ROMEL JAYME Y REFE, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124506. September 09, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal via certiorari from a decision of the Court of Appeals[1] affirming, with modification as to the penalty, that of the Regional Trial Court, Pasig, Metro Manila,[2] convicting petitioner of frustrated homicide. He claimed self-defense.

We sustain the appeal. Petitioner acted in legitimate self-defense. We acquit him of the charge of frustrated homicide.

The Court of Appeals related both the prosecution and the defense version of the event, as follows:

> "The prosecution's version is that on May 25, 1992 at about 6:30 in the evening, Ramil Cruz was on his way from his house to the Torres Store to buy ice when he saw the accused Romel Jayme from a distance of thirty meters walking towards him. Romel passed by, and without provocation, suddenly stabbed him, hitting the left side of his stomach. He thought he was boxed, and when he faced Romel, he was stabbed for a second time, also on the left side (tsn, November 25, 1992). Edwin Cruz, a tricycle driver, brother of Ramil, was then at the other aside of the street, and saw the stabbing from a distance of about three (3) meters; he rushed towards his brother to help, and was able to hold the right hand of Romel. Romel managed to free himself and turned his ire at Edwin hitting the latter on the right arm. Edwin went to his house to call his brother, Mario. Edwin and Mario picked up stones to throw at Romel, who was with two other companions, but Romel ran away (tsn, May 19, 1993). Ramil was brought to the Polymedic Hospital where he was hospitalized for six (6) days, spending a total of P27,276.20 in medical expenses. Dr. Agaton Manimtim testified that Ramil was treated for two "perforating and penetrating" stab wounds, any of which could have caused the victim's death if unattended (tsn, March 23, 1993).
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> "The version of the accused Romel Jayme is that on May 25, 1992, at about 5:45 in the afternoon, he was fetching Nawasa water at Bautista Street, when his way was blocked by a man, who said "Pare ito ba? Alalayan nyo ako" and then suddenly pulled a knife from his right waist and thrust it on him. The accused twisted the hand of his assailant and wrestled with the latter for possession of the knife. While he was twisting the hand of his attacker, several persons were boxing him at the back. He was able to get hold of the knife, and he swung it right and left; somebody hit him at the back of his head and he fell; he dropped the knife in the process. He suffered a lacerated wound in the head. He recognized his attackers only by face (tsn, June 30, 1993).
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> "Edmund Villanueva was presented by the defense. He testified that earlier in the afternoon of that day, at about 5:00 o'clock, he met Edwin Cruz. The latter told him that they had an enemy and were asking for help, and were waiting for someone. He refused to give help and proceeded to the basketball court. After playing for fifteen minutes, he was on his way home when Ramil Cruz suddenly appeared and boxed Romel Jayme. He also testified that he saw Ramil Cruz coming from the house of Celso Ramirez, where there was a drinking

session (tsn, Aug. 4, 1993)."[3]

Then, the Court of Appeals concluded, going along with the trial court, that:

"x x x

"x x x Ramil Cruz was in a drinking session before the incident and was under the influence of liquor when he boxed the accused without provocation. Surprised at the sudden attack, Jayme drew a knife and used it against Ramil. When Edwin arrived to come to the assistance of his brother Ramil, Edwin succeeded in wresting the knife from the accused who ran away."

On the basis of the foregoing, the Court of Appeals found that there was unlawful aggression on the part of the victim Ramil Cruz. He attacked the accused suddenly and boxed him. There was no provocation on the part of the accused.

Accordingly, on January 31, 1996, the Court of Appeals promulgated its decision affirming that of the trial court convicting accused-appellant of frustrated homicide, but credited him with the privileged mitigating circumstance of incomplete self-defense.

Hence, this appeal.

On July 10, 1996, the Court required respondent to comment on the petition within ten (10) days from notice.[4] On September 10,1996, the Solicitor General filed his comment. On November 18, 1996, petitioner filed a reply to comment,[5] as required in the Court's resolution of October 2, 1996.[6]

The Court of Appeals held that "there was no reasonable necessity for appellant to draw a knife and stab the victim, inflicting upon the latter two stab wounds which could have caused his death."

In his comment, the Solicitor General Agreed that there was attendant the privileged mitigating circumstance of incomplete self-defense. He submitted that there was no reasonable necessity for the accused to use a knife to repel the attack.

We disagree with both the Solicitor General and the Court of Appeals.

The Court of Appeals found that "the evidence established the presence of unlawful aggression on the part of the victim and lack of sufficient provocation on the part of the appellant."

In making such finding, the appellate court recognized that the complainant was the aggressor, that the aggression was real and imminent, not merely imaginary.[7] "The aggression must be of such a nature as to have placed in real peril the life or the personal safety or the rights of the accused."[8] "In other words, there must have been an outward and material attack upon the person defending himself or a wrongful act showing the aggressor's wrongful intent, not merely a threatening attitude."[9]

"Unlawful aggression contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude; there has to exist a real danger to the life or personal safety of the person claiming self-defense."[10]

The remaining question is whether there was reasonable necessity for the means employed by petitioner to repel the attack.

Consider the factual situation at the time, as found by the trial court and the Court of Appeals. It was about 7:00 in the evening of May 25, 1992. Petitioner was walking along Bautista St., Pasig City on the way home. He was carrying a pail of water he had fetched from the public faucet when suddenly complainant Ramil Cruz blocked his

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way and attacked him with fist blows. Ramil Cruz was in a drinking session before the incident and was under the influence of liquor when he boxed the accused without provocation. He was with his brothers and three other persons. Surprised at the sudden attack, accused drew a knife and used it against complainant. His brother Edwin came to his immediate succor and succeeded in wresting the knife. Under that situation, in the darkness of the night, with the element of surprise in the assault, and his perception that the aggressor was armed with a knife and together with three or more persons was ganging up on him, it was reasonable for petitioner to use a knife to disable his adversary. "His knife was his only means of defense, and under the circumstances of the case there was clearly a reasonable necessity for him to make use of it. It cannot be said with any certainty that his life was not in danger. When a highwayman brutally assaults one in the dark and tries to take away one's only means of defense, it is reasonable to believe that one's life is endangered."[11] According to the accused , three other persons joined Ramil in attacking him, one hitting him on his head, causing him to drop the knife. He then ran away. His head injury is duly proved.[12]

To support its decision, the Court of Appeals cited the cases of People vs. Montalbo;[13] People vs. Gutierrez;[14] and People vs. Madali.[15] None of these cases is applicable.

In Montalbo, the factual situation was different. There, the trial court found that the deceased attacked the accused with his fist. However, there was no sufficient proof that the attack took place before the accused used his knife. The court did not accept the version of the defense. Rather, the court found that the deceased being wounded in the chest could not have attacked the accused. In other words, unlawful aggression on the part of the victim was not proved, aside from which the court ruled that the accused was not justified in mortally wounding his assailant with a fan knife.[16]

In Gutierrez, the court ruled that first, the accused has not proved the first requirement of self-defense, which is unlawful aggression on the part of the victim against his killer. This is a condition sine qua non.[17] In the second place, the accused claimed that he accidentally stabbed the victim while parrying his attack. This does not square with his subsequent testimony that it was the deceased who grabbed the knife and that the accused stabbed the older man during their struggle.[18]

In Madali, the court ruled that for self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack that placed the accused's life in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist the attack. The court ruled that the allegation that accused's residence was hurled with stones before he confronted the Gasang group was not credibly established. It was not shown that the victims were armed with clubs and a knife and even if it were so, the accused's means of resisting them was unreasonable under the circumstance. The accused, a policeman, fired at the victims with his service revolver and all four shots hit their targets.

The circumstances in the three cited cases are totally different from the case at bar, and consequently, none of them is applicable herein.

Consequently, we rule that petitioner employed reasonable means to repel the sudden unprovoked attack of which he was the victim.[19]

"Reasonable necessity does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons which can easily be made in the calmness of the home. It is not the indispensable need but the rational necessity which the law requires. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The defendant may be given the benefit of any reasonable doubt as to whether he employed rational means to repel the aggression."[20]

"The rule of reasonable necessity is not ironclad in its application; it depends upon the circumstances of the particular case. One who is assaulted does not have the time nor sufficient tranquility of mind to think, calculate and choose the weapon to be used. The reason is obvious, in emergencies of this kind, human nature does not act upon processes of formal reason but obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and to hold the actor irresponsible in law for the consequences."[21]

In light of the foregoing, petitioner has duly proved all the essential elements of self-defense, namely, unlawful aggression on the part of the complainant; reasonable necessity of the means employed to prevent or repel it; and lack of sufficient provocation on the part of the accused.[22] He is entitled to an acquittal.

WHEREFORE, THE Court hereby REVERSES and SETS ASIDE the appealed decision of the Court of Appeals in CA-G. R. CR No. 16607, promulgated on January 31, 1996, and ACQUITS the accused-appellant Romel Jayme y Refe, with costs de oficio.

SO ORDERED.

Puno, Kapunan, and Ynares-Santiago, JJ., concur. Davide, Jr., C.J., (Chairman), on official leave.

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[1] In CA-G.R. CR No. 16607, promulgated on January 31, 1996.

[2] In Crim. Case No. 92745.

[3] Decision, CA-G.R. CR No. 16607, Rollo, pp. 25-32, 26-27.

[4] Rollo, p. 36.

[5] Rollo, pp. 51-57.

[6] Rollo, p. 50.

[7] People vs. Francisco de la Cruz, 61 Phil. 422, 427 [1935].

[8] Ramon C. Aquino, The Revised Penal Code, 1997 ed. Vol 1, p. 136

[9] Ibid., at p. 137.

[10] People vs. Galapin, 293 SCRA 474, 488 [1998], citing People vs. Boniao, 217 SCRA 653, 667 [1993]; People vs. Talinting, G.R. No. 107747, October 20, 1997; People vs. Villamor, 292 SCRA 384,396 [1998]; People vs. Panes, 278 SCRA 357 [1997]; People vs. Baniel, 275 SCRA 472 [1997]; Escoto vs. Court of Appeals, 278 SCRA 752 [1997].

[11] People vs. Reyes, 60 Phil. 858, 861 [1934].

[12] Exhs. 1, 1-a, Annex "B", Petition, Rollo, p.24.

[13] 56 Phil. 443 [1931].

[14] 209 SCRA 206 [1992].

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[15] 188 SCRA 69 [1990].

[16] At p. 445.

[17] At p. 208.

[18] At p. 212.

[19] See People vs. Ignacio, 58 Phil. 858 [1933]; Cf. People vs. Encomienda, 46 SCRA 522 [1972]; People vs. Viernes, 262 SCRA 641 [1996].

[20] Ramon C. Aquino, The Revised Penal Code, op cit. At pp. 145-146, citing People vs. Amante, 47 Phil. 8 [1924].

[21] Ibid, at pp. 149-150; People vs. Viernes, supra.

[22] Article 11, (1), Revised Penal Code; People vs. Galapin, supra, at p. 488; People vs. Aguilar, 292 SCRA 349, 356 [1998]; People vs. Villamor, 292 SCRA 384, 395 [1998]; People vs. Viernes, supra.

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