

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSEPH CAJURAO, APPELLANT.

G.R. No. 122767. January 20, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of South Cotabato, Branch 26, convicting the appellant Joseph Cajurao of murder; sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the heirs of the victim Santiago Betita P50,000 as civil indemnity and P20,000 as actual damages.

On December 22, 1993, an Information was filed charging the appellant of murder, the accusatory portion of which reads:

That on or about the 29[th] day of November, 1993 at Poblacion, Municipality of Surallah, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery did then and there willfully, unlawfully and feloniously attack, assault and stab SANTIAGO BETITA with a sharp pointed-bladed instrument hitting and wounding him on the breast which caused his death thereafter.

CONTRARY TO LAW.[2]

On January 21, 1994, the appellant was arraigned with the assistance of his counsel and pleaded not guilty to the crime charged.[3] Trial thereafter ensued.

The Case for the Prosecution[4]

On November 29, 1993, the residents of Poblacion, Surallah, South Cotabato were in a festive mood. There was carnival in the municipal plaza. The Sangguniang Kabataan had also sponsored a disco that evening to be held in the Poblacion's Civic Cultural Center gymnasium. Pacita Pordios put up a stall in front of the gym for the sale of candies, soft drinks and other assorted items. She filled a flat bottle of Tanduay with kerosene and placed a wick thereon. She used the makeshift lamp to light up her stall.[5]

The appellant Joseph Cajurao and his friend Allan Dañosos went to the dance hall. Felix Teruel and Nena Carmelo were then manning the gate and the ticket booth. Since Cajurao and Dañosos had no tickets, they were not allowed to enter. The appellant and Dañosos tarried within the vicinity and repeatedly tried to enter the hall without tickets, to no avail.[6]

At about 10:30 p.m., Pordios was surprised when Santiago Betita suddenly arrived at her stall. When he took the "lamp" that illuminated her wares, she got angry and confronted him. Pordios asked him why he took the lamp, but Betita ignored her and held on to the lamp in a defensive stance. Betita appeared perturbed. Shortly thereafter, someone threw a stone, prompting people to scamper away. Still holding on to the lamp, Betita moved over to the stall beside Pordios. Suddenly, the appellant sped towards Betita and stabbed him on the right nipple. Betita fell to the ground. The appellant then threw his knife away and fled.[7]

Domingo Tecson, a civilian volunteer assigned to take charge of the peace and order situation in the area, was then on patrol. He saw the appellant pass by, running. He looked towards the direction where the appellant had come from and saw Betita slumped on the ground, mortally wounded. Tecson rushed to where Betita was and shouted for help. He instructed his fellow volunteers to run after the appellant and collar him. After a brief chase, the appellant was caught by a volunteer in the carnival ground and was thereafter turned over to the police authorities.[8]

Tecson went back to the crime scene to look for the weapon the appellant used to kill Betita. With the aid of the light from a nearby fire truck, he found the knife and its scabbard. Tecson turned the weapon over to the police.[9] Pordios and Tecson gave their respective statements to PO3 Lino D. Antonino.[10]

Dr. Rolando P. Arrojo, the Municipal Health Officer, signed the Certification of Death showing that Betita died due to:

- Severe internal hemorrhage resulting to shock then cardiac arrest.
- Stab wound, right chest.[11]

Valentina Betita, the victim's mother, spent P20,000 for the wake and burial of her son.

The Case for the Appellant

The appellant admitted stabbing and killing Betita but claimed that he did so to defend himself. He testified that at 9:00 a.m. on November 29, 1993, he and his friend Allan Dañosos went to the dance at the Civic Cultural Center gymnasium. The appellant saw Betita enter the gymnasium. He was nonplussed when Betita shouted at him, "Putang ina ka, ari pa na, nakit-an na ta!" Betita also accused him of being a braggart and a liar. The appellant asked Betita what his gripe was against him.

At about 10:00 p.m., the appellant went out of the gym and seated himself on a concrete bench nearby, beside the trunk of a mango tree. Betita followed and shouted at him saying, "When you are in a group you are a braggart. Now, we are here outside." The appellant remonstrated, saying, "Boy, what is this?" Betita retorted, "You came here just to look for trouble!" The appellant stood up and was about to leave, but Betita slapped him on the face. Betita then fled to the stall of Pordios and took hold of the makeshift lamp. As he was about to throw the lighted lamp at the appellant who was about four meters away, the latter walked slowly to Betita and asked, "Why did you slap me, Boy?" The appellant pushed Betita's hand aside, the hand that held the lamp, and pulled out a knife from his waist. The appellant then stabbed Betita on his right nipple. He threw his knife in a grassy area and fled from the scene.

Nanette Evangelista testified that on that fateful evening, she and Pacita Pordios put up their stalls within the periphery of the gymnasium where the dance was being held. Her wares included assorted items like candies, biscuits, soft drinks and cigarettes. Her stall was about four meters away from that of Pordios. Before 10:00 p.m., Nanette, Melinda Rojas and their friends, decided to join the disco in the gymnasium. Nanette asked someone to man the stall in the meantime. She then saw Santiago "Boy" Betita, the appellant and Allan Dañosos dancing inside the gymnasium. The two had an argument. By about 10:30 p.m., Nanette left the gymnasium, went outside and proceeded to the mango tree, about seven meters away from the gymnasium. She then talked to a friend, Arlene Mendoza.

After about half an hour, the appellant and Allan Dañosos emerged from the gymnasium and went to the concrete bench near the trunk of the mango tree, about two meters from where Nanette and Arlene Mendoza had seated themselves. Betita arrived and approached the appellant, pointing at the latter. The appellant stood up. Betita then slapped the appellant on the face. The appellant was about to retaliate but Betita fled towards the stall of Pordios,

about three meters away from the concrete bench. He took hold of the “Tanduay lamp” and was about to throw it at the appellant but the latter, armed with a knife, ran towards Betita and stabbed him on the chest.

After trial, the court a quo rendered judgment on January 19, 1994, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the court finds the accused Joseph Cajurao guilty beyond reasonable doubt of murder and hereby sentences him to the penalty of reclusion perpetua and to indemnify the heirs of the victim Santiago Betita the sum of P50,000.00 for the victim’s death and P20,000.00 actual expenses in relation to said death of the victim.

SO ORDERED.[12]

The trial court rejected the appellant’s defense and concluded that he failed to present clear and convincing evidence to prove that he killed Betita in self-defense. It gave credence and full probative weight to the testimony of the witnesses for the prosecution, that the appellant stabbed the defenseless victim. It also appreciated the presence of treachery, qualifying the crime to murder.

The appellant appealed the decision with the lone assignment of error, to wit:

1. The Honorable Court a quo gravely committed error in finding the accused guilty of the crime of MURDER.[13]

The appellant contends that the trial court erred in giving credence and full probative weight to the testimony of the prosecution witnesses, more particularly to those of Tecson and Pordios, and in ignoring his testimony and that of Evangelista. The appellant contends that he stabbed Betita because the latter took hold of the “Tanduay lamp” on the stall of Pordios and was about to throw it at him. This impelled the appellant to rush to where Betita was. Before the lamp could be thrown at him, he stabbed Betita. According to the appellant, the victim’s act of slapping him and attempting to throw the lighted lamp at him constituted unlawful aggression on the part of the latter. Thus, there was no provocation on his part; the means he used to repel the unlawful aggression of Betita was reasonable.

We do not agree with the contention of the appellant.

First. Like alibi, self-defense is a weak defense because it is easy to fabricate.[14] When the accused interposes self-defense, he thereby admits having killed the victim. The burden of proof is shifted on him to prove with clear and convincing evidence the confluence of the essential requisites of a complete self-defense, namely: (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.[15] The accused must rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution; because even if the prosecution’s evidence is weak, the same can no longer be disbelieved.[16] The appellant failed to discharge his burden.

Second. The trial court found the collective testimonies of the witnesses for the prosecution to be credible, while those of the appellant and Evangelista, incredible and barren of probative weight. The legal aphorism is that the factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight is given high respect if not conclusive effect, unless the trial court ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which if considered will alter the outcome of the case. We have meticulously reviewed the records and found no reason to deviate from the factual findings of the trial court.

Third. The natural reaction of one who witnesses the commission of a crime is to report the same immediately to

the police authorities so that the culprit could be arrested and forthwith prosecuted; and if convicted, to be meted the appropriate penalty therefor. In this case, Pordios and Tecson gave their respective statements to the public investigator on November 30, 1993, barely a day after the stabbing. In contrast, the appellant and Evangelista did not report the stabbing to the police authorities and even failed to give any statement thereon.

Fourth. The flight of the appellant, his throwing away the knife used to stab the victim, his failure to report the stabbing and to surrender himself to the police authorities and to thereafter claim that he killed Betita in self-defense, all these belie his claim that he killed the victim in self-defense.[17]

Fifth. Evangelista put up her stall in the periphery of the gym to sell biscuits, cigarettes and soft drinks and other assorted items. It is incredible that she would leave her stall and join the dance and after an hour or so, proceed to the nearby mango tree and converse with a friend.

Sixth. There can be no self-defense, complete or incomplete, unless there is clear and convincing proof of unlawful aggression on the part of the victim. The unlawful aggression, a constitutive element of self-defense, must be real or at least imminent and not merely imaginary. A belief that a person is about to be attacked is not sufficient. Even an intimidating or threatening attitude is by no means enough. Unlawful aggression presupposes an actual or imminent danger on the life or limb of a person. Mere shouting, an intimidating or threatening attitude of the victim does not constitute unlawful aggression.[18] Unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent; it cannot consist in oral threats or merely a threatening stance or posture.[19] The settled rule in jurisprudence is that when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor. Retaliation is not a justifying circumstance.[20] Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases. If he persists in attacking his adversary, he can no longer invoke the justifying circumstance of self-defense.[21] Self-defense does not justify the unnecessary killing of an aggressor who is retreating from the fray.[22]

In this case, Pordios testified that the appellant stabbed Betita even as the latter moved over to the next stall, still holding the lamp with the lighted wick which he took from her stall to defend himself from the appellant. Betita had anticipated that the appellant would assault him. Betita's fears proved to be well-founded, as the appellant rushed to where he was and stabbed him on the right nipple. Pordios did not testify that before the stabbing, Betita was about to throw the bottle at the appellant. She testified as follows:

Q

At about 10:30 o'clock in the evening of November 29, 1993, could you recall of any unusual incident that happened?

A

There was.

Q

What was that unusual incident all about?

A

At about 10:30 Santiago approached my table and took my torch. Then a stone was thrown. I do not know who threw the stone. So this Santiago Betita transferred to another table where he brought my torch with him, and he was followed by a man thereat.

Q

Were you able to identify that man who followed him? I am referring to Santiago Betita.

A

Yes.

Q

Who is that person?

A

Joseph.

Q

Are you referring to the accused in this case?

A

Yes.

Q

What did this Joseph do when he followed Santiago Betita?

A

He went near the table and [in] a short while later I saw Santiago was already stabbed.

Q

Who stabbed Santiago Betita?

A

Joseph.

Q

About how many meters were you from the place where Santiago Betita was stabbed by Joseph Cajurao?

A

About four (4) meters.

Q

Could you tell this Honorable Court whether this Santiago Betita was hit when he was stabbed?

A

Yes.

Q

Could you tell in (sic) what portion of his body was hit by the accused?

A

On the right nipple.

Q

How many times was the victim Santiago Betita stabbed by the accused?

A

Once only.

Q

After he stabbed Santiago Betita what happened next?

A

He left.

Q

How about Santiago Betita what happened to him if you know?

A

He fell on the ground.[23]

On cross-examination by defense counsel, Pordios testified that before the appellant stabbed Betita, the latter was merely holding the bottle in his right hand, on the level of the right shoulder, with his elbow by the side of the body.

ATTY. MONTEFRIO:

Q

Betita was standing when Cajurao was stabbing, is that right?

A

Yes, he was standing and he was holding the torch.

Q

He was holding the torch. Will you please demonstrate how was he holding the torch at the time when he was stabbed by Cajurao?

A

This was the position of Betita. (Witness held the gavel with right hand, with clenched fist on the level of the right shoulder, and her elbow by the side of her body. Witness is standing erect.)[24]

In fine, Betita was in a defensive position when he was stabbed. If, as claimed by the appellant, Betita was about to throw the bottle at him, surely Betita's right hand would have been raised above his head, his body and right hand arched backward, ready to throw the bottle at the appellant. This was not the case.

Assuming that Betita did slap the appellant on the face, the appellant's evidence shows, however, that Betita anticipated that the appellant would retaliate and forthwith ran away to the stall of Pacita and took hold of the knife. From that moment, the inceptive unlawful aggression on the part of Betita had ceased to exist; there was no longer a need for the appellant to still pursue the victim and kill him. In fine, when the appellant stabbed the victim, he did so to retaliate.

We agree with the contention of the appellant that there was no factual basis for the ruling of the trial court that he killed Betita with treachery. Article 14, paragraph 16 of the Revised Penal Code, reads:

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

Treachery requires the concurrence of the following conditions: (1) the employment of means, methods or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of such means, methods or manner of execution.[25]

In this case, there is no evidence that the appellant deliberately and consciously adopted a method of attack that insured the death of the victim. For one thing, Pordios did not see how the incident between the appellant and Betita commenced and developed before the latter suddenly appeared from the direction of the plaza, and took hold of the lamp from her stall. For treachery to be appreciated, it must be present at the inception of the attack.[26] Where no particulars are known as to how the killing began, its perpetration with treachery cannot be merely supposed.[27] Moreover, it could not be said that the attack was without risk to the appellant, because Betita was holding a lighted wick lamp which he could have used as a weapon to fend off the appellant's assault. To be considered treacherous, a sudden attack by the assailant, whether frontally or from behind, must be proven to have been a mode of attack deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat.[28] In *People v. Domingo Albao*[29] we held, thus:

The qualifying circumstance of treachery can not logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of Article 13, subsection 16 of the Revised Penal Code, when the culprit employs means, methods or forms of execution which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his own person from a defense which the other party might offer. In *United States vs. Namit*, 38 Phil. 926, it was held that the circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself.

The penalty for homicide under Article 249 of the Revised Penal Code, is reclusion temporal in its full range. The maximum of the indeterminate penalty should be taken from the medium period of reclusion temporal, there being no modifying circumstances attendant to the crime. The minimum period of the indeterminate penalty should be taken from the full range of prision mayor which is from six (6) years and one (1) day to twelve (12) years.

We affirm the award of P50,000 as civil indemnity *ex delicto*, which is granted without need of proof other than the commission of a crime.[30] Likewise, the trial court correctly awarded the sum of P20,000 as actual damages, which was admitted by the appellant.[31] We cannot award moral damages in the absence of proof of mental or physical suffering on the part of the heirs of the victim.[32]

WHEREFORE, the appealed Decision is AFFIRMED with the MODIFICATION that the appellant Joseph Cajurao is convicted of HOMICIDE under Article 249 of the Revised Penal Code and is sentenced to an indeterminate penalty from eight (8) years and one (1) day of prision mayor in its medium period as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum. No costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Cristeto D. Dinopol.

[2] Records, p.1.

[3] Id. at 25.

[4] The prosecution presented as its witnesses Pacita Pordios, Domingo Tecson, Valentina Betita, Felix Teruel, and Nena Carmelo.

[5] TSN, 11 March 1994, pp. 3-6

[6] TSN, 10 November 1994, pp. 3-4 (Felix Teruel); TSN, 10 November 1994, pp. 8-9 (Nena Carmelo).

[7] TSN, 11 March 1994, pp. 4-5.

[8] Exhibit "B."

[9] Ibid.

[10] Exhibits "A" and "B."

[11] Exhibit "C."

[12] Records, p. 92.

[13] Rollo, p. 59.

[14] *People v. Noay*, 296 SCRA 292 (1998).

[15] Article II, paragraph 1, Revised Penal Code.

[16] *People v. Camacho*, 359 SCRA 200 (2001).

[17] *People v. Alfaro*, 119 SCRA 204 (1982); *People vs. Camacho*, *supra*.

[18] *People v. Galit*, 230 SCRA 486 (1994).

[19] *People v. Lachica*, 132 SCRA 230 (1984).

[20] *People vs. Agapinay*, 186 SCRA 812 (1990).

[21] *People v. Cotas*, 332 SCRA 627 (2000).

[22] *People v. Agapinay*, *supra*.

[23] TSN, 11 March 1994, pp. 4-5.

[24] Id. at 9.

[25] *People v. Mahinay*, 304 SCRA 767 (1999).

[26] *People v. Maldo*, 307 SCRA 424 (1999).

[27] *People v. Silvestre*, 307 SCRA 68 (1999).

[28] People v. Academia, Jr., 307 SCRA 229 (1999).

[29] 327 SCRA 123 (2000).

[30] People v. Bautista, 331 SCRA 130 (2000).

[31] TSN, 18 March 1994, p. 7.

[32] People v. Abut, G.R. No. 137601, April 24, 2003.

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