

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY NALANGAN, ALIAS GERRY BUKOL, ACCUSED-APPELLANT.

G.R. No. 117218. March 20, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Adjudged guilty by the Regional Trial Court, Branch 19, of Bacoor, Cavite of the crime of murder in Criminal Case No. B-89-93, accused-appellant Gerry Nalangan, alias Gerry Bukol, predicates his present appellate recourse on self-defense. He seeks to bolster that apologia with the supposed unreliability of the prosecution witnesses, especially their version of the events upon which the trial court grounded its affirmative nod on the prosecution's cause.

The initiatory criminal information, dated March 9, 1989, imputed the murder subject of this case to appellant, the pertinent portion thereof alleging -

That on or about 11:30 p.m. of February 28, 1988, at the vicinity of Block 14 and 15, Barangay Ramon Cruz, Municipality of General Mariano Alvarez, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a kitchen knife, with intent to kill and with treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously assault, attack and stab with the use of the aforesaid weapon Emmanuel Rosal on the stomach, thereby inflicting upon the latter a mortal wound which caused his death.[1]

Appellant, duly assisted by counsel, registered a negative plea at his arraignment on July 5, 1989.[2] At the trial conducted thereafter, the prosecution presented as its witnesses Rogelio Alvarez, Jose Samone, Jr., Constancia Rosal, Pat. Roland Alamo, and Dr. Ruben Maranan. Appellant himself testified in his defense, without corroboration from any other witness to buttress his asseverations. On November 29, 1993, the court *a quo* rendered its condemnatory verdict sentencing appellant to suffer the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim in the amount of P30,000.00 for the latter's death, P10,000.00 for hospitalization and funeral expenses, and to pay the costs. Appellant was credited with the period of his preventive imprisonment caused by his failure to post bail.[3]

Prosecution witnesses Rogelio Alvarez and Jose Samone, Jr., both of whom were townmates and common friends of the victim and appellant, narrated before the trial court that at around 11:30 in the evening of February 28, 1989, they had just adjourned from a drinking spree with said victim and appellant. They were about to go their separate ways when they observed Nalangan, who was holding a knife, running away from the wobbling victim. Emmanuel Rosal shouted that he had been wounded. When these two witnesses rushed to the succor of Rosal, the victim told them that appellant had stabbed him, and asked them to bring him at once to a hospital for treatment. The stabbing incident occurred at a well-lighted place in the vicinity of Blocks 14 and 15 in Barangay Roman Cruz, General Mariano Alvarez, Cavite, and the witnesses were just a short distance away from the protagonists at the time. The victim was hospitalized for about two weeks before he expired, apparently on account of the wound inflicted by appellant.[4]

Appellant's own story is that it had all begun from a scuffle between him and the victim. He was then on his way home after watching television at a friend's house when the victim accosted him and tried to extort P20.00 from him. When he refused, Rosal insisted on selling to him a plastic bag containing marijuana. When appellant again declined, the victim assaulted him with blows from the handle of a knife. Appellant tried to fight back and, in the ensuing affray, the knife fell from the victim's hand. Appellant picked up the knife and attempted to run away but the victim grasped his shirt and began to choke him. At this point, appellant thrust the knife into the victim's stomach and then scampered away. He insists that he stabbed the deceased to save his life.[5]

Appellant imputes error on the part of the trial court (a) when it gave full weight and credence to the testimonies of the prosecution witnesses and totally disregarded his own testimony; (b) when it held that there was no unlawful aggression on the part of the deceased and that appellant's life was never placed in danger; and (c) when it convicted him in spite of the failure of the prosecution to establish his guilt beyond reasonable doubt.[6]

Evidently, all the assigned errors revolve on the question of credibility. In that regard, resort to appellate review to reverse the findings thereon of the trial court would generally elicit a rebuff from the superior court where no perceivable gross error bordering on misapprehension of the facts could be readily gleaned from such factual conclusions.[7] In appellant's case, while the trial court apparently misappreciated treachery and evident premeditation against him, his guilt for homicide in the slaying of Emmanuel Rosal, and not murder as found by the court below, is indisputably borne out by the evidence on record.

The justifying circumstance of self-defense, to vindicate an accused relying thereon, must be proved clearly and convincingly, and it is not for an accused asserting its presence in his case to bank on the weakness of the People's evidence. Once invoked by the accused, the burden of proof is shifted to him to establish the elements of the same, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[8]

The incident recounted by appellant, which is uncorroborated and thus self-serving, is that an altercation occurred between him and the victim at the instance of the latter, immediately prior to the stabbing. The two prosecution witnesses, Rogelio Alvarez and Jose Samone, Jr., to whom no ill motives had ever been attributed, were however unequivocal in their testimonies that no such squabble ever transpired between the two. On the contrary, Alvarez stated that minutes before the stabbing, as he and appellant were on their way to join the group of the deceased, appellant had intimated that he was going to inflict some harm on the person of the victim and that he was then armed with a knife.

That appellant did just that appears to be beyond question for, indeed, the victim later sustained a fatal wound on the stomach, inflicted no doubt by appellant who fled shortly thereafter from the scene of the incident. By his flight, appellant's claim of self-defense was exposed as a mere subterfuge since he had no reason to flee considering that the persons present there were his friends. It could not even be suggested to an acceptable degree that he had to escape from his antagonist since the latter had by then been rendered hors de combat.

While it may be conceded that the two witnesses for the prosecution did not actually see the very act of stabbing, the concatenation of the events immediately prior to and after the victim shouted that he had been hit confirms the criminal plan hatched by appellant. As further observed by the Solicitor General, appellant emerged unscathed from the supposed struggle despite his claim that the deceased had boxed and also struck him with the handle of the knife and, on top of that, even choked him. In any case, it has been held that in the absence of evidence showing that the victim was the unlawful aggressor at the start, the law will consider the aggression as reciprocal between the combatants.[9]

Upon the other hand, the evidence on record fails to bear out the presence of treachery and evident premeditation,

both of which cannot be simply presumed or speculated upon. For alevosia to be considered, it must be established as clearly as the elements of the crime or crimes it is alleged to qualify.[10] And, as with treachery, evident premeditation must likewise be proved with as much certainty and clarity as the criminal act itself.[11] Absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated.[12] In the case of appellant, as already noted, the prosecution witnesses had not actually seen the stabbing of the victim. Hence, it could not just be assumed that appellant had coolly and deliberately adopted treacherous means to take the victim's life.

Evident premeditation could not also qualify the slaying of Emmanuel Rosal, since there was no evidence of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow the accused time to reflect on the consequences of his act.[13] Here, although there is evidence showing that appellant had harbored an evil design against the victim, the time within which he made known that plan to Alvarez until the stabbing of the victim, which involved an interval of only a few minutes, could not have afforded appellant a sufficient opportunity for reflection on the consequences of his criminal plan. Thus, the crime committed by appellant, given these factual considerations, is homicide and not murder.

ACCORDINGLY, the judgment appealed from is hereby MODIFIED. Accused-appellant Gerry Nalangan, alias Gerry Bukol, is declared guilty of simple homicide and is hereby sentenced to suffer an indeterminate prison term of ten (10) years, of prison mayor in its medium period, as the minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as the maximum. Further, the death indemnity for the victim is hereby increased to P50,000.00 in accordance with present case law. In all other respects, the judgment of the court a quo is hereby AFFIRMED.

SO ORDERED.

Romero, Puno, Mendoza, and Torres Jr., JJ., concur.

[1] Original Record, 42.

[2] Ibid., 45.

[3] Ibid., 126-127.

[4] TSN, July 24, 1989, 3-12; November 14, 1989, 2-8; December 20, 1989, 2-11.

[5] Ibid., July 11, 1990, 2-5; September 11, 1990, 2-7.

[6] Appellant's Brief, 1; Rollo, 33.

[7] People vs. Sanchez, G.R. Nos. 98402-04, November 16, 1995, 290 SCRA 14; People vs. Salodaga, et al., G.R. No. 106784, August 7, 1995, 297 SCRA 98.

[8] People vs. Ronquillo, G.R. No. 96125, August 31, 1995, 247 SCRA 793; People vs. Aliviado, G.R. Nos. 113783-84, August 14, 1995, 247 SCRA 300; People vs. Morin, et al., G.R. No. 101794, February 24, 1995, 241 SCRA 709.

[9] Bitalac vs. Court of Appeals, et al., G.R. No. 45835, February 15, 1995, 241 SCRA 351.

[10] People vs. Rosario, et al., G.R. No. 108789, July 18, 1995, 246 SCRA 659.

[11] People vs. Barros, G.R. Nos. 101107-08, June 27, 1985, 245 SCRA 312.

[12] People vs. Patamama, G.R. No. 107938, December 4, 1995, 250 SCRA 603.

[13] People vs. Gauzagan, Jr., G.R. No. 113793, August 11, 1995, 247 SCRA 220; People vs. De la Cruz, G.R. No. 111968, March 2, 1995, 242 SCRA 129.

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