (8) and one (1) day, to ten (10) years. The minimum of the indeterminate sentence shall be the next lower degree which is prision correccional with a range from six (6) and one (1) day to six (6) years. Hence, the proper penalty to be imposed upon the accused-appellant is imprisonment of four (4) years and two (2) months of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.

The amount of civil indemnity shall be increased and moral damages shall be awarded. Based on current jurisprudence[24], the accused-appellant must pay P75,000.00 as civil indemnity and P75,000.00 as moral damages. Moreover, temperate damages[25] in the amount of P25,000.00 is proper since the victim was hospitalized for four days before he died.

The rule in People v. Torres, Sr.,[26] requires the imposition of interest at 6% on the damages awarded reckoned from the date the victim died up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid.

WHEREFORE, the November 6, 2008 Decision by RTC, Branch 61, Kabankalan City, Negros Occidental finding the accused-appellant Randy Sumagaysay guilty beyond reasonable doubt of Homicide is AFFIRMED with MODIFICATIONS as to the penalty and civil liability. The accused-appellant is imposed with the penalty of imprisonment of four (4) years and two (2) months of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum together with the accessory penalties under the law. Furthermore, he is ORDERED to pay civil indemnity and moral damages at P75,000.00 each, P25,000.00 as temperate damages with interest at 6% on the damages awarded to be reckoned from September 25, 2001, up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid. With costs against the accused-appellant.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

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[*] Designated as Acting Chairman of the Special Nineteenth Division per Office Order No. 013-14-GTI

[1] Records, p. 1

[2] See Order, January 7, 2002, Records, p. 38

[3] Records, p. 47.

[4] As culled by the trial court in the Decision.

[5] See Appellant's Brief which was culled from the assailed Decision.

[6] Records, pp. 213-216.

[7] Records, pp. 220-221.

[8] Records, p. 230.

[9] Records, p. 231

[10] Rollo, page 52-75.

[11] TSN, 15 January 2004, p. 7; footnote 45 in the Appellee's Brief.

[12] G.R. No. 127489, July 11, 2003.

[13] Supra.

[14] TSN, July 17, 2002, p. 6.

[15] Supra, p. 7.

[16] Supra, p. 9.

[17] Regalado, REMEDIAL LAW COMPENDIUM, VOL. II, 649-650 (2001); See also People v. Guillermo, 420 SCRA 326, January 20, 2004; People v. Dela Cruz, 412 SCRA 503, October 1, 2003; People v. Ignas, 412 SCRA 311, September 30, 2003; People v. Lobrigas, 442 SCRA 503, December 17, 2002 which are cited in Celestino Marturillas v. People of the Philippines, G.R. No. 163217, April 18, 2006.

[18] Exhibit “C”- Medical Certificate.

[19] TSN, August 29, 2001, p. 18.

[20] G.R. No. L- 34517, November 2, 1982, 118 SCRA 35.

[21] People v. Quilang, 312 SCRA 314 (1991) cited in People v. Job Cortezano, G.R. No. 140732, January 29, 2002.

[22] Luis B. Reyes, The Revised Penal Code, Criminal Law, Book One, Sixteenth Edition (2006), p. 295.

[23] Record, pp. 220-221.

[24] People v. Teofilo “Rey” Buyagan, G.R. No. 187733, February 8, 2012.

[25] See People v. Ferdinand Baluntong, G.R. No. 182061, March 15, 2010.

[26] G.R. No. 190317, August 22, 2011.

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