

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARANDE COLINA ADLAWAN @ RANDIE, ACCUSED-APPELLANT.

G.R. No. 131839. January 30, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the June 23, 1997 Decision[1] of the Regional Trial Court of Mandaue City, Branch 28, in Criminal Case No. DU-3463, convicting accused-appellant of the crime of Murder and sentencing him to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and one (1) day of reclusion temporal, as maximum; and to pay the heirs of the deceased the sum of P50,000.00 as death indemnity, P18,850.00 as actual damages and the costs.

The Information against accused-appellant reads:

That on or about the 15th day of November, 1992, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, and shot Nequito Ortizano with a revolver, thereby inflicting upon the latter mortal wound at his vital portion which caused his death soon thereafter.

CONTRARY TO LAW.[2]

Upon arraignment on March 31, 1997, accused-appellant pleaded not guilty.[3] Thereafter, trial ensued.

The prosecution's account of the antecedent facts are as follows: At dawn of November 15, 1992, the deceased, together with prosecution witnesses Benjamin Basubas and Quirino Cinco, and a certain Oliver Bonayan, were inside a fenced disco area in Sitio Oril, Mandaue City. At 2:00 a.m., Benjamin Basubas and Quirino Cinco were alerted by a commotion outside. When they rushed out, they saw the deceased raising his hands in front of accused-appellant, who was then in the company of Barangay Tanod Jerry Diaz and Jet Bonita. Likewise present was accused-appellant's father, Barangay Tanod Crispulo Adlawan, who was lying on the ground unconscious. Prosecution witnesses Benjamin Basubas and Quirino Cinco stood approximately one meter away from the deceased. All of a sudden, accused-appellant drew a gun from his waist, pointed it at the deceased, saying, "this is the one." [4] He immediately fired the gun, hitting the deceased on the chest. The latter staggered toward the direction of Benjamin Basubas. He was able to hold on to a deaf-mute bystander, but fell on a shallow canal and landed on his belly with his head resting on the bank of the canal. Accused-appellant followed the deceased, turned the latter's head and delivered a fatal shot hitting him above the right ear. Thereafter, accused-appellant surrendered the gun to a group of Barangay Tanod.[5]

The Necropsy Report shows the postmortem findings and the cause of death of the victim, thus:

II. Pertinent Findings:

- Gunshot Wound, Entrance, 0.5 cm. x 0.5 cm., located at the left parietal region 4 cm. above the right ear. The

entrance wound has an inverted periphery. The bullet slug went thru the brain tissues and pierced thru the right parietal bone, where the slug was embedded and extracted at the scalp of the right parietal region.

- Gunshot Wound, Entrance, 0.5 cm., located at the left supraclavicular at the medial part, with inverted periphery and contusion, collar. The bullet slug went downward and backwards hitting the upper lobes of the left and right lungs and exited thru the inferior border of the right scapula. The exit wound measures 1 cm. x 1 cm. with irregular everted edges.

Gunshot Wounds Number 1 and 2 resulted to a massive hemorrhage of the brain, the left and right lungs.

III. Cause of Death:

SHOCK, IRREVERSIBLE. Secondary to Massive Hemorrhage due to Multiple Gun Shot Wounds.[6]

On the other hand, the defense averred that at around 2:00 in the morning of November 15, 1992, while accused-appellant was inside a fenced disco area in Sitio Oril, Mandaue City, he heard somebody shouting and when he turned to the source of the disturbance, he saw his father, lying on the ground unconscious and with a bloodied face. Accused-appellant dashed to his father whom he thought was already dead. As he tried to lift him, he saw the deceased about 2 1/2 arm's length away, holding a gun and told him, "Do you want to follow your father?"[7] Thereafter, accused-appellant lunged at the deceased, twisted his hand, forcing the muzzle of the gun to be pointed at the deceased's chest. Suddenly, the gun went off, causing the deceased to fall in a canal. Accused-appellant was able to get hold of the gun and again fired at the deceased. Thereafter, he fled and hid in Manila[8] until January 23, 1997, when he finally decided to surrender to Mayor Alfredo M. Ouano and P/Supt. Rolando Borres.[9]

After trial, the court a quo rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, finding the herein accused ARANDE COLINA ADLAWAN @ RANDIE guilty beyond reasonable doubt for the crime of Murder, the said accused is hereby sentenced to undergo the indeterminate penalty by imprisonment of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to SEVENTEEN (17) YEARS and ONE (1) DAY of reclusion temporal as maximum, with the accessories of the law, to indemnify the legal heirs of Nequito Ortizano the amount of Fifty Thousand (P50,000.00) Pesos by reason of his death, P18,850.00 as actual damages, and to pay the costs.

The accused, being a detention prisoner, shall be credited in the service of his sentence full time during which he has undergone preventive imprisonment.

SO ORDERED.[10]

Hence, the instant appeal. Accused-appellant contends that:

I.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER CONSIDERING THAT THE PROSECUTION FAILED TO ESTABLISH BEYOND REASONABLE DOUBT THE ATTENDANCE OF TREACHERY AND EVIDENT PREMEDITATION, AND THE RECORDS WILL SHOW THAT THE ACCUSED-APPELLANT ONLY OFFERED TO PLEAD GUILTY TO THE LESSER OFFENSE OF HOMICIDE.

II.

ANENT HERETO, THE COURT A QUO ERRED TO APPRECIATE (sic) THE ACCUSED-APPELLANT'S WILLINGNESS TO ENTER A PLEA OF GUILTY TO THE LESSER OFFENSE OF HOMICIDE AS A MITIGATING CIRCUMSTANCE.

III.

FURTHER TO THIS, ASSUMING THAT THE ACCUSED-APPELLANT IS INDEED GUILTY, THE COURT A QUO FAILED TO LIKEWISE APPRECIATE THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE/DEFENSE OF RELATIVE WHICH WAS SUFFICIENTLY ESTABLISHED.

IV.

IN APPRECIATING THE EVIDENCE ON RECORD, THE COURT A QUO ERRED IN ACCORDING GREATER WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THE FACT THAT THE SAME LACK CREDIBILITY AND CANNOT SUSTAIN A CONVICTION OF THE ACCUSED-APPELLANT.

V.

THE COURT A QUO ERRED IN AWARDING ACTUAL DAMAGES OF P18,850.00 TO THE HEIRS OF THE VICTIM NOTWITHSTANDING THAT THE SAME WERE NEVER DULY PROVEN.[11]

The appeal has no merit.

The task of assessing the conflicting versions of the defense and the prosecution is a matter best determined by the trial court who had the untrammelled opportunity to observe the witnesses' demeanor and deportment on the witness stand, and therefore could better discern if such witnesses were telling the truth or not. Hence, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility of witnesses must be respected.[12]

After a careful and thorough review of the testimony of prosecution witnesses Benjamin Basubas and Quirino Cinco, we are convinced that the trial court did not err in giving credence to their declarations which were given in a direct, positive and straightforward manner. Moreover, the defense failed to show that the prosecution witnesses had improper motive to give a false narration of the circumstances surrounding the death of the deceased.

Likewise, the trial court correctly appreciated the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack, depriving the victim of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor.[13] At the time accused-appellant fired the first shot, the deceased was unarmed and had his hands raised. The deceased was therefore in no position to put up any defense such as would present a risk to accused-appellant. Moreover, the second shot fired by accused-appellant clearly foreclosed any doubt as to the attendance of treachery. When he turned the head of the deceased before he fired the second shot, accused-appellant was manifestly determined to have a better shot at the head of the deceased who was already lying helpless on the ground.

The privileged mitigating circumstance of incomplete self-defense cannot be appreciated in favor of accused-appellant. Unlawful aggression is a condition sine qua non for self-defense, whether complete or incomplete.[14] From the version of the prosecution, which the Court finds credible, the deceased did not commit any unlawful aggression towards accused-appellant. On the contrary, it was accused-appellant who was the aggressor when he shot the deceased who was unarmed and raising his hands.

In the same vein, the circumstance of incomplete defense of a relative is unavailing. It is settled that a person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.[15] In the instant case, accused-appellant was not justified in attacking the deceased as the latter had his hands raised and was no longer poised to attack accused-appellant's father at the time he was shot.

Furthermore, the acts of the deceased immediately prior to the shooting did not constitute unlawful aggression. Unlawful aggression requires an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. It must be such as to put in real peril the life of the person defending himself and not a mere imagined threat.[16] In his direct testimony, accused-appellant did not categorically declare that the deceased was aiming the gun at him, or about to shoot him. Right after he allegedly heard the deceased's remark, "Do you want to follow your father," he immediately lunged at him, twisted the gun toward his chest and fired. Clearly, therefore, there was no real peril to the life of accused-appellant. In *People v. Escoto*,[17] we held that the mere apprehension that the supposed aggressor would shoot the person invoking self-defense is not justified. Failing to discharge the burden of proving unlawful aggression, accused-appellant's claim of incomplete self-defense cannot prosper.

The trial court, however, erred in appreciating the mitigating circumstance of voluntary surrender in favor of accused-appellant. To be considered a mitigating circumstance, voluntary surrender must be spontaneous. The conduct of the accused, and not his intention alone, after the commission of the offense, determines the spontaneity of the surrender. In *People v. Mabuyo*,[18] we held that the surrender is not spontaneous where it took the accused almost nine months from the issuance of the warrant of arrest against him before he presented himself to the police authorities. With more reason than that we should not appreciate the mitigating circumstance of voluntary surrender in the case at bar since it took accused-appellant more than three years from the issuance of the warrant of arrest on September 23, 1993 before he finally decided to surrender on January 23, 1997.

Nevertheless, the mitigating circumstance of passion or obfuscation should be appreciated to mitigate accused-appellant's criminal liability. The requisites of this mitigating circumstance are: (1) that there be an act, both unlawful and sufficient to produce such a condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[19]

In the case at bar, accused-appellant thought his father whose face was bloodied and lying unconscious on the ground was dead. Surely, such a scenario is sufficient to trigger an uncontrollable burst of legitimate passion. His act, therefore, of shooting the deceased, right after learning that the latter was the one who harmed his father, satisfies the requisite of the mitigating circumstance of passion or obfuscation under Paragraph 6, Article 13 of the Revised Penal Code.

The penalty for Murder at the time of the commission of the offense is Reclusion Temporal in its maximum period to Death. There being one mitigating circumstance of passion or obfuscation, and no aggravating circumstance to offset it, the penalty shall be imposed in its minimum period, i.e., Reclusion Temporal maximum. Applying the Indeterminate Sentence Law, the maximum sentence shall be reclusion temporal in its maximum period and the minimum shall be taken from the next lower penalty, which is prision mayor maximum to reclusion temporal medium. Hence, accused-appellant should be meted the penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal as maximum.

As to accused-appellant's civil liability, we agree with the accused-appellant that the award of P18,850.00 as actual damages to the heirs of the deceased lacks basis. In lieu of actual damages, the heirs of the deceased are entitled to temperate damages in the amount of P10,000.00. Temperate damages are awarded where pecuniary loss is proved but not the amount thereof.[20]

Moral Damages in the amount of P50,000.00 should likewise be awarded for the emotional suffering of the deceased's heirs.[21]

The wife of the deceased testified that her husband, a 29-year old driver and spray man at the time of his death, was earning P100.00 daily.[22] Using the American Expectancy Table of Mortality,[23] the loss of his earning capacity should be computed as follows:

Net
Earning
Capacity = Life expectancy
[2/3 (80-age at death)] x Gross Annual Income (GAI)
(daily wage) x 261 (No. of
working days in a yr.)] - Living expenses
(50% of GAI)

$$\begin{aligned} &= 2/3 [(80-29)] \times [(P100.00 \times 261)] - 50\% \\ &= 2/3 (51) \times P26,100.00 - 13,050.00 \\ &= 34 (P13,050.00) \\ &= P443,700.00 \end{aligned}$$

Hence accused-appellant should be ordered to pay the amount of P443,700.00 for the loss of earning capacity of the deceased.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Mandaue City, Branch 28, in Criminal Case No. DU-3463, convicting accused-appellant of the crime of Murder, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, and to pay in addition to the P50,000.00 death indemnity and the costs, the amount of P50,000.00 as moral damages; P10,000.00 as temperate damages and the amount of P443,700.00 for the loss of earning capacity of the deceased.

SO ORDERED.

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

[1] Penned by Judge Mercedes Gozo-Dadole.

[2] Rollo, p. 6.

[3] Records, p. 18.

[4] TSN, April 28, 1997, p. 6.

[5] TSN, April 28, 1997, pp. 3-9 and pp. 16-21.

[6] Records, p. 31.

[7] TSN, May 21, 1997, p. 5.

[8] TSN, May 21, 1997, pp. 2-8.

[9] Records, p. 12.

[10] Rollo, pp. 33-34.

[11] Rollo, pp. 83-84.

[12] Uriarte v. People, G.R. No. 137344, January 30, 2001.

[13] People v. Macuha, 310 SCRA 14, 23-24 [1999]; citing People v. Vermudez, 302 SCRA 276 [1999], People v. Caritativo, 256 SCRA 1 [1996], People v. De Castro, 252 SCRA 341, People v. Abrenica, 252 SCRA 54 [1996], People v. Ponayo, 235 SCRA 226 [1994], People v. Balanon, 233 SCRA 679 [1994].

[14] People v. Camacho, G.R. No. 138629, June 20, 2001.

[15] Pepito v. Court of Appeals, 310 SCRA 128, 143 [1999], citing People v. Alongca, 78 Phil. 366 [1974].

[16] Escoto v. Court of Appeals, 278 SCRA 752, 759 [1997].

[17] Supra.

[18] People v. Mabuyo, 63 SCRA 532, 542 [1975].

[19] Tangan v. People, G.R. No. 105830, February 23, 2001.

[20] People v. Reyes, G.R. Nos. 137494-95, October 25, 2001.

[21] People v. Makilang, G.R. No. 139329, October 23, 2001.

[22] TSN, April 30, 1997, p. 12.

[23] People v. Enguito, 326 SCRA 508, 529 [2000]; People v. Langit 337 SCRA 232, 346 [2000].

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