

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HILARIO GEMENTIZA, ACCUSED-APPELLANT.

G.R. No. 106635. February 18, 1994

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Hilario R. Gementiza alias Lario was charged with the crime of MURDER in an information which reads as follows:

"That on or about the 5th day of January, 1991, in the municipality of Antequera, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable cause, with treachery and abuse or taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and strike/stab one Leon Gementiza with the use of a sharp-edged, sharp-pointed weapon thereby inflicting fatal injuries upon the vital parts of the body of the victim which resulted in the latter's death to the damage and prejudice of the heirs of the victim."[1]

Accused-appellant was arraigned and entered a plea of "NOT GUILTY". After due trial, he was found guilty of the offense charged in a decision[2] dated September 12, 1991 of the Regional Trial Court of Tagbilaran City, Branch 1 in Criminal Case No. 6994, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court finds the accused Hilario Gementiza GUILTY of the crime of Murder punished under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua with the accessories of the law and to pay the cost.

"The accused Hilario Gementiza is further ordered to indemnify the widow of Leon Gementiza, Alicia Apayor Gementiza, in the amount of Thirty Thousand Pesos (P30,000.00) representing damages, without subsidiary imprisonment in case of insolvency.

"The bolo which was used in the commission of the crime is hereby ordered forfeited in favor of the government."[3]

The facts, as borne out from the records, are as follows:

At about 3 o'clock in the afternoon of January 5, 1991, accused-appellant and his brother, Leon Gementiza, attended the Burial Mutual Aid meeting in the house of Francisco Samante at Villa Aurora, Antequera, Bohol. During the meeting, accused-appellant, who was sitting beside Cresencio Anoba, suddenly stood up and repeatedly stabbed his brother to death with a bolo. Cresencio Anoba immediately left after the incident. Shortly thereafter, accused-appellant caught up with Cresencio Anoba and told him: "My younger brother who is considered to be bad boy is already dead."[4]

On January 7, 1991, Dr. Rufino Loquere conducted an autopsy examination of the victim and issued a Post Mortem Report which reads as follows:

"1. Stabwound, 3 cm. long, chest, left, along the lateral border of the lower end of the sternum directed

laterally downward and posteriorly hitting the heart.

"2. Stabwound, 3 cm. long, chest, right, along the right lateral border of the lower end of the sternum, opposite and 2 cm. above the level of wound No. 1 directed medially downward and posteriorly hitting and causing injury to the heart.

"3. Stabwound, 2 1/2 cm. long, chest, at the mid sternum upper third, directed downward, and laterally to the left, 3 inches deep.

"4. Stabwound, 1 cm. long, 2 inches deep, abdomen right, at the lower border of the 12th rib midline.

"5. Stabwound, 1 cm. long, thorax, left side, along the mid axillary line, at the level slightly below the left nipple.

"6. Stabwound, 1 cm. long, thorax, left side, 2 cm. below wound No. 5.

"Cause of death: Cardio respiratory arrest due to multiple stabwounds [in the] chest and abdomen."[5]

Accused-appellant declared that he killed his brother in self-defense and testified that in the afternoon of January 5, 1991, he and his brother, Leon Gementiza, were attending a meeting when the latter, who was drunk and had a bolo tucked on his waist, took his (Leon's) son from accused-appellant's lap and told him: "Do not get near him because I will kill him." [6] Thereafter, Leon Gementiza went to the kitchen and came back with a jar which he dropped in front of accused-appellant and said: "Who desire to fight and be killed?" [7] Before Leon Gementiza could pull out his bolo, accused-appellant suddenly stood up and stabbed his brother. Accused-appellant further testified that he and his brother were not in good terms since 1969. In fact, his brother was convicted for stabbing his right hand sometime in 1989.

The appeal is devoid of merit.

Whether or not accused-appellant acted in self-defense is essentially a question of fact. Being so and in the absence of any showing that the court a quo failed to appreciate facts and circumstances of weight and substance that would have altered its conclusion, the court below, having seen and heard the witnesses during the trial, was in a better position to evaluate their testimonies. No compelling reason, therefore, existed for this Court to disturb the trial court's findings that appellant did not act in self-defense. [8]

Paragraph 1, Article 11 of the Revised Penal Code provides:

"Art. 11. Justifying circumstances. --The following do not incur any criminal liability:

"1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

"First. Unlawful aggression;

"Second. Reasonable necessity of the means employed to prevent or repel it;

"Third. Lack of sufficient provocation on the part of the person defending himself."

In the instant case, accused-appellant has not proved the first requirement of self-defense which is a condition sine qua non. [9] The prosecution has clearly established that accused-appellant suddenly stood up and approached the victim who was seated near the "aparador". Thereafter, he placed his right hand on the breast of the victim and stabbed the latter to death. The fact that a bolo was found in the person of the victim does not signify that the victim attempted to use it against accused-appellant. Likewise, the larger bolo found in the body of the victim as compared to the bolo used by the accused-appellant is immaterial because the victim never had the chance to use his bolo as he was held down by the accused-appellant. Consequently, there was no unlawful aggression on the

part of the victim which would have justified the killing by the accused-appellant. Moreover, Cresencio Anoba who was about three (3) meters away from the stabbing incident also testified that:

"Q:

During the meeting, did you notice any unusual incident?

x x x x x x x x

A:

This Hilario Gementiza sitting at my side immediately stood and walked towards his brother Leon Gementiza and placed his right hand on the breast and stabbed Leon.

x x x x x x x x

Q:

What was the position of Leon Gementiza at the time he was attacked and stabbed by his brother Hilario Gementiza?

A:

He was sitting near the "aparador".

Q:

And at the time he was attacked, was Leon Gementiza able to stand up?

A:

Leon Gementiza was not able to stand up because he was covered by the right hand of Hilario Gementiza and stabbed him.

COURT:

How was the attack done, with force? Was the attack done with force?

A:

Yes, it is by force and the stabbing was in force and Hilario Gementiza stabbed several times this Leon Gementiza.

COURT:

When the stabbing occurred, were you able to notice the facial expression of the accused?

A:

I did not notice the facial expression of Hilario Gementiza.

Q:

But you are very sure that the stabbing was with full force?

A:

Yes, Your Honor because I really see the actual stabbing.

Q:

And was Leon Gementiza able to defend himself from the stabbing blow directed on his body by Hilario Gementiza?

A:

He was not able to defend himself because he was already covered by the right hand of Hilario Gementiza." [10]

(NOTE: "SIC" not used to avoid cluttering up the testimony)

We have time and again ruled that when an accused admits having killed his victim, but invokes self-defense, the burden of proving the elements of that defense by clear and convincing evidence lies with the accused. [11] Inasmuch as the un rebutted testimonies of the prosecution witnesses indicate that there was no unlawful aggression on the part of the victim, accused-appellant's plea of self-defense must necessarily fail. For self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack on the person of the defendant that placed him in danger, thereby forcing him to repel the attack and to inflict more or less severe wounds upon his assailant employing reasonable means therefore to resist the same. [12]

The evidence on record does not show any unlawful aggression on the part of the victim. Therefore, accused-appellant has nothing to prevent or repel. Not only was there an absence of unlawful aggression in the case at bar, but the claim of self-defense is likewise negated by the physical evidence. Accused-appellant suffered no harm or injury physically. The number and nature of the wounds inflicted on the victim proved that if at all, the attack came from the accused-appellant. The victim had no chance to defend himself even if armed. Besides, the Solicitor General has aptly pointed out that:

"Although motive is generally not essential for the conviction of an accused, the existence thereof can be used to establish that the accused killed his brother out of vengeance or out of sheer anger and not in self defense. The accused himself testified that he and Leon were not in good terms. In fact, sometime in 1989, the accused had a fight with Leon, as a result of which, the accused's right hand, wrist and fingers were injured. The accused also testified that he and his brother also had a fight when Leon climbed and gathered coconut from the plantation which belonged to the accused. The accused also narrated an incident where the deceased forced their parents to dance at gunpoint. All these must have taken its toll on the accused which made him decide to kill his brother. Thus, what the accused did was not improbable considering the enmity between the two brothers." [13]

WHEREFORE, finding the guilt of the accused-appellant to have been established beyond reasonable doubt for the crime of MURDER, the decision appealed from is hereby **AFFIRMED** with the modification that the indemnity to be paid to the widow of the victim be increased to P50,000.00.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Rollo, p. 7.

[2] Penned by Judge Antonio H. Bautista.

[3] Rollo, pp. 16-17.

[4] T.S.N., August 7, 1991, at p. 27.

[5] Folder of the Record of Documentary Evidence, Exhibit "B", p. 1.

[6] T.S.N., August 21, 1991, at p. 6.

[7] Id., at p. 7.

[8] People vs. Binondo, 214 SCRA 764 [1992].

[9] People vs. Gutierrez, 208 SCRA 206 [1992].

[10] T.S.N., August 7, 1991, pp. 24-26.

[11] People vs. Binondo, *supra*.

[12] People vs. Caling, 208 SCRA 816 [1992].

[13] Rollo, pp. 14-15.

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