

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO DELADA, JR., ACCUSED-APPELLANT.

G.R. No. 137406. March 26, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In the morning of July 7, 1997, Danny Paredes, a pedicab driver, parked his vehicle in front of the shoe shop of Loloy Cerna in Cogon, Cagayan De Oro City. He then went inside the Cogon market to eat breakfast. When he returned, he discovered that his pedicab was missing. Loloy Cerna told him that appellant Rogelio Delada, Jr., alias “Loloy Piang,” took his pedicab.

Later in the afternoon, at 4:00 p.m., Paredes saw appellant in the same vicinity aboard the pedicab. He accosted him and said, “Ang, why did you steal my trisikad?” Appellant answered, “Ngano, palag ka?” Irked at the insolent response, Paredes attempted to punch appellant but the latter was able to dodge the blow and run towards the public market.

Thereafter, while Paredes was talking with Loloy Cerna and Antonio Quipanes, they heard somebody say, “Piang is coming back.” Quipanes saw appellant approaching towards Paredes’ direction holding a kangkong cutter. He tried to warn Paredes of the forthcoming attack by uttering, “Dan, watch out!” However, even before Paredes could fully turn to face his assailant, the latter thrust the knife into the side of his waist. Paredes threw punches at appellant but he collapsed. While he lay injured on the pavement, he requested Quipanes to bring him to the hospital. Quipanes boarded Paredes on a motorela which brought him to the hospital. Meanwhile, he went inside the market to inform Paredes’ wife, who worked as a market vendor.[1]

The entire incident was also witnessed by Paredes’ sister, Marlyn P. Yabo. She was standing on the road eight meters away, waiting for her husband, when appellant stabbed her brother.[2]

Paredes sustained a single three-centimeter incised wound on the right flank of his abdomen. The vessel supplying blood to his intestines was lacerated thereby causing massive bleeding within the abdominal cavity. He lost four liters of blood and, despite immediate medical attention, succumbed to his injuries at dawn the following day.[3] The cause of his death was irreversible hypovolemic shock secondary to massive blood loss.[4]

In the meantime, appellant fled the crime scene and re-appeared only after Paredes’ body was laid to rest. He voluntarily surrendered to Nilo Java, a barangay captain, who subsequently brought him to Governor Emano.[5]

On September 24, 1997, appellant was formally charged for the killing of Paredes in an information which alleged:

That on or about July 7, 1997 in the afternoon at Pres. Sergio Osmeña Street corner Lim Ket Kai Drive, Cagayan De Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, and armed with a knife which he was then conveniently provided, did then and there willfully, unlawfully and feloniously attack, assault and stab

one Danny Paredes towards the right side of his body with said knife, thereby inflicting a fatal wound on the vital part of the latter's body resulting in his untimely death.

Contrary to and in violation of Article 248 of the Revised Penal Code, as amended by Section 6, Republic Act No. 7659.[6]

The case was docketed as Criminal Case No. 97-1432 and filed with the Regional Trial Court of Cagayan De Oro City, Branch 19. At his arraignment, appellant pleaded not guilty to the charge. Trial on the merits thereafter followed.

Appellant interposed self-defense to justify the killing of the victim, Paredes. He claimed that in the early morning of July 7, 1997, Paredes entrusted the pedicab to him while the former went inside the market to have breakfast. He knew the victim because his wife is a cousin of the latter's wife. He asked for Paredes' permission to use the pedicab, which the latter gave. He was, therefore, surprised when the victim confronted him at 12:00 noon for using the pedicab. He surmised that the latter was intoxicated since he had engaged in a drinking spree with Quipanes. The victim allegedly boxed him for no reason, hitting him on the right side of the face. When he saw Paredes scrambling for an umbrella tube with which to strike him, he then got a knife from inside the shoe repair shop. The victim wrestled with him and kicked him on the back. To defend himself against Paredes, who was a man of robust build, he thrust the knife without even knowing which part of the victim's body was hit. Thereafter, he ran towards the public market.[7]

In due course, the trial court rendered a decision dated November 20, 1998, the dispositive part of which reads:

WHEREFORE, judgment is hereby rendered finding accused guilty of murder, and sentencing him to suffer the penalty of reclusion perpetua plus the accessory penalties thereto. He is also ordered to pay indemnity to the heirs of Danny Paredes in the sum of P75,000.00 plus costs. xxx xxx xxx.

SO ORDERED.[8]

Hence, this appeal raising the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT DESPITE THE EXISTENCE OF EVIDENCE THAT THE FATAL BLOW WAS INFLICTED IN SELF-DEFENSE.

II

ASSUMING ARGUENDO THAT THE ACCUSED KILLED THE VICTIM, THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF MURDER DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER ON THE PART OF THE ACCUSED-APPELLANT.[9]

Appellant insists that he was able to prove all the elements of the justifying circumstance of self-defense under Article 11 (1) of the Revised Penal Code. Contrary to the findings of the trial court, it was the victim, Danny Paredes, who initially provoked the altercation by punching and kicking him for no apparent reason. The victim's size and build made the use of a knife reasonable under the circumstances, considering that appellant is much smaller and is suffering from a limp.

We are not convinced.

Appellant's contention basically boils down to the trial court's appreciation of the prosecution witnesses' credibility. In this regard, it is well-settled that the highest degree of respect is accorded to the findings of the trial court since it had the opportunity to observe firsthand the deportment of witnesses and is thus in a better position to determine the issue of credibility. The only exception to this rule is when there is a clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would justify a departure from its conclusions.[10] No such fact or circumstance obtains in the case at bar.

Prosecution witnesses Quipanes and Yabo categorically testified that after his initial confrontation with the victim, appellant returned approximately ten minutes later to kill him. Yabo, for her part, testified as follows:

Q.

What was the cause of that stabbing incident?

A.

Danny Paredes was looking for his trisicad which was stolen by Loloy Pi-ang.

Q.

You said that Danny Paredes was looking for his trisicad which was stolen by the accused in this case, did he find his trisicad?

A.

Danny Paredes saw Loloy Pi-ang riding on his trisicad and Danny Paredes told him and said: "Ang, why did you steal my trisicad."

Q.

What did Rogelio Delada say in response?

A.

Danny Paredes said "why did you destroy the top canvass of my trisicad or punctured the tire of the trisicad" and Loloy Piang said "palag ka" or "are you aggrieved."

Q.

When Rogelio Delada said "palag ka" or "are you aggrieve", what happened next?

A.

Danny Paredes attempted to box Loloy Pi-ang but Loloy Pi-ang was able to run towards the public market.

Xxx xxx xxx

Q.

You said Rogelio Delada ran towards Cogon market what happened next?

A.

Loloy Pi-ang was carrying a knife (which is a kangkong cutter); when he came back Danny Paredes was talking to a shoemaker and Tonio Quipanes shouted "Dan, watch out."

Q.

When Tonio Quipanes said “Dan, watch out!” did you see what happened next?

A.

When Danny Paredes tried to turn his head he was stabbed by Rogelio Delada on his right side (witness pointing to her right side on the waist portion)

Q.

How far were you when Danny Paredes was stabbed?

A.

About 2 armslength across the street.[11]

The foregoing narration was corroborated by Quipanes in this wise:

Q.

You said that when accused Rogelio Delada was confronted about the triscad he got from Danny Paredes and Rogelio Delada said “why, are you aggrieved?” and then Danny Paredes boxed Rogelio Delada but did not hit him, do you know what happened next?

A.

After Danny Paredes tried to box Rogelio Delada, Rogelio Delada ran towards Cogon Market.

xxx xxx xxx

Q.

While accused Rogelio Delada ran towards Cogon Market what were you and Danny Paredes doing?

A.

We were talking sir.

Q.

What were you talking about?

A.

We were talking about the triscad.

Q.

How far were you from each other?

A.

Two meters.

Q.

What was the position of Danny Paredes while talking to you?

A.

We were facing each other.

Q.

With reference to Cogon Market, who was facing Cogon Market?

A.

I am the one sir.

Q.

And whose back towards Cogon market?

A.

Danny Paredes.

Q.

How long have you been talking to each other?

A.

About ten minutes.

Q.

While talking to Danny Paredes was there any untoward incident that happened?

A.

Yes, sir.

Q.

What was that?

A.

I saw Rogelio Delada stab Danny Paredes.

xxx xxx xxx

Q.

And you said you were able to shout “Dan, watch out!”

A.

Yes, sir.

Q.

Was Danny Paredes able to have the opportunity to defend himself?

A.

No more.

xxx xxx xxx

Q.

What happened to Danny Paredes after he was stabbed by Rogelio Delada?

A.

He fell to the ground.

Q.

How did he fall to the ground?

A.

He fell on the pavement on his back.

Q.

Then he was able to utter any word?

A.

Yes, sir.

Q.

What word if anything did he utter?

A.

He told me "Bay, please bring me to the hospital."

xxx xxx xxx

Q.

What did you do then?

A.

I loaded him to the motorela with the help of other drivers. I told the driver to bring the victim to the hospital while I'll be going to his wife because his wife at that time is vending in Cogon.

Q.

How about accused Rogelio Delada did you see where he was going?

A.

He went back to Cogon market.[12]

We have carefully examined the evidence on record and found no cogent reason to disturb the finding of the trial court that Quipanes and Yabo are credible witnesses. As can be gleaned from the aforequoted testimonies, Quipanes' and Yabo's account was clear, straightforward and unequivocal. Appellant did not even allege and thus failed to show that the two witnesses had any dubious motive for testifying against him. There being no showing of improper motives on the part of the prosecution witnesses in identifying appellant as the perpetrator of the crime, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[13]

By invoking self-defense, appellant in effect admitted that he killed Paredes, thereby shifting the burden of proving all the elements of this justifying circumstance to him. These elements are: (a) unlawful aggression on the

part of the victim; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself. Of these requisites, unlawful aggression, or the sudden and unprovoked attack on the person defending himself, is indispensable. Without this element, no claim of self-defense can prosper.[14]

In the case at bar, while it would seem that it was the victim who initiated the attack at the outset, the aggression ceased as soon as appellant ran away. Paredes did not pursue the assault and was in fact casually conversing with Quipanes when appellant returned ten minutes later. It was then that appellant suddenly and fatally stabbed Paredes from behind.

When the unlawful aggression which had begun no longer exists, the one purportedly making the defense has no more right to kill or even wound the former aggressor,[15] otherwise, retaliation and not self-defense is committed. Accordingly, when appellant stabbed Paredes, there was no longer any immediate threat to his person that would justify his unlawful act. Hence, appellant cannot successfully invoke self-defense to avoid criminal liability and his conviction must necessarily follow.

Appellant next argues that if he were to be held criminally liable, it should only be for homicide. According to him, the prosecution did not sufficiently establish the presence of treachery in order to qualify the killing to murder. At no instance was it shown that he deliberately adopted a mode of attack that would deprive the victim of an opportunity to defend himself. Neither could the attack be considered as unexpected on the part of the victim since it was preceded by a quarrel over the trisikad.

We do not agree.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor.[16]

In the instant case, it was indubitably established that Paredes had his back towards the public market from where appellant commenced the assault. He had no inkling of the impending attack as shown by his casual behavior while talking to Quipanes. Although it is true that he had a previous altercation with appellant over the pedicab, he already had his guard down at the time of the fatal stabbing since he had given up on the pursuit of appellant ten minutes earlier. These all too clearly indicate that Paredes could not have foreseen the deadly assault.

Moreover, the injury inflicted on Paredes rendered him defenseless and without recourse against his assailant. The location and severity of the lone stab wound practically foreclosed any opportunity for Paredes to resist the attack. The knife pierced through a vulnerable part of the body and the manner by which the same was inflicted ensured the commission of the criminal act without any risk of defense from the victim. The trial court thus correctly appreciated treachery as having attended the killing.

On the other hand, the aggravating circumstance of evident premeditation did not attend the killing. The prosecution was not able to show: (a) the time when accused-appellant decided to commit the crime; (b) an act manifestly indicating that the accused-appellant had clung to his determination; and (c) a sufficient lapse of time between such determination and its execution to allow him to reflect upon the consequence of his act.[17]

As to the mitigating circumstance of voluntary surrender, we agree with appellant that the same should be considered in his favor. The evidence reveals that he indeed surrendered to a person in authority three days after the killing – a fact which the prosecution did not contest. Notwithstanding this, the presence of voluntary

surrender as a mitigating circumstance will not affect the penalty to be imposed upon appellant. Under Article 248[18] of the Revised Penal Code, as amended, the penalty for murder is reclusion perpetua to death. Article 63[19] of the same code states that when the law prescribes a penalty consisting of two indivisible penalties and the crime is attended by a mitigating circumstance and no aggravating circumstance, the lesser penalty shall be imposed. Consequently, the penalty of reclusion perpetua was correctly imposed by the trial court.

Finally, the court a quo awarded civil indemnity in the amount of P75,000.00 to the heirs of the victim. In accordance with prevailing judicial policy, however, said amount must be reduced to P50,000.00.[20] Likewise, an award of P50,000.00 as moral damages in favor of the victim's heirs is in order even in the absence of any allegation or proof of the heirs' emotional suffering. This is based on the assumption that a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family, as borne out by human nature and experience.[21]

WHEREFORE, the decision of the Regional Trial Court of Cagayan De Oro City, Branch 19, in Criminal Case No. 97-1432, finding appellant Rogelio Delada Jr. alias "Loloy Piang" guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay the heirs of the victim civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio and Azcuna, JJ., concur.

[1] TSN, July 7, 1998, pp. 3-8.

[2] TSN, June 19, 1998, pp. 4-6 & 11-14.

[3] TSN, July 27, 1998, pp. 4-5.

[4] RTC Records, p. 10.

[5] TSN, November 9, 1998, pp. 7-8.

[6] Rollo, p. 17.

[7] Supra, note 5 at 2-4 & 6-7.

[8] Supra, note 6 at 20-21.

[9] Id., at 37-38.

[10] See *People v. Teston*, G.R. No. 134938, 8 June 2000, 333 SCRA 404, 416-417 citing: *People v. Albao*, 350 Phil. 573 (1998) and *People v. Obello*, 348 Phil. 88 (1998).

[11] Supra, note 2 at 4-5.

[12] Supra, note 1 at 4-8.

[13] See *People v. De la Rosa, Jr.*, G.R. No. 133443, September 29, 2000, 341 SCRA 425, 438 citing: *People v. Tabaco*, 336 Phil. 771 (1997).

[14] *People v. Cotas*, G.R. No. 132043, May 13, 2000, 332 SCRA 627, 635 citing: *People v. Quino*, G.R. No. 105580, May 17, 1994, 232 SCRA 400; *People v. Alba*, 326 Phil. 519 (1996); *People v. Rapanut*, 331 Phil. 830

(1996); *De Luna v. Court of Appeals*, 314 Phil. 780 (1995); and *People v. So*, 317 Phil. 826 (1995).

[15] *Supra*, note 10 at 421, citing *Albao, supra*.

[16] *People v. Magno*, 379 Phil. 531, 554 (2000), citing *People v. Naguita*, 372 Phil. 169 (1999).

[17] *Supra*, note 14 at 640, citing *People v. Caisip*, 352 Phil. 1058 (1998); *People v. Pallarco*, 351 Phil. 391 (1998); *People v. Sumalpong*, 348 Phil. 501 (1998); *People v. Saliling*, 319 Phil. 288 (1995).

[18] ART. 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity; x x x.

[19] Article 63. Rules for the application of indivisible penalties. –

x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. x x x.

[20] See *People v. Verde*, 362 Phil. 305, 320 (1999), citing *People v. Espanola*, 338 Phil. 403 (1997).

[21] See *People v. Cabote*, G.R. No. 136143, November 15, 2001, citing *People v. Panado*, G. R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

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