

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORATO NAVARRO, ACCUSED-APPELLANT.

G.R. No. 125538. September 03, 1998

Ponente: MELO, J.

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MELO, J.:

In an Information dated September 27, 1993, Honorato Navarro was charged with the crime of Murder, thusly :

That on or about June 28, 1993, in the Municipality of Sara, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable motive and with a decided purpose to kill, armed with a firearm, with treachery, and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Rosendo Espura with the firearm he was then provided, hitting the victim on the chest and other parts of his body which resulted on his death thereafter.

CONTRARY TO LAW.

(p. 12, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty. Thereafter, trial ensued.

The evidence for the prosecution was summarized by the trial court as follows :

Jocelyn Navarro and the deceased Rosendo Espura were living together as husband and wife without the benefit of marriage. Their house is situated at Brgy. Posadas, Municipality of Sara, Province of Iloilo. The accused Honorato Navarro is the uncle of Jocelyn. He is the younger brother of Jocelyn's father. Honorato also resides at Brgy. Posadas, Sara, being the barangay captain of said barangay.

At about 11 o'clock in the evening of June 28, 1993, Jocelyn and the deceased were sleeping at their house at Brgy. Posadas, Sara, Iloilo.

While they were sleeping, someone "called up". Jocelyn recognized the voice as that of her second cousin, Leosadi Azusano. She opened the door of their house and Azusano came in. She noticed some blood in Azusano's shirt. The latter asked for a glass of water and after drinking, he changed his clothes. At this time, Rosendo Espura woke up. Azusano requested them to bring him to the hospital. Jocelyn asked Azusano why he "was bloody" and he answered that he was struck on his head.

When Azusano was going to the house of the deceased, Renato Navarro, the son of the accused and the accused were following Azusano. Rosendo Espura went out of his house and when he saw Renato Navarro, he asked him what to do, as Azusano was asking for their help.

At this juncture, Jocelyn was already in the yard of their house, while Azusano was sitting on the sofa inside their house. Renato, in answer to the question of the deceased told the latter, "Help him if you want to help him".

After Renato answered him, Rosendo was about to go back inside their house, as he was about 10 meters from the house when he talked to Renato. Jocelyn was 2 meters away from the door of their house. However,

Rosendo was not able to go back to their house because he was shot by Honorato Navarro with a "high powered" long firearm. The actual shooting was seen and witnessed by his common law wife, Jocelyn. The accused was around 5 meters away from their (Jocelyn's) store when he shot the deceased and was two arm's length away from the deceased.

Rosendo was hit when the deceased shot him. When he was hit, he was "lifted from the ground" (tumbo). Honorato was at the right side of the deceased when he shot him. He was already facing his house when he was shot. When the deceased fell down and was already lying on the ground, the accused again shot him.

Renato was at the nearby road when Honorato fired the second shot while Jocelyn was crawling towards the house of her uncle when the second shot was fired. The house of her uncle was near their house, about 70 meters. At the house of her uncle, she told her brother to look for a tricycle and to inform the police what happened.

When the "moon was no longer so bright", Jocelyn went back to their house. The incident happened two nights after the full moon. When she reached their house, she closed the door and windows and waited for the police. The cadaver of her deceased live-in partner was not touched.

Later, three policemen arrived, at about 1:00 a.m. Jocelyn told them to call a photographer. A photographer arrived and took pictures of the cadaver and the place of the incident. The policemen looked for empty shells. Jocelyn told the policemen that it was barangay captain Honorato Navarro who shot the deceased.

(pp. 26-28, Rollo.)

Accused-appellant, on the other hand, admitted killing the victim but invoked the justifying circumstances of self-defense and defense of strangers. Thus, in fractured English, he now asserts:

At about 11 o'clock in the evening of June 28, 1993, Jocelyn Navarro and the deceased were sleeping at their house at said Barangay when someone called up. Jocelyn recognized the voice as that of her second cousin Leosadi Asusano who came from a drinking spree with Roger Aspera, Freddie Aseral and Leonardo Ballesta for about two (2) hours. She opened the door of their house and Leosadi Asusano came inside whose head was bloody when Renato Navarro hit him on the head while he was destroying the fence and forcibly made a hole at the wall of the house of the accused and entered therein armed with a bolo with the intent to kill the accused. But the accused is not around so, he went to Rosendo Espura's house to seek help. Thereafter, Rosendo Espura (victim) came out of his house running and carrying a hand grenade at the same time shouting "why are you afraid of them", going to the store of Irene Navarro, while approaching the accused at about two (2) meters distance he uttered, "You are used to do foolishness, I will kill you". Accused upon sensing such a dangerous situation in the presence of many people shouted to Rosendo Espura, "Don't throw the hand grenade many people will die", but his warning was not reciprocated and accused run and grab the gun of CVO Rodel Navarro, while in control of the gun he fired hitting twice Rosendo Espura who fell to the ground. The hand grenade roll down from his hand but did not explode and Jocelyn Navarro (his wife) picked it up and run away. (TSN-Yolanda S. Pudadera, trial on January 3, 1995)

(p. 75, Rollo.)

In a 24-page decision dated August 21, 1995, the trial court rendered a judgment of conviction and accordingly disposed :

WHEREFORE, premises considered, the accused Honorato Navarro is hereby found guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code and there being no mitigating or aggravating circumstance is hereby sentenced to suffer the penalty of reclusion perpetua.

The accused is further ordered to pay the legal heirs of the deceased the amount of P50,000.00 for his wrongful death; P176,000.00 for loss of earning capacity and to his common-law wife the amount of P15,000.00 for

funeral and burial expenses.

The accused who is detained is credited with the number of days he spent under detention, if he is qualified, otherwise, he shall be credited only with four-fifths (4/5) of his preventive imprisonment.

The accused is further ordered to be sent to the National Penitentiary at Muntinlupa, Metro Manila, even if he appeals.

SO ORDERED.

(RTC Decision, pp. 23-24.)

We affirm.

When an accused invokes self-defense, the onus probandi to substantiate such assertion rests on him. He must prove clearly and convincingly its three elements, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself (*People vs. Nemesia*, 242 SCRA 448 [1995]).

In the case at hand, accused-appellant failed to prove legitimate and complete self-defense or defense of strangers.

We cannot give credence to the allegation that there was unlawful aggression on the part of the victim. On the contrary, the evidence shows that Rosendo was helpless and defenseless when accused-appellant attacked him. Fast asleep in the comfort of his home on that night of the incident, Rosendo was awakened by the distressed call of his wife's second cousin, Leosadi (tsn, March 1, 1994, p. 8), who had a wound in the head after having been struck by accused-appellant's son, Renato (TSN, id., p.1 2). Rosendo arose from his slumber and went outside the house to seek help for the wounded Leosadi (tsn, ibid.). Accused-appellant and his son, Renato, had, however, followed Leosadi to Rosendo's house and were waiting outside. Without warning, accused-appellant shot Rosendo (tsn, ibid), not only once but twice even as he was already prostrate on the ground, bleeding to death (tsn, id., p. 18).

Accused-appellant would justify killing Rosendo on the alleged ground that the latter was holding a hand grenade, threatening to kill him. This was, however, belied by the prosecution witnesses who categorically stated that Rosendo was not equipped with a hand grenade or any firearm when he was attacked by accused-appellant. Moreover, not a trace of the so-called hand grenade was ever produced in evidence in court. Accused-appellant would explain its "disappearance" by alleging that the victim's wife, Jocelyn Navarro, picked it up immediately after the shooting. This is preposterous. A hand grenade is not a toy that one easily picks up and plays with. One has to be learned in the ways of weapons and explosives to handle a grenade and prevent it from exploding. Jocelyn, a plain housewife, was certainly not such an expert. It would have been silly of her to pick up the grenade which could have detonated at any moment. What further strains the credulity of the Court is the fact that the victim was shot at a distance of less than 2 meters. As correctly observed by the trial court,

. . . a person who is armed with a hand grenade and intends to use it, does not have to approach or go near his enemies or intended victims at a distance of two meters or less than two meters, to injure them. All he has to do is to throw the hand grenade at his intended victims or enemies even if he is 10 or 20 meters away upon them.

(p. 42, Rollo.)

The facts and the evidence on record clearly show that there was no unlawful aggression on the part of Rosendo. Absent the same, accused-appellant's claim of self-defense and defense of strangers must fall. Moreover, to properly invoke the justifying circumstance of defense of strangers, the person defending must not be induced by revenge, resentment or other evil motive (Art. II, par. 3, Revised Penal Code). This cannot be said of

accused-appellant who resented the fact that Rosendo was willing to help Leosadi, the man who had allegedly earlier picked up a fight with accused-appellant and destroyed the fence and the wall of his house.

We believe, however, that the trial court erred in appreciating treachery and in having so considered it as a qualifying circumstance. Well-entrenched is the rule that the suddenness of an attack does not, of itself, suffice to support the finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was incidental (*People vs. Ardisa*, 55 SCRA 245 [1974]; *People vs. Narit*, 197 SCRA 334 [1991]; *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. Lubreo*, 200 SCRA 11 [1991]; see also *People vs. Sunga*, 238 SCRA 274 [1994]; *People vs. Supremo*, 244 SCRA 548 [1995]; *People vs. Teehankee, Jr.*, 249 SCRA 54 [1995]). In the case at hand, accused-appellant shot Rosendo as a result of a rash and impetuous impulse rather than from a deliberate act of the will. The fact is that he did not plan to kill Rosendo, the common-law husband of his niece. His intended victim was Leosadi who had earlier provoked him into a fight and destroyed a part of his house. He shot Rosendo on the spur of the moment, when the latter came out of his house to seek assistance for the wounded Leosadi. The time between their encounter and the shooting was short and unbroken. Thus, it cannot be said that accused-appellant consciously and deliberately shot the victim to insure killing him without risk to himself. Absent any qualifying circumstance, accused-appellant should only be held liable for homicide.

WHEREFORE, the decision appealed from is hereby affirmed with the modification that accused-appellant Honorato Navarro is found guilty beyond reasonable doubt only of the crime of HOMICIDE which is punishable by reclusion temporal under Article 249 of the Revised Penal Code. There being neither a mitigating nor aggravating circumstance, he is hereby sentenced to suffer the penalty of reclusion temporal in its minimum period, or from 12 years and 1 day to 12 years, 10 months and 20 days. No special pronouncement is made as to costs.

SO ORDERED.

Puno, Mendoza and Martinez, JJ., concur.

Regalado, J., (Chairman), on official leave

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