

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. SPO1 RUFINO DEMONTEVERDE, ACCUSED-APPELLANT.*G.R. No. 124978. May 19, 1998*

Ponente: REGALADO, J.

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Accused-appellant SPO1 Rufino Demonte Verde seeks the reversal of the December 29, 1995 decision of the Regional Trial Court Branch 26, Iloilo City, finding him guilty of murder qualified by treachery. He was sentenced therein to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased, Mario Anchuña, Jr., in the sums of P50,00.00 as death indemnity, P38,543.00 as actual damages, and P30,000.00 as moral damages.[1]

The information in Criminal Case No. 42760 alleges—

That on or about October 21, 1993, in the Municipality of Sara, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, with deliberate intent and decided purpose to kill, armed with a firearm, by means of treachery, did there and then wilfully, unlawfully and feloniously shoot one Mario Anchuña, Jr. with the firearm which the accused was then provided (sic), inflicting gunshot wounds on the victim causing hemorrhage secondary to gunshot wound on the chest involving the heart and left lung which resulted to his death.[2]

The records of the case reveal that two informations arising from the same incident were filed against appellant in the court a quo, specifically, the aforesaid information for the murder of Anchuña, Jr. and another information for the murder of one Enrique Publico which was docketed as Criminal Case No. 42759. Upon arraignment, with the assistance of counsel, appellant pleaded not guilty to the charges, and the cases were ordered consolidated by the trial court and tried jointly. According to its decision, however, during the pendency of the proceedings, Criminal Case No. 42759 was dismissed pursuant to a motion to dismiss filed by the prosecution.[3] Hence, trial proceeded only with respect to Criminal Case No. 42760, the subject of this appeal.

In this case, the prosecution offered the testimonies of Hernani Canindo, Dr. Salvador Mallo, Jr., Vicente Columbus Javellana, PO3 Elmer Villaruel and Mario Anchuña, Sr., while the evidence for the defense consisted of the testimonies of appellant, SPO3 Rene del Castillo, Bernabe Busaban, Rosie Basog and Guardalino Aventurero.

The “Rumbohan Beer Garden,” which was the locus criminis, was a restaurant and drinking place located in Sara, Iloilo. The evidence of the prosecution established that in the evening of October 21, 1993, the group of the deceased Anchuña, Jr., which included Hernani Canindo, Teodorico Encia, Paquito Labrador and Henry Canindo, was drinking beer in the establishment. The other deceased, Enrique Publico, was with Vicente Columbus Javellana, Rufino Dolendo and Federico Catequista at a separate table. Appellant, a non-commissioned officer assigned to the intelligence department of the local police precinct and who was then on duty but in civilian attire, was seated at another table with Junior Tedoco[4] and Rosie Basog, a waitress in the establishment.

The table of Anchuña, Jr. and his companions was near the platform on which a signer was performing. In the

course of the drinking spree, some of the men became rowdy and Henry Canindo dropped a beer bottle on the floor, causing a disturbance which apparently irritated appellant who was seated a table away. Vexed by the commotion, appellant approached Canindo, introduced himself as a policeman and angrily asked him why he was causing trouble. Canindo replied that the breaking of the bottle was purely accidental. Appellant nonetheless whipped out a handgun from his waistband and held it while he frisked Canindo and his companions. He then turned to Canindo and beat his face with the gun.[5]

Javellana and one Filmer Mercurio approached Canindo and persuaded him to go home to avoid further trouble. Canindo obliged. As he was led out of the establishment, his other companion, Ancuña, Jr., and Publico, who was seated at the next table, told appellant that they were not causing trouble and asked him why he was harassing them. They were allegedly about to stand with their arms raised when appellant, who was about an arm's length away, fired three shots at them. Appellant then stood on the platform, pointed his firearm at the crowd, and dared the people to challenge him.[6] The customers, in their consternation, either fled from the place or hid under the tables.

Ancuña, Jr., was hit by a bullet and died instantly. Publico, who likewise sustained a gunshot wound, collapsed on the floor holding his abdomen and writhing in pain before he was rushed to the hospital where he later died. Appellant continued to point his gun at Canindo and his companions, thus preventing them from leaving the place.[7] Appellant thereafter left the establishment aboard his motorcycle and other persons there immediately left, leaving Ancuña, Jr. lying in a pool of blood in the deserted drinking place.

Dr. Salvador Mallo, Jr., Municipal Health Officer of Sara, Iloilo, conducted an autopsy on the body of Ancuña, Jr. he established that the cause of the victim's death was hemorrhage secondary to a gunshot wound involving the heart and the left lung.[8] The physician opined that the assailant was in front of Ancuña, Jr. and that the trajectory of the bullet wound sustained by the latter was downwards. This indicated that the perpetrator of the crime was probably standing while the victim was a lower level and possibly seated when he was shot.[9]

Appellant denied the charges. In his testimony, which was corroborated by Rosie Basog and Guardalino Aventurero, he claimed that at about 9:30 in the evening of October 21, 1993, he was on duty but was then at a roadside hailing a pedicab to take him home for dinner. At that instance, he was approached by Aventurero and one Julio Zerrudo who asked him for help because someone was allegedly causing trouble at the Rumbohan, which was about 50 meters away. Appellant allegedly responded to the call of duty, followed the men to the establishment, and proceeded to the table where Henry Canindo was breaking bottles.[10]

He introduced himself as a policeman, to which Canindo retorted, "So what if you are a policeman?"[11] Canindo then attempted to stand and wrestle with appellant, holding him by the neck.[12] Appellant elbowed Canindo but the four companions of the latter purportedly stood up and pulled out knives.[13] Appellant pushed Canindo toward the other men, drew his handgun and cocked it.

The armed men allegedly surrounded appellant who was forced to take several steps backwards. He supposedly warned them to back off and fired a shot in the air, but they continued to advance towards him until his back was pressed against a wall. They proceeded to attack him so, in self-defense, appellant fired his gun at them, hitting Ancuña, Jr.[14]

Panic ensued in the Rumbohan and appellant, upon seeing Ancuña, Jr. slumped on floor, supposedly ran out to look for a vehicle which would take the casualty to the hospital, but to no avail. Appellant returned to the establishment where he found Ancuña, Jr. already dead. He examined the body, allegedly took the latter's knife, and proceeded to the municipal building where he reported the incident to the guard on duty and surrendered the victim's knife.[15]

As already stated, although two men were killed in the incident, namely, Ancuña, Jr. and Publico, the case against appellant for the killing of Publico was dismissed. The court a quo found appellant guilty of murder qualified by teachery for the killing of Ancuña, Jr., hence, this appeal where appellant claims that the prosecution failed to establish his guilt beyond reasonable doubt and that he should be absolved from liability because he acted in self-defense. He further contends that there was no treachery in the killing of Ancuña, Jr.

It should preliminarily be observed that since appellant interposed the plea of self-defense, the burden of evidence thereby shifted to the defense. The Court has carefully and thoroughly reviewed the records of this case and is reasonably convinced that the court below did not err in rejecting said exculpatory submission of appellant.

Also, it bears reiterating that there is self-defense when the following elements concur: first, unlawful aggression on the part of the person injured or killed by the offender; second, reasonable necessity of the means employed to prevent or repel it; and third, lack of sufficient provocation on the part of the person defending himself.[16] Projected against these elements, the defensive theory advanced by appellant falls short of the requirements.

Appellant claims that he fired only two gunshots, a warning shot in the air and a shot to repel the armed men about to attack him, the second shot being that which wounded and killed Ancuña, Jr. He denied that he likewise shot Publico. Ancuña, Jr. and his companions were allegedly armed with knives and assaulted him and, unlike an ordinary citizen who may take refuge in flight when attacked, he was an officer of the law who was bound to stand his ground and overcome his aggressors. He thus could not have been expected to wait until he was injured before fighting back.

The Court is not persuaded that there was unlawful aggression from the victim. We agree with the findings of the trial court that the victim and his companions were not armed with knives and were not about to attack appellant when he fired his gun at them. Appellant accosted the men and it is indubitable that the latter knew that he was a police officer. Furthermore, appellant was gripping his handgun when he frisked them. It is thus difficult for the Court to believe that, notwithstanding these facts, the men would arm themselves with knives and proceed to attack appellant. Based on the evidence, there was no unlawful aggression from the victim or his companions that would support the claim of self-defense.

Even assuming *arguendo* that the men were armed with knives, this by itself cannot be deemed an act of unlawful aggression as to constitute an element of self-defense. Besides, the shooting of Ancuña, Jr. cannot be viewed as a reasonable means employed to prevent or repel the aggression. The knives, if any, were no match to service firearm of appellant and, in fact, there is no evidence that appellant sustained any injuries evincive of an aggression which would justify his firing his gun to protect himself. Evidently, the shooting was unwarranted and was an reasonable act of violence, or even as a means of defense, under the circumstances. .

Also, there was no motive for Ancuña, Jr. and his companions to attack appellant, and the evidence shows that they did not in truth do so. The third element of self-defense is further rendered inapplicable by the absence of the first two elements of self-defense. Based on the foregoing circumstances, the defense has failed to show the concurrence of the elements of self-defense and appellant's claims must perforce be rejected.

The prosecution further contend that appellant was on duty on the night of the incident and was, in fact, a customer of the Rumbohan when he confronted the group of the victims and eventually shot Ancuña, Jr. The defense, on the other hand, asseverates that appellant was not a customer of the Rumbohan then but was elsewhere, and he proceeded to the establishment only when assistance was sought because some men were supposedly causing trouble there. Appellant was allegedly merely responding to the call of duty and should thus be acquitted.

We agree with the findings of the court below and the claim of the prosecution that on the night of the crime, appellant was on duty and was drinking in the Rumbohan. Parenthetically, drinking liquor while on duty constitutes conduct unbecoming a police officer which, by itself, is subject to administrative sanction. But even if appellant was not a customer of the drinking place when he got involved in the shooting incident, the fact remains that in shooting Ancuña, Jr. appellant acted beyond the bounds of his authority and he must accordingly be held liable for the consequence thereof.

Nonetheless, while the Court affirms the guilt of appellant, it is not persuaded that there was treachery which would qualify the killing of Ancuña, Jr. to murder. Treachery exists when the offender employs means, methods or forms in the execution of the offense which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[17] The attack should be deliberate and unexpected[18] and the means employed by the malefactor must not give the victim an opportunity to defend himself or to retaliate.[19]

In case at bar, it is undisputed that appellant and the victim were face to face when the latter was shot. The evidence also reveals that the meeting of appellant and the victim was unintended; that prior to the shooting, appellant had a spat with the victim's companion, Henry Canindo; that he frisked the men while he held a gun; and that he then beat Canindo in the face with the gun before he fired it at the men and killed Ancuña, Jr.

Also, there is no proof that appellant had intended to kill Ancuña, Jr.; and, even if such were the case, it is obvious that their encounter at the beer garden was merely accidental,[20] and the shooting of Ancuña, Jr. was sudden. Appellant drew his gun and fired at the deceased because of unexpected events which must have aroused a manic instinct in him.[21] He did not even have the time to reflect on the means or manner of attack. In treachery, the mode of attack must have been thought of by the offender and must not have sprung from an unforeseen occurrence.[22]

Treachery does not exist in the case at bar because the evidence does not show that appellant deliberately adopted a mode of attack intended to ensure the killing of Ancuña, Jr. with impunity, and without giving the victim an opportunity to defend himself. Further, the shooting took place after a heated exchange of words and a series of events that forewarned the victim of aggression from appellant.[23] In this case, it appears to have occurred on sudden impulse but preceded by acts of appellant showing hostility and a heated temper that indicated an imminent attack and put the deceased on guard.[24] Ancuña, Jr., cannot thus be deemed to have been completely unaware of, and totally deprived of chance to ward off or escape from, the criminal assault.

Treachery may not be simply deduced from presumptions. It is necessary that it be proven as fully as the crime itself in order to qualify the killing to murder[25] and, in the case at bar, it is difficult to conclude that the killing of Ancuña, Jr., was qualified by treachery. This crime committed by appellant is, therefore, simple homicide only and not murder.

Turning to basics, Article 249 of the Revised Penal Code punishes homicide with reclusion temporal, and there being no mitigating or aggravating circumstances, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, the imposable penalty shall be an indeterminate sentence, the minimum whereof shall be within the range of prision mayor, and the maximum shall be reclusion temporal in its medium period.

WHEREFORE, the impugned judgment of the court a quo is hereby MODIFIED by finding accused-appellant Rufino Demonteverde guilty of homicide in Criminal Case No. 42760 and sentencing him serve an indeterminate prison term of twelve (12) years of as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. In all other respects, said judgment is AFFIRMED, with cost against herein accused-appellant.

SO ORDERED.

Melo, Puno, Mendoza, and Martinez, JJ., concur.

[1] Rollo, 27-40.

[2] Ibid., 10-11.

[3] Ibid., 30. The records do not show the legal reason or circumstances adduced and relied upon as the basis for such dismissal.

[4] He is also referred to as Junior Eñojo in the stenographic transcripts.

[5] TSN, June 6, 1994, 12-17; April 12, 1994, 15-20.

[6] Ibid., June 6, 1994, 18-25; April 12, 1994, 21-23.

[7] Ibid., April 12, 1994, 31.

[8] Original Record, 4.,

[9] TSN, April 20, 1994, 30-31.

[10] Ibid., April 21, 1995, 16-21.

[11] Ibid., May 31, 1995, 14.

[12] Ibid., id., 1995, 22-23; April 21, 1995, 26.

[13] Ibid., April 21, 1995, 28

[14] Ibid., id., 31-33.

[15] Ibid., id., 46-47.

[16] People vs. Unarce, G.R. No. 120549, April 4, 1997, 270 SCRA 756; Jacobo vs. Court of Appeals, et al., G.R. No. 107699, March 21, 1997, 270 SCRA 270; People vs. Tobias, G.R. No. 114185, January 30, 1997, 267 SCRA 229.

[17] Article 14(16), Revised Penal Code.

[18] People vs. Macalino, et al., G.R. No. 79387, August 31, 1989, 177 SCRA 185.

[19] People vs. Belga, G.R. Nos. 94376-77, July 11, 1996, 258 SCRA 583.

[20] People vs. De Leon, G.R. Nos. 116232, September 26, 1996, 262 SCRA 445; People vs. Velaga, Jr., G.R. No. 87202, July 23, 1991, 199 SCRA 518; People vs. Belga, supra., fn 19; People vs. Ardisa, G.R. No. L-29351 January 23, 1974, 55 SCRA 245; People vs. Ardisa, G.R. No. L-29351 January 23, 1974, 55 SCRA 245; People vs. Macalisang, G.R. No. L-24546, February 22, 1968, 22 SCRA 699.

[21] See People vs. Ruiz, G.R. No. L-33609, December 14, 1981, 110 SCRA 155.

[22] People vs. Malazzab, G.R. No. L-39136, April 15, 1988, 160 SCRA 123.

[23] People vs. Compendio, G.R. No. 114002, July 5, 1996, 258 SCRA 254; People vs. Hubilla, et al., G.R. No.

114904, January 29, 1996, 252 SCRA 471; *People vs. Macalino, et al.*, supra., fn. 18.

[24] *People vs. Macalino, et al.*, supra., fn. 18; *People v. Ruiz*, supra, fn. 21.

[25] *People vs. Ballabare, et al.*, G.R. No. 108871, November 19, 1996, 264 SCRA 350; *People vs. Nemeria*, G.R. No. 96288, March 20, 1995, 242 SCRA 448; *People vs. Ardisa*, supra, fn. 20.

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