

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS JAVIER A.K.A. JESSIE, ACCUSED-APPELLANT.

G.R. No. 130489. February 19, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant was charged with Murder for the fatal shooting of Romeo Jumao-as in an Information,[1] which alleges:

That on or about the 29[th] day of September of 1996, at about 9:30 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a handgun, with treachery and evident premeditation, with deliberate intent, with intent to kill, did then and there attack, assault and shoot one Romeo Fernandez Jumao-as with the use of said weapon thereby inflicting upon said Romeo Fernandez Jumao-as fatal wounds which caused his death a few minutes later.

CONTRARY TO LAW.

On September 29, 1996 at around 7:00 in the morning, Nestor Fernandez Mirafior, a barangay tanod of Pasil, Cebu City, was informed by his neighbor, Mina Garcia, that Romeo “Bobby” Jumao-as and Jesus “Jessie” Javier had been engaged in a fist fight.[2] He knew both protagonists since Bobby was his cousin while Jessie was his neighbor.[3] Nestor convinced Jessie to settle his differences with Bobby.[4] He brought Jessie to the house of Ramon Cabugason, another barangay tanod, to seek assistance in resolving the dispute between Bobby and Jessie. Ramon suggested that Nestor bring Bobby to his house.[5] Before leaving, Nestor asked Ramon to frisk Jessie for firearms.[6]

Nestor went to see Bobby, who agreed to the proposed meeting. Nestor returned to Ramon’s house and informed him that Bobby had agreed to come to his house.[7] Again, Nestor asked Ramon to frisk Jessie. However, he did not see whether Ramon actually frisked Jessie.[8] Nestor then left to fetch Bobby. Before going to Ramon’s house, Nestor told Bobby not to bring any weapon and to take off his shirt, since the purpose of the meeting was to settle the dispute between him and Jessie. Bobby thus took off his shirt and wrapped it around his head like a turban.[9]

When Nestor and Bobby reached Ramon’s house, they saw Ramon and Jessie sitting on a bench outside the house. Ramon got up to meet them and inform them that the meeting will be held at the barangay hall instead.[10] Suddenly, Jessie drew a gun from his waist and pointed it at Nestor and Bobby. Nestor raised his right hand and told Jessie, “Jess, don’t. Let’s talk about it.”[11] Jessie fired his handgun, hitting Bobby on the right calf. Bobby ran away and Jessie went after him.[12] When Bobby was about sixteen meters away, Nestor heard three more gunshots.[13] Nestor ran to the house of Patricio Abesia, a policeman, when Jessie aimed the gun at him.

Bobby was brought to the Cebu City Medical Center, where he was declared dead on arrival.[14] Dr. Jesus P. Cernan, a medico-legal officer, stated that the cause of death was shock secondary to multiple gunshot wounds.[15]

The defense, on the other hand, endeavored to prove that Jessie Javier acted in self-defense.[16] Jessie alleged that after Nestor Miraflor learned of the fistfight between him and Bobby, Nestor brought him to the house of Ramon Cabugason and left to look for Bobby.[17] While waiting for Nestor and Bobby to arrive, he narrated to Ramon that Bobby mauled him the night before because he caused the arrest of the latter's cousin, Daylin Miraflor, for selling drugs.[18] Daylin's husband is the brother of Nestor Miraflor.[19] When Nestor and Bobby arrived, the latter attempted to pull a gun from his back. Jessie hugged Bobby to prevent him from drawing his gun. The gun fired, hitting Bobby on the right side and killing him.[20] Jessie immediately walked away and surrendered to the National Bureau of Investigation.[21]

After trial on the merits, a judgment of conviction was handed down by the Regional Trial Court of Cebu City, Branch 15, to wit:

WHEREFORE, in view of all the foregoing evidence, arguments and considerations, this court hereby finds the accused – JESUS JAVIER alias Jessie GUILTY beyond reasonable doubt of the crime of Murder as penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659. But considering that the accused has voluntarily surrendered, he is hereby sentenced to Reclusion Perpetua, together with all the accessory penalties provided for by law. The accused is also hereby ordered to indemnify the next of kin of the victim the sum of P50,000.00.

SO ORDERED.[22]

Hence, the instant appeal based on the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER ON THE BASIS OF THE INCREDIBLE AND BIASED TESTIMONES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN NOT BELIEVING THE DEFENSE OF THE ACCUSED-APPELLANT THAT THE VICTIM WAS SHOT ACCIDENTALLY.

The issues raised by accused-appellant rest entirely on the question of credibility. In this regard, it has been consistently held that the nature of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who had the opportunity to observe the witnesses and to assess their credibility.[23] The general rule is that the trial courts are in a better position to decide questions of credibility since they have heard the witnesses and observed their deportment and manner of testifying during the trial.[24] The findings of the trial courts with respect to credibility of the witnesses will not be disturbed by the appellate court unless there are factors of weight and influence which have been overlooked or the significance of which have been misinterpreted by the trial courts.[25]

In the case at bar, the trial court found that the testimonies of the two prosecution witnesses "were very convincing and straightforward, and they appear to the court as very truthful and honest in the way they narrated to the court what they saw with their own eyes and what they heard with their own ears." [26] We agree.

Accused-appellant claims that the prosecution witnesses, Nestor F. Miraflor and Vicente Torrejas, are closely related to the victim.[27] Relationship does not necessarily give rise to a presumption of bias or ulterior motive, nor does it impair the credibility or tarnish the testimony of a witness.[28] The relationship of the witness to the victim does not automatically affect the truthfulness of the testimony of the former. There is no legal provision that disqualifies the relatives of the victim of a crime from testifying.[29] Indeed, it has been ruled that there is absolutely nothing in this jurisdiction which disqualifies a person from testifying in a criminal case in which a

relative is involved, if the former was really at the scene of the crime and witnesses the execution of the criminal act.[30] The natural interest of witnesses who are relatives of the victim in securing the conviction of the guilty party would prevent them from implicating persons other than the culprits. Otherwise, the latter would thereby go unpunished.[31] We are aware of the fact that now and then crimes are committed with just the relatives of the victim as witnesses.[32]

In the second assignment of error, accused-appellant claims that the trial court erred in not believing the defense that the victim was shot accidentally.[33] In the course of the trial in the court a quo, accused-appellant invoked self-defense.[34] Accident and self-defense do not have the same meaning or legal effect. Self-defense is a justifying circumstance under paragraph 1 of Article 11, while accident is an exempting circumstance under paragraph 4 of Article 12, both of the Revised Penal Code.[35]

It is a cardinal principle in criminal law that self-defense must be established as convincingly as possible.[36] Although the prosecution has the burden of proving the guilt of the accused, this rule is reversed where the accused interposes self-defense. The burden is shifted to the accused to prove the following elements of self-defense: (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.[37] Unlawful aggression has been defined as an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude.[38] Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense.[39] Therefore, unlawful aggression is indispensable, it being the main ingredient to self-defense.[40]

In the case at bar, accused-appellant failed to prove that the killing was justified and that, therefore, no criminal liability has attached. Accused-appellant failed to prove unlawful aggression. Self-defense cannot be justifiably entertained where it is not only uncorroborated by competent evidence but is seriously doubtful.[41] Accused-appellant's invocation of self-defense therefore deserves scant consideration.

As correctly observed by the trial court:

Unfortunately for the accused, he was making barefaced lies when he testified and claimed that he only heard one burst of gunfire. And yet, the victim died from multiple gunshot wounds. Upon coaxing to tell the truth, on being confronted with the physical evidence from the multiple gunshot wounds sustained by the victim, the accused readily admitted that he heard 3 more shots from the same gun.

Moreover, it is amazing how the accused could describe the gun in its minute and particular details when all along, he claimed that he never got hold of the fatal gun, even after he has killed the victim and leaving only after he made sure that he was already dead, instead of bring him to the hospital if he did not really kill the victim with deliberate intent.[42]

Furthermore, it is a well-settled rule that the nature and number of wounds inflicted by the assailant are considered important indicators which belie a plea of self-defense.[43] In the instant case, the cause of the victim's death was shock secondary to multiple gunshot wounds, as evidenced by the post-mortem examination conducted by Dr. Jesus P. Cernan, the medico-legal officer.[44]

The trial court correctly appreciated the presence of the circumstance of treachery, which qualified the offense to Murder. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without the risk to himself arising from the defense, which the offended party might make.[45] For treachery or *alevosia* to be properly considered as a qualifying circumstance, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself; and (2) that the offender

deliberately or consciously adopted the particular means, method or form of attack employed by him.[46]

In the case before us, the victim was half-naked while walking towards the house of Ramon Cabugason to attend a reconciliatory meeting with accused-appellant, when the latter, suddenly and without warning, drew his gun and shot the victim on the right calf. Moreover, accused-appellant pursued the wounded victim and continued shooting at the latter when he started to run away.

The suddenness of an attack without the slightest provocation from the victim who was unarmed and had no opportunity to repel the aggression or defend himself necessarily qualifies the crime with treachery.[47] A frontal attack could be treacherous when unexpected and the unarmed victim would be in no position to repel the attack or avoid it.[48]

The killing was further attended by the aggravating circumstance of evident premeditation. For evident premeditation to be properly appreciated, it must be clearly shown as the crime itself.[49] Consequently, the following elements must be competently proven: (1) the time the accused decided to commit the crime; (2) an overt act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequence of his act.[50]

It was clearly established by the prosecution that accused-appellant decided to commit the crime when Nestor Miraflor approached him for the purpose of reconciling accused-appellant and the victim. Sufficient time had elapsed from the decision and the execution for the accused-appellant to reflect upon the consequences of his act, as shown by the following: (1) accused-appellant had to wait while Miraflor convinced Cabugason to help him with the reconciliation; (2) accused-appellant had to wait with Cabugason for Miraflor to return to Cabugason's house to inform them that the victim agreed to reconcile; and (3) accused-appellant had to wait again for Miraflor to go back to the house of the victim in order to bring him to the house of Cabugason.

The trial court was correct in appreciating the mitigating circumstance of voluntary surrender, which requires the following: (1) the offender has not actually been arrested; (2) the offender surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[51] Voluntary surrender must be spontaneous and the intent of the accused to surrender unconditionally to the authorities must be shown because he has acknowledged his guilt or he wished to save the authorities the trouble and expenses necessarily incurred in his search or capture.[52]

Accused-appellant surrendered to the National Bureau of Investigation (NBI) on the same day that the incident occurred. The fact that he surrendered to the NBI instead of the nearest police station is of no moment since it is sufficient that the accused surrenders to a person in authority or his agent.[53]

The penalties imposed by the trial court on accused-appellant were likewise correct. Since treachery qualified the offense to Murder, the penalty imposable is reclusion perpetua to death.[54] The aggravating circumstance of evident premeditation was clearly evidenced by the facts and the mitigating circumstance of voluntary surrender was sufficiently proven. In cases where the law prescribes a penalty composed of two indivisible penalties, and where both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance.[55] In this case, the aggravating circumstance of evident premeditation was offset by the mitigating circumstance of voluntary surrender. Thus, accused-appellant was correctly sentenced to suffer reclusion perpetua, the lesser of the two indivisible penalties.[56]

The prosecution prayed that the civil indemnity for the death of the victim be increased from Fifty Thousand Pesos (P50,000.00) to Seventy-five Thousand Pesos (P75,000.00) pursuant to the ruling in *People v. Victor*. [57]

However, the amount of P75,000.00 as civil indemnity is awarded only to rape victims where the penalty imposed is death. Thus, the sum of P50,000.00 awarded by the trial court as civil indemnity is in line with the policy of the Court.[58]

Finally, we note that the trial court failed to award actual damages for burial expenses, which was stipulated by the prosecution and the defense in the amount of P15,000.00.[59] In this connection, we have held that although receipts should ordinarily support claims of actual damages, the same may be awarded where the defense stipulated thereon.[60] Therefore, accused-appellant must be ordered to pay the further amount of P15,000.00, as burial expenses.

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Cebu City, Branch 15 in Criminal Case No. CBU-42577, finding accused-appellant Jesus Javier @ Jessie guilty beyond reasonable doubt of Murder, sentencing him to suffer the penalty of Reclusion Perpetua, and ordering him to pay the heirs of the victim, Romeo Jumao-as, the amount of P50,000.00 as civil indemnity, is AFFIRMED with the MODIFICATION that accused-appellant is further ordered to pay the heirs of the victim burial expenses in the stipulated amount of P15,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.

[1] Record, p. 1; Criminal Case No. CBU-42577.

[2] TSN, January 20, 1997, pp. 4-5.

[3] Ibid.

[4] Id., p. 5.

[5] Id., p. 6.

[6] Id.

[7] Id., p. 7.

[8] Id., p. 8.

[9] Id.

[10] Id., p. 9.

[11] Id., p. 10.

[12] Id., p. 11.

[13] Id.

[14] Exhibit A.

[15] Ibid.

[16] TSN, February 20, 1997, p. 3.

[17] Ibid., pp. 3-4.

- [18] *Id.*, pp. 5-6.
- [19] *Id.*, p. 6.
- [20] *Id.*
- [21] *Id.*, pp. 6-7.
- [22] RTC Decision, p. 5; penned by Judge German G. Lee, Jr.
- [23] *People v. Tacipit*, 242 SCRA 241 [1995]; *People v. Sarabia*, 266 SCRA 471 [1997].
- [24] *People v. Alvarez*, 267 SCRA 266 [1997]; *People v. Tanedo*, 266 SCRA 34 [1997]; *Lustan v. CA*, 266 SCRA 663 [1997].
- [25] *People v. Carpio*, 282 SCRA 23 [1997]; *People v. Letigio*, 268 SCRA 227 [1997].
- [26] RTC Decision, p. 3.
- [27] Appellant's Brief, p. 6.
- [28] *People v. Galapin*, 293 SCRA 474 [1998].
- [29] *People v. Virtucio, Jr.*, 326 SCRA 198 [2000]; *People v. Urgel*, 134 SCRA 483 [1985].
- [30] *People v. dela Cruz*, 207 SCRA 632 [1992].
- [31] *People v. Galapin*, *supra*; *People v. Apongan*, 270 SCRA 713 [1997]; *People v. Enciso*, 223 SCRA 675 [1993]; *People v. Veinte*, 225 SCRA 361 [1993].
- [32] *People v. Virtucio, Jr.*, 326 SCRA 198 [2000]; *People v. Ronato*, 316 SCRA 433 [1999].
- [33] Appellant's Brief, p. 5.
- [34] TSN, February 20, 1997, p. 3.
- [35] *People v. Cario*, 288 SCRA 404 [1998].
- [36] *People v. Magallano*, 266 SCRA 305 [1997]; *Jacobo v. CA*, 270 SCRA 270 [1995].
- [37] *People v. Magallanes*, 275 SCRA 222 [1997]; *People v. Cahinde*, 266 SCRA 554 [1997]; *People v. Ganzagan*, 247 SCRA 220 [1995].
- [38] *People v. Cario*, *supra*; *People v. Ignacio*, 270 SCRA 445 [1997].
- [39] *People v. Ignacio*, *supra*; *People v. Bernal*, 254 SCRA 659 [1996].
- [40] *People v. Jotay*, 222 SCRA 801 [1993].
- [41] *People v. Bitoon, Jr.*, 309 SCRA 209 [1999]; *People v. Baniel*, 275 SCRA 472 [1997].
- [42] RTC Decision, pp. 3-4.
- [43] *People v. Cario*, *supra*; *Guevarra v. CA*, 187 SCRA 484 [1997]; *People v. Masankay*, 157 SCRA 320 [1988]; *People v. CA*, 166 SCRA 436 [1988]; *People v. Ganut*, 118 SCRA 35 [1982].
- [44] Exhibit A.
- [45] *People v. Lumacang*, 324 SCRA 254 [2000], citing *People v. Dela Cruz*, 242 SCRA 129 [1995].

[46] *People v. Romeo Magaro*, 291 SCRA 681 [1998], citing *People v. Magallanes*, 275 SCRA 222 [1997]; *People v. Azugue*, 268 SCRA 711 [1997].

[47] *People v. Apongan*, 270 SCRA 713 [1997].

[48] *People v. Adrales*, 322 SCRA 424 [2000]; *People v. Guillermo*, 302 SCRA 257 [1999]; *People v. De Manuel*, 263 SCRA 49 [1996]; *People v. Tampon*, 258 SCRA 115 [1996]; *People v. Mirandoy*, 242 SCRA 620 [1995].

[49] *People v. Piamonte*, 303 SCRA 577 [1999]; *People v. Padama*, 316 SCRA 152 [1999].

[50] *People v. Sesbreno*, 314 SCRA 87 [1999].

[51] *People v. Ignacio*, 375 SCRA 375 [2000].

[52] *People v. Real*, 308 SCRA 244 [1999].

[53] *People v. Ignacio*, 375 SCRA 375 [2000].

[54] Revised Penal Code, Art. 248.

[55] Revised Penal Code, Art. 63.

[56] Revised Penal Code, Art. 63.

[57] 292 SCRA 186 [1998].

[58] *People v. Borreros*, 306 SCRA 680 [1999].

[59] TSN, January 31, 1997, p. 10.

[60] *People v. Galvez*, G.R. No. 136790, March 26, 2001.

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