PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DOMINGO Y LIMPOT, ACCUSED-APPELLANT.

G.R. No. 131817. August 08, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Dante Domingo y Limpot, together with accused Leonardo Guerrero y Castro and Nanette Ricarse y Saveron, were charged with murder in an information[1] which reads, thus:

> That on or about October 12, 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, armed with a gun, with treachery and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot with said gun one PO3 Pedro Delgado, thereby inflicting fatal injuries upon the latter which caused his death.
>
> CONTRARY TO LAW.

In the evening of October 12, 1994, Michael Abad, a bodyguard and driver of a certain Manuel Orig, was standing in front of the Davao Investment Promotion Center along Quimpo Boulevard. He was waiting for Mr. Orig who was then having a meeting at said Center. At around 9:30 p.m., he saw PO3 Pedro Delgado, accused-appellant Dante Domingo, Leonardo Guererro and Nanette Ricarse walking alongside each other across the boulevard. PO3 Delgado was nearest the cemented road pavement and on his right was Domingo, Guerrero and Ricarse. He noticed Guerrero step back and allow Ricarse to approach accused-appellant. From Abad's perspective, it appeared that Ricarse handed something to accused-appellant and immediately the latter shot Delgado at the back of his head.

Another witness, Rosauro Sauza, testified that he heard several gunshots and as he tried to look into the general direction of where he heard the gunshots, he saw accused-appellant, who was wearing a jacket, approaching and at the same time allegedly tucking something in his left waistline.

Dr. Danilo Ledesma of the Davao City Health Office made an autopsy on the body of the victim and later issued a Post-mortem Examination Report,[2] indicating "Gunshot Wound of the Head" as the cause of death.

For his part, accused-appellant interposed self-defense. He claimed that on the evening of October 12, 1994, he and the victim were walking along Quimpo Boulevard going south. They had just come from a drinking session at the Ecoland Bus Terminal when the victim taunted accused-appellant that he is not the father of the unborn child being carried by his wife. At first, accused-appellant ignored the victim's taunting but when the latter pestered him and even laughed at him, he told the victim to stop. Resenting his admonition for him to stop, the victim pushed him and pulled out a knife. As the victim was about to stab him, he stepped back and shot the victim.

Guerrero and Ricarse simply raised lack of conspiracy between them and accused-appellant and did not controvert the latter's narration of the incident.

While the trial court acquitted Guerrero and Ricarse of the charges based on insufficiency of evidence, it

convicted accused-appellant Dante Domingo of the crime charged and held thus:

> For the foregoing considerations, this Court finds DANTE DOMINGO, "GUILTY", of Murder aggravated by the qualifying circumstance of treachery and considering that the commission of the crime was not attended by any other aggravating circumstance is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA and ordered to indemnify the family of the victim the sum of P50,000.00 for the death of the victim and to pay actual damages in the sum of P57,245.00.
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> Considering the insufficiency of evidence of conspiracy, the Information against LEONARDO GUERRERO and NANETTE RICARSE is hereby DISMISSED.
>
> Accordingly, the City Warden, Ma-a City Jail, Davao City, is hereby directed to release accused Leonardo Guerrero and Nanette Ricarse from his custody in so far as this case is concerned.[3]

Aggrieved by the decision, accused-appellant Dante Domingo interposed the instant appeal on the following assignment of errors:

> - The court a quo erred in not considering Dante Domingo's plea of self-defense;
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> - The court a quo erred in finding that the qualifying circumstance of treachery attended the commission of the crime charged; and
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> - The court a quo erred in not considering the mitigating circumstances of intoxication, passion and obfuscation in favor of the accused-appellant.

The trial court correctly disregarded accused-appellant's claim of self-defense. To prove self-defense, the accused must show with clear and convincing evidence, that: [1] he is not the unlawful aggressor; [2] there was lack of sufficient provocation on his part, and [3] he employed reasonable means to prevent or repel the aggression. Self-defense, like alibi, is a defense which can easily be concocted. It is well-settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing."[4]

Granting that the first two elements are present, accused-appellant miserably failed to prove that he employed reasonable means to prevent or repel the alleged aggression. The victim was supposedly armed with a knife while accused-appellant was armed with a gun. In addition, a more telling disparity was exposed in the necropsy report. The victim suffered four gunshot wounds, three of which were head wounds. One bullet shattered the victim's nose. The second pierced the back of his head. The third hit the victim's right mandible, about 1.5 cm. away from the hole of the victim's right ear. The fourth wound was no less superficial as the bullet pierced the victim's right shoulder. In contrast, the accused-appellant did not suffer a single scratch. The physical evidence, therefore, negated his claim of self-defense since he suffered no harm or injury.[5] The location, number and seriousness of the wounds inflicted on the victim indeed belied accused-appellant's claim of self-defense.[6]

Treachery attended the commission of the crime. To constitute treachery, two conditions must concur: [1] the employment of means methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and [2] the offender's deliberate or conscious choice of the means, method or manner of execution.[7] From the vantage point of Michael Abad, the prosecution's eyewitness, accused-appellant and his victim were conversing with each other while walking side by side when suddenly, accused-appellant pulled out his gun and fired at the victim four times. The attack was sudden and the wounds were fatal thereby effectively preventing the victim from mounting even a token defense. The necropsy report

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indicated that accused-appellant was at the 4 o'clock or 5 o'clock position in relation to his victim. Three of the four shots were fired from behind. Clearly, the assault was treacherous.

Accused-appellant next insists that the circumstances of intoxication, passion and obfuscation must be considered in his favor. We disagree.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony.[8] In the instant case, accused-appellant claimed that prior to the shooting he joined his victim in a drinking spree. Nonetheless, he failed to prove the approximate quantity of his intake as to sufficiently affect his mental faculties and consequently entitle him to a mitigation of his offense. Accused-appellant failed to prove he was in a state of intoxication at the time of the commission of the crime. On the contrary, the records showed no disturbance in the reasoning powers of accused-appellant. In fact, from his narration of the events that transpired prior to and after the shooting, he seemed to be fully aware and cognizant of everything that occurred.

Also, passion and obfuscation cannot be considered in favor of accused-appellant because it cannot be said that he acted under an impulse so powerful as naturally to have produced passion and obfuscation. Interestingly, even after having been taunted with regard to the paternity of his child, accused-appellant still had a grip of the situtation. He even pleaded with the victim to stop taunting him as they were both drunk. Plainly, passion and obfuscation did not provoke accused-appellant into killing Delgado. A person invoking irresistible force or uncontrollable fear must show that the force exerted was such that it reduced him to a mere instrument who acted not only without will but against his will.[9] Besides, passion cannot co-exist with treachery because in passion, the offender loses his control and reason, while in treachery the means employed are consciously adopted and one who loses his reason and self-control could not deliberately employ a particular means, method or form of attack in the execution of the crime.[10]

The trial court awarded actual damages in the amount of P57,245.00. However, only the amount of P10,000.00 for embalming services was duly receipted. It is axiomatic that a party seeking the award of actual damages must produce competent proof or the best evidence obtainable to justify such award. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the court. It will not rely merely on suppositions or conjectures.[11] Thus, the amount of actual damages is reduced to P10,000.00.

On the other hand, the heirs of the victim are entitled to receive moral damages in the amount of P50,000.00. This award is mandatory and does not require proof other than the death of the victim.[12]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 8 of Davao City finding Dante Domingo y Limpot guilty beyond reasonable doubt of murder is AFFIRMED with the MODIFICATION that moral damages in the amount of P50,000.00 is awarded while the award for actual damages is reduced from P57,245.00 to P10,000.00.

Costs de oficio.

SO ORDERED.

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

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[1] Records, p. 1.

[2] Id., p. 11.

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[3] Decision penned by Judge Salvador M. Ibarreta, Jr., Records, p. 231.

[4] People v. Belbes, G.R. No. 124670, June 21, 2000.

[5] People v. Binondo, 214 SCRA 764 [1992].

[6] People v. Batas, 176 SCRA 46 [1989].

[7] People v. Rendaje, G.R. No. 136745, November 15, 2000.

[8] Revised Penal Code, Art. 15, 3rd par.

[9] People v. Lising, 285 SCRA 595 [1998].

[10] People v. Germina, 290 SCRA 146 [1998].

[11] People v. Rios, G.R. No. 132632, June 19, 2000.

[12] People v. Candare, et al., G.R. No. 129528, June 8, 2000.

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