PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEXANDER LOZA Y ROMUALDO, ACCUSED-APPELLANT.

Ponente: VILLON, J.

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VILLON, J.:

This is an appeal[1] from the decision[2] dated August 31, 2010 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 253,[3] Las Piñas City in Criminal Case No. 07-0857 finding appellant Alexander Loza y Romualdo guilty beyond reasonable doubt of the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code (RPC), as amended.

The accusatory portion of the Information dated October 30, 2007 charging appellant of the crime of Homicide reads:

> "That on or about the 27[th] day of October, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable motive, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one SOLOMON DADOR y SABERON, by then and(sic) stabbing him several times with a fan knife on the different parts of his body (neck and trunk), thereby inflicting upon the latter mortal stab wounds which directly cause(sic) his death.
>
> CONTRARY TO LAW."[4]

Upon arraignment on November 20, 2007, appellant pleaded "not guilty"[5] to the offense charged. On December 4, 2007, the pre-trial of this case was terminated.[6] Hence, trial on the merits ensued.

The facts of the case, as summarized by the court a quo, are as follows:

> "The prosecution presented three (3) witnesses, namely, Myrna Vacal, Allan John Falcon, and Dr. Voltaire Nulud. Their testimonies were as follows –
>
> Myrna Vacal was the live-in partner of the victim Solomon Dador and the aunt of the accused Alexander Loza. In the evening of October 27, 2007, while she was then cooking in their house, she instructed her husband to get an electric fan from the multi-purpose hall which was about ten (10) meters away. When Dador returned, he was angry and said that he had an argument with Alexander Loza. Dador kept pacing their house, still angry. He and Loza threw invectives at each other when they met outside. A little later, Vacal saw Dador already holding a knife and ran out of the house. She ran after him but had to return because their child also followed. Thereafter, she saw Loza on top of Dador and was stabbing him. Loza stabbed Dador six (6) times. Vacal shouted at Loza, 'Alex, bakit mo ginagawa yan?' Loza was surprised and he came to his senses, stood up and ran away. As soon as Loza left, she went to her husband and found him already dead. In relation to the incident, Vacal incurred expenses of P70,000.00 for the wake, burial and medico-legal. She manifested that she would bring the receipts at the next hearing.
>
> Vacal identified the Death Certificate,[7] her Sinumpaang Salaysay,[8] and, the accused himself in open court.
>
> Allan John Falcon testified that on the said date and time, he was in line with the pedicabs in Ilaya Madrigal,

Las Piñas City. Loza sat beside him and later on Loza had an altercation with Dador. Falcon could not hear what the argument was about. When it ended, Loza sat beside Falcon again while Dador went home, holding an electric fan. Dador returned and stood in front of Loza, who was still sitting beside Falcon. Dador appeared to have been holding something behind him when he asked Loza what he wanted. Loza kept quiet and just looked at Dador. Thereafter, Dador pulled out a knife. Loza stood up while a woman pacified him. He likewise pulled out a knife and Dador ran away. Loza chased after Dador and Falcon saw Dador falling on the ground. Both Dador and Loza fell on the ground and they were stabbing each other. He tried to pacify the two but was too late.

Falcon identified Loza in open court and described the knife used by Loza to be about nine (9) inches long, including the handle. However, he did not see much of the knife held by Dador. On cross, Falcon agreed that it would seem that Dador provoked Loza to a fight.

Dr. Voltaire Nulud's direct testimony was stipulated by both parties as follows: that Dr. Nulud conducted a post-mortem examination on the cadaver of one Jose Dador; that after conducting the said post-mortem examination, he found out that the cause of death of the victim was stab wounds at the neck and trunk; and, that Dr. Nulud prepared a written report to this effect. Thereafter, Medico-Legal Report No. N-596-2007 was marked as Exhibit 'D.'

On cross, it was established that the victim was possibly on a moving position since the various injuries he sustained were located in front and the back of his body. The victim also had abrasions which indicated a scuffle.

During the hearing of April 14, 2009, the prosecution and the defense stipulated as to the existence of Exhibit 'A', the Sinumpaang Salaysay ng Pag-aresto executed by SPO4 Joey Maborrang and SPO1 John Baquiran. The said affidavit stated that the affiants were approached by Barangay Captain Vicente Miranda on October 28, 2010 with regard to the suspect for the stabbing of Solomon Dador named Alexander Loza. The said suspect was in Barangay Ilaya, Las Piñas City and he voluntarily surrendered to Brgy. Captain Miranda. The affiants brought Loza to the Las Piñas City General Hospital for medical examination then to the Las Piñas City Police Station for investigation.

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The defense presented its lone witness, the accused himself, Alexander Loza. He testified that in the evening of October 27, 2007, he was in front of the Day Care Center waiting to drive a pedicab. Everything was fine then he saw his uncle and asked about the conversation his uncle had with his mother. This made his uncle mad. Loza noticed that his uncle seemed drunk. When his uncle raised his voice at him, he walked away from him and sat at his usual place. He guessed that his uncle went home after that.

About five (5) minutes later, his uncle was suddenly coming towards him with a deadly weapon. Loza repelled his thrust and fell on the ground but his uncle did not stop and both of them fell on the ground. His uncle was holding the knife when Loza's aunt came and shouted his name and told him to stop. His uncle was still holding the knife then. When his aunt shouted, 'Tama na,' Loza left and did not turn back. He noticed that his uncle was covered with blood but the latter was still holding the knife. Loza likewise stated that he left the knife at the place of incident, that his uncle owned it and that he never got hold of the knife during the scuffle, and that his uncle was 40+ years old at the time of the incident. Also, he called his mother the next day and told her he is going to surrender.

The cross-examination revealed that the uncle referred to by the accused was Solomon Dador, the victim in this case. The weapon that his uncle was holding was a kitchen knife about a foot long, including the handle. According to Loza, his uncle made seven (7) thrusts of the knife. He held his uncle's hand on one hand while trying to wrestle for the possession of the knife with the other and then they both fell down and rolled on the ground. He never got hold of the knife so it was his uncle who inflicted on himself the wounds he sustained.

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> When he left the incident, he walked towards Bernabe Compound to his sister, Neneng Loza's house. When he got there, his sister already knew of the incident because their mother told her. His mother asked him what his decision was and he replied that whatever happened to his uncle, he will be responsible. He said that he could not go to the police or the barangay officials to report the incident because he cannot go out of the house as he was threatened by his uncle's relatives. He knew that he did nothing wrong that is why he asked his mother the next day to pick him up to go to the police to surrender.
>
> On re-direct, Loza said that he did not sustain injuries but was brought to the hospital for examination. He identified Temporary Medico Legal Certificate Hospital No. 516402 which was marked as Exhibit '1.'
>
> On re-cross, Loza agreed that the abrasions he sustained on his left hand, as indicated in the Temporary Medico Legal Certificate, was the result of the struggle between him and his uncle."[9]

After weighing the evidence presented, the RTC rendered the assailed decision, the dispositive portion of which reads:

> "WHEREFORE, premised from the foregoing, the Court finds the accused, ALEXANDER LOZA y ROMUALDO, GUILTY beyond reasonable doubt of the crime of Homicide, as charged in the Information.
>
> Accordingly, he is sentenced to suffer the indeterminate prison term of six (6) years and one (1) day to eight (8) years of prision mayor in its minimum period, as Minimum, to twelve (12) years and one (1) day to fourteen (14) years and four (4) months of reclusion temporal in its minimum, as Maximum.
>
> Costs de oficio.
>
> SO ORDERED."[10]

Hence the present recourse, appellant ascribing to the court a quo the following errors, to wit:

I.

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVED BEYOND REASONABLE DOUBT.

II.

> THE TRIAL COURT ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF DEFENSE.[11]

The appeal is bereft of merit.

The burden of proving the guilt of an accused rests on the prosecution. However, when an accused claims self-defense, the burden of proof shifts to him to establish by clear and convincing evidence the elements thereof, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent and repel it; and, (c) lack of sufficient provocation on the part of the person defending himself.[12] Self-defense as a justifying circumstance under Article 11 of the Revised Penal Code, as amended, implies the admission by the accused that he committed the acts which would have been criminal in character had it not been for the presence of circumstances whose legal consequences negate the commission of a crime.[13]

The most important among all the elements of self-defense is the element of unlawful aggression. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[14] Being a condition sine qua non for the justifying circumstance of self-defense, unlawful aggression contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical

force or with actual use of weapon. Of all the elements, unlawful aggression, i.e., the sudden unprovoked attack on the person defending himself, is indispensable.[15] A threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material aggression.[16] To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[17]

In the instant case, appellant invokes self-defense in order to exonerate himself from the penal consequences of killing the victim. It then becomes incumbent upon him to rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution, for even if the latter were weak, it could not be disbelieved after he had admitted the killing.[18] We agree with the Solicitor General's submission that appellant's theory of self-defense cannot prosper considering that the requisites thereof are not present in the instant case. The victim never attacked nor intended to attack appellant with his knife. This is made obvious by the fact that once appellant drew a knife, the victim immediately ran away. Thus appellant did not face any real or immediate threat to his life when he stabbed the victim.[19]

The testimony of prosecution witness Allan John Falcon (or “Falcon”), a local pedicab driver who saw the stabbing incident, lends credence to this view, thus:

“Q:

What happened next after Solomon went home?

A:

He was then looking at Alex and he stood in front of us.

Q:

And after this Solomon stood in front of Alex, what did Alex do, if any?

A:

Alex and I were still seated beside each other and Solomon was still in front of us.

Q:

What happened next after this Solomon went in front of Alex?

A:

Solomon was holding something at his behind and he asked what does he want.

Q:

To whom was he talking?

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A:

Alex, Sir.

Q:

What was the reaction of Alex when he was confronted by Solomon?

A:

None, Sir. He kept quiet and he was just looking at him.

Q:

What else happened after Alex ignored the actuation of Solomon?

A:

There was reaction, Sir, but when Alex saw Solomon pulling out a knife, that was the time Alex stood up.

Q:

What else did Alex do when he stood up?

A:

A woman pacified him.

Q:

Who was this woman you are referring to who pacified him?

A:

I forgot the name, Sir.

Q:

And after this woman pacified this Alex, what happened next?

A:

Alex likewise pulled out a knife, Sir.

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Q:

After Alex pulled out a knife also, what else did he do?

A:

When Solomon saw Alex pulled out a knife, he ran away, Sir.

Q:

What did Alex do after he saw this Solomon running away?

A:

I did not see much, Sir. What I saw was that Alex was chasing Solomon and I saw Solomon fell on the ground, Sir.

Q:

After you saw Solomon fell on the ground, what happened next?

A:

Both of them fell on the ground and I saw them stabbing each other.

Q:

What do you mean these two persons were stabbing each other?

A:

I saw them stabbing each other but Alex was the one who stood up.

Q:

Was Alex hit?

A:

I do not know, Sir.

Q:

What about Solomon, what happened to him?

A:

He was stabbed several times, Sir.

Q:

What did you do after you saw Alex stabbing Solomon several times?

A:

I intended to pacify both of them, Sir, but it was too late.

Q:

Mr. Witness, if you would see again this Alex you are referring to, would you be able to recognize him?

A:

Yes, Sir.

Q:

Will you please look around and point to him if he is present inside the courtroom?

A:

Yes, Sir.

Q:

By the way, would you describe that weapon which was used by Alex in stabbing Solomon?

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A: It was quite long. This long, Sir.

Acting Court Interpreter:

Witness demonstrating the length approximately –

Counsels?

Atty. Manalo:

Nine (9) inches including the handle.

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Pros. Mangrobang:

Q: How about the knife which was allegedly pulled out by Solomon, will you describe it?

A: I did not see much of it, Sir."[20] (emphasis ours)

To constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided must be imminent and actual, not merely imaginary.[21] Based on Falcon's version of the incident, although the victim pulled a knife in front of appellant, he did not use the same to stab appellant. It was appellant who suddenly took out his own nine-inch long bladed weapon and chased the victim, who reacted to appellant's actions by immediately running away from him. Thus, there is no clear and convincing proof that appellant acted in defense of his life, especially since he was never in actual danger or peril.

Moreover, appellant only sustained minor bruises to his body. He failed to state or explain any plausible reason as to why the victim was the only one who suffered major injuries in the altercation. Noteworthy is the fact that despite appellant's claim that the victim made seven (7) thrusts of his knife towards him, not a single wound was inflicted upon him. A plea of self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[22]

Then, too, the nature, number and location of the wounds sustained by the deceased belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.[23] The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence.[24] In this case, the post-mortem findings reveal that there were stab wounds suffered by the victim on the different parts of his body especially the neck and trunk.[25] These wounds are more than enough to disprove appellant's testimony that he was merely defending himself from the victim's attacks. As aptly found by the court a quo:

> "It is clear from the evidence presented and the testimonies given that Solomon Dador died from the stab wounds sustained during the struggle with Alexander Loza, accused herein. The killing was not justified. Since the victim died, the intent to kill is presumed. Evidence of intent to kill is important only in attempted or frustrated homicide. The killing of Dador was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. All the requisites then are present. The accused committed Homicide."[26]

In view of the fact that appellant failed to clearly establish, prove and substantiate the existence of unlawful aggression as regards the victim, his plea of self-defense must necessarily fail. Indeed, the totality of the evidence on records proves with moral certainty that appellant committed the crime of Homicide.

Time and again, it has been held by the Supreme Court that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.[27]

However, the lower court erred in the imposition of the correct penalty despite its proper appreciation of the two (2) ordinary mitigating circumstances, which are a) voluntary surrender and b) sufficient provocation or threat on

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the part of the victim that immediately preceded the act.[28]

Art. 64 of the RPC provides:

> "Art. 64. Rules for the application of penalties which contain three periods. x x x
>
> 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, 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."

The penalty for homicide is reclusion temporal, hence the penalty next lower in degree which is imposable in the case at bar is prision mayor. Pursuant to the Indeterminate Sentence Law, herein applicable, the minimum term of the penalty that should be imposed on appellant should be within the range of prision correccional in any of its periods or from 6 months and 1 day to 6 years, while the maximum term thereof should be within the range of prision mayor in its medium period or 8 years, 8 months and 1 day to 9 years and 4 months.

Finally, according to Article 100 of the RPC, every person criminally liable for a felony is also civilly liable. Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In cases of murder and homicide, civil indemnity of P75,000.00 and moral damages of P50,000.00 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide.[29]

Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved."[30] The award of P25,000.00 as temperate damages is proper when no evidence of burial and funeral expenses is presented in the trial court. Thus, in lieu thereof, we hereby award to the heirs of the victim, the amount of P25,000.00 as temperate damages.

In line with recent jurisprudence, the grant of exemplary damages in the amount of P30,000.00 is proper in this case.[31]

WHEREFORE, in light of all the foregoing, the decision dated August 31, 2010 of Branch 253, RTC of Las Piñas City in Criminal Case No. 07-0857 finding appellant Alexander Loza GUILTY beyond reasonable doubt of the crime of Homicide, is hereby AFFIRMED with MODIFICATIONS in that appellant is hereby sentenced to suffer the indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor as maximum. Appellant is further ordered to pay the heirs of the victim the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages and P25,000.00 as temperate damages, plus interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.[32]

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Macalino, F.S., and [*]Dimagiba, L.R., JJ., concur.

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[*] Acting Junior Member per Office Order No. 60-14-RDS dated February 24, 2014.

[1] Rollo, pp. 26-43.

[2] Rollo, pp. 11-17.

[3] Hon. Salvador V. Timbang, Jr., Presiding Judge.

[4] Records, p. 1.

[5] Records, pp. 15-16.

[6] Records, pp. 20-21.

[7] Exhibit “C”

[8] Exhibit “B”

[9] Rollo, pp. 12-15.

[10] Rollo, p. 17.

[11] Rollo, p. 28.

[12] People of the Philippines v. Antonio Samudio y. Loresto, G.R. No. 126168, March 7, 2001.

[13] People v. Eduardo Gonzales, G.R. No. 195534, June 13, 2012.

[14] People v. Rogelio Dolorido y Estrada, G.R. No. 191721, January 12, 2011.

[15] People v. Susano Pateo y Garcia, G.R. No. 156786, June 3, 2004.

[16] People v. Jimmy Rubiso, G.R. No. 128871, March 18, 2003.

[17] Manuel O. Oriente v. People, G.R. No. 155094, January 30, 2007.

[18] People v. Elmer Damitan y Mantawel, G.R. No. 140544, December 7, 2001.

[19] Rollo, pp. 70-71.

[20] TSN, May 27, 2008, pp. 37-43.

[21] People v. Ausencio Comillo, Jr., G.R. No. 186538, November 25, 2009.

[22] Rodolfo Belbis, Jr. y Competente v. People, G.R. No. 181052 , November 14, 2012.

[23] People v. Bonifacio Aliben, G.R. No. 140404, February 27, 2003.

[24] People v. Clarence Astudillo, G.R. No. 141518 , April 29, 2003.

[25] Records, p. 68.

[26] Rollo, p. 16.

[27] People v. Wenceslao Nelmida, G.R. No. 184500, September 11, 2012.

[28] Art. 13 (4) & (7) of the RPC

[29] People vs. Elarcosa, G.R. No. 186539, June 29, 2010

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[30] People vs. Gidoc, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837

[31] People v. Ofemiano, G.R. No. 187155, February 1, 2010; citing People v. Pabol, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[32] People vs. Hatsero, G.R. No. 192179, July 3, 2013

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