

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PFC. RENANTE NACARIO y CAPALOS, DEFENDANT-APPELLANT.

G.R. NO. 137049. November 29, 2000

Ponente: MELO, J.

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MELO, J.:

In an Information dated May 21, 1998, accused-appellant Renante Nacario y Capalos was charged with murder allegedly committed as follows:

That on or about May 20, 1998, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then an active member of the Philippine Army assigned with the 62[nd] Infantry Battalion, stationed at Malagutay, this City, and as such armed with an M14 rifle, with grave abuse of superior strength, by means of treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with the use of said weapon that he was then armed with, at the person of Cpl. DANILO ROSIL, thereby inflicting multiple gunshot wounds on the fatal part of the latter's body which directly caused his death to the damage and prejudice of the heirs of said victim.

(p. 6, Rollo.)

It is not disputed that the victim and the accused-appellant were members of the Philippine Army and were both assigned to work in the mess hall of the 62[nd] Infantry Battalion in Malagutay, Zamboanga City. At around 2 o'clock in the afternoon of May 20, 1998, accused-appellant and the victim were alone inside the mess hall when accused-appellant thrice shot the victim at the back using an M14 rifle. Accused-appellant owned up the killing and immediately surrendered his M14 rifle and a bandolier of bullets to the officer on duty, Pfc. Reynaldo O. Germano, and later to superior officers.

When arraigned, accused-appellant pleaded "not guilty" and invoked self-defense. He contended that he and the victim had a heated argument on May 20, 1998; that he pushed the victim as the latter was grabbing accused-appellant's M14 rifle; that the victim then pulled a .357 caliber revolver from his back forcing accused-appellant to raise his M14 rifle and to shoot the victim as he turned his back. Accused-appellant submits that the circumstance that the victim was shot three times was purely due to impulse and was not deliberate.

The trial court did not believe the sole and uncorroborated testimony of accused-appellant. Instead, it upheld the testimony of the prosecution witnesses who declared that they saw the accused-appellant shoot the victim two more times even as the victim had his back to accused-appellant, and was about to fall on the ground due to the first shot. The trial court also lent credence to the testimony of the physician who conducted the autopsy which showed that all the three wounds sustained by the victim were at his back. Thus, on November 13, 1998, the court a quo rendered a decision convicting accused-appellant of Murder and sentencing him to reclusion perpetua and to pay damages (pp. 16-28, Rollo).

On appeal, accused-appellant assigns the following as the errors allegedly committed by the trial court, to wit:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING APPELLANT'S PLEA OF SELF-DEFENSE OR THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE.

II

ASSUMING ARGUENDO THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND DOUBT, THE COURT A QUO GRAVELY ERRED IN APPRECIATING TREACHERY AS A QUALIFYING CIRCUMSTANCE.

III

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT IS GUILTY, THE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

(pp. 53-54, Rollo.)

We find the appeal unmeritorious.

Self-defense is a timeworn excuse resorted to by assailants in criminal cases (*People vs. Maalat*, 275 SCRA 206 [1997]). We have held in a host of cases that for self-defense to prosper, the following requisites must be met: (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 (*People vs. Angeles*, 275 SCRA 19 [1997]; *People vs. Maalat*, 275 SCRA 206 [1997]; *People vs. Unarce*, 270 SCRA 756 [1997]; *People vs. Nalangan*, 270 SCRA 234 [1997]; *People vs. Tobias*, 267 SCRA 229 [1997]; *People vs. Cahindo*, 266 SCRA 554 [1997]; *People vs. Silvestre*, 244 SCRA 548 [1995]). In the case at bar, accused-appellant has failed to prove by clear and convincing evidence the first element of self-defense: unlawful aggression on the part of the victim. His uncorroborated testimony that he and the victim had a heated discussion is not the unlawful aggression contemplated by law. Worse, this pretension is belied by the absence in the crime scene of any firearm, more so the .357 cal. revolver allegedly drawn by the victim and with which he was presumably going to shoot accused-appellant.

Rather, the evidence shows that accused-appellant was the aggressor. His use of a deadly and high-powered M14 rifle in shooting the victim, not just once, but thrice and at the back at that, all demonstrate a deliberate and determined effort to kill the victim. His failure to assert self-defense before the person on duty, Pfc. Hermano, to whom he surrendered the M14 rifle used in killing the victim and the bandolier of bullets, casts serious doubt on the veracity of the theory of self-defense. And it must be borne in mind in this regard that the absence of the essential element of unlawful aggression on the part of the victim likewise invalidates and voids incomplete self-defense (*People vs. Layam*, 234 SCRA 424 [1994]).

Was the killing of the victim attended with treachery, thus qualifying the crime to murder?

We answer in the affirmative. 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 especially to insure its execution, without risk to himself arising from any defense which the offended party might make (Art. 14, Par. 16, Revised Penal Code; *People vs. Tañedo*, 266 SCRA 34 [1997]). In the case at bar, accused-appellant shot the victim thrice from behind. The victim was unarmed. Plainly, treachery attended the killing for there is *alevosia* when a person is unexpectedly attacked from behind, depriving him of any opportunity to defend himself (*Ingles vs. Court of Appeals*, 269 SCRA 122 [1997]). In *People vs. Eubra* (274 SCRA 180 [1997]), we likewise held that where the victim was totally unprepared for the unexpected attack from behind and had no weapon to resist the

aggression, the shooting cannot but be considered as treacherous. Here, accused-appellant's treacherous attack on his co-soldier was narrated by accused-appellant himself, to wit:

COURT:

Q - You were able to hit him (the victim) also three (3) times?

A - Yes.

Q - All at the back?

A - Yes.

Q - Are you sure?

A - Yes.

Q - You were not able to hit him a single time at the front?

A - No, your Honor, because his back is already facing me.

Q - So, when you shot him his back was towards you?

A - Yes.

Q - He was not facing you?

A - No, your Honor.

(tsn, p. 12, October 27, 1998)

Anent the third assigned error, the trial court, contrary to accused-appellant's submission, indeed considered the mitigating circumstance of voluntary surrender by imposing the lesser penalty of reclusion perpetua. Article 248 of the Revised Penal Code punishes the crime of murder with reclusion perpetua to death. Because accused-appellant voluntarily surrendered to the authorities immediately after the shooting, the trial court considered said mitigating circumstance and correctly imposed the lesser penalty of reclusion perpetua on the accused. However, reclusion perpetua being an indivisible penalty, accused-appellant cannot avail himself of the provisions of the Indeterminate Sentence Law.

With respect to the award of actual damages in the amount of P34,500.00, we find that only the amount of P2,713.00 was duly supported by receipts (Exhs. G2-G9, Original Records). The rest of the expenses which the victim's widow allegedly incurred were not substantiated by evidence other than her sole testimony. The award of actual damages cannot rest on the bare allegation of the heirs of the offended party (*People vs. Aguilar*, 292 SCRA 349 [1998]. Failure to substantiate such claim negates the award for actual damages (*People vs. Castro*, G.R. No. 130785, September 29, 2000). As such, the victim's widow is entitled to the award of P2,713.00 only as actual damages.

We, however, increase the award of moral damages from P20,000.00 to P50,000.00 considering that the victim's widow was pregnant with her and the victim's first child at the time of the incident. Moral damages, which include mental anguish, serious anxiety, and wounded feelings, may be recovered in criminal offenses resulting in the victim's death (*People vs. Dagami*, G.R. No. 123111, September 13, 2000).

WHEREFORE, the appealed decision is hereby AFFIRMED, with the modification that the actual damages awarded by the trial court are reduced to P2,713.00, and the moral damages granted are increased to P50,000.00. In all other respects, the appealed decision is affirmed. No special pronouncement is made as to costs.

SO ORDERED.

Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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