

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON MAHILUM ALIAS “NEL”, ACCUSED-APPELLANT.*G.R. No. 137990. September 27, 2002*

Ponente: QUISUMBING, J.

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On ordinary appeal is the decision[1] of the Regional Trial Court of Toledo City, Branch 59, in Criminal Case No. TCS-T-229 (TCS-1879) finding appellant Nelson Mahilum alias “Nel” guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay damages to the heirs of the deceased.

The crime was allegedly committed as follows:

That on or about July 26, 1992, at around 8:50 o’clock in the evening, more or less, at Matab-ang, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, said accused, without just cause or sufficient provocation (sic) and with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly and treacherously assault, attack and stab one PABLEO A. FERNANDEZ[2] with the use of a knife, thereby inflicting upon the latter a lacerated wound, 1 ½ inches in length diagonally directed, at the abdomen, left lumber (sic) area, with eviceration of the greater omentum, the superior mesenteric artery was cut off, with about 3 liters of clotted blood in the abdominal cavity, resulting to hemorrhagic shock secondary to stab wounds, thereby directly causing the death of said Pableo A. Fernandez.

CONTRARY TO LAW.[3]

Upon arraignment, appellant entered a plea of not guilty, whereupon he was tried.

The prosecution’s version of the events, as summarized in Appellee’s Brief,[4] is as follows:

On July 26, 1992, around 8:50 p.m., Miguelito “Dodo” Aviles was in front of his store/carinderia at Matab-ang, Toledo City when he saw appellant across the road. Appellant’s state of intoxication was noticeable from his faltering steps. Aviles had known appellant since the latter was a child as they were neighbors and appellant at times would help in his (Aviles’) carinderia. Aviles approached appellant and told him to go home so as not to cause any trouble in the carinderia. There was an instance in the past when appellant, who was drunk, created trouble in the carinderia, so that Aviles’s regular customers no longer patronized his carinderia (TSN, October 10, 1995, pp. 4-6). Appellant when advised to go home just stared at Aviles and pushed the latter. Aviles was taken aback, so he slapped appellant (ibid., p. 8). At this juncture, Pableo “Willie” Fernandez arrived. Fernandez approached appellant and Aviles and pacified them (TSN, September 6, 1995, p.5).

After they were pacified, Aviles went back to his Carinderia and instructed his helper and his son to close the carinderia as it was already late. While Aviles was standing at the door of his carinderia, appellant approached him and asked for forgiveness (TSN, October 10, 1995, p.9). Aviles then told appellant “its okay” and again advised appellant to go home. When appellant approached Aviles, the latter noticed that a knife was hidden along

appellant's forearm. Then, Fernandez called appellant towards the middle of the road. Thereupon, appellant's brother, Demetrio, arrived and asked them what happened (ibid, pp. 10-11). Appellant replied "it was nothing". Fernandez placed his arm around appellant's shoulder still pacifying him. Suddenly, appellant stabbed Fernandez on the left side of his abdomen below the ribs. After that, appellant and Demetrio immediately ran away (ibid, pp. 12-13).

Fernandez was brought to the Toledo City Hospital by Marlon Bacaron and Rod Perolino on board the latter's car (ibid, p. 15). Fernandez died that night (TSN, September 6, 1995, p. 9).

Dr. Hermes Labrador, Jr., a Medico-Legal Officer in Toledo City, conducted an autopsy on the body of Pableo "Willie" Fernandez on July 27, 1992 (TSN, March 19, 1996, p. 3). He testified that based on the location of the wound, it is possible that the assailant was beside or in front of the victim. Although no vital organ was affected, the vessel that supplied blood to the intestine was severed which caused bleeding inside the abdomen and because of massive blood loss, the victim eventually died (ibid, pp. 7-8).

In his defense, appellant "vehemently denied the accusation" and presented his own version of the facts, thus:

... that in the evening of July 26, 1992, he went to the eatery of Miguelito Aviles for the purpose of buying his family's viand. Upon reaching the eatery, Miguelito Aviles approached him, then suddenly slapped his face. He inquired from Miguelito Aviles for the latter's reason for slapping him but Miguelito just turned away and went inside the store. Thereafter, the deceased Willy Fernandez arrived and after inquiring from Miguelito Aviles for what transpired, Willy Fernandez boxed him for several times. After Willy Fernandez boxed him, he was able to draw out a knife which he used in the morning for stripping coconuts. He brandished the knife in front of Willy Fernandez and Miguelito Aviles believing that Willy Fernandez was to attack him anew. After hearing someone shout from the background, "watch out Nel because Dodo has a gun" he stabbed Willy Fernandez and then ran away. (TSN, August 31, 1996, pp. 2-7).[5]

After trial, the court found the prosecution's evidence credible. It ruled that the positive declaration of the prosecution's eyewitnesses outweigh the bare denial interposed by the appellant. Consequently, appellant was convicted for the crime of murder. The trial court found that treachery attended the commission of the offense because appellant:

...pretended before his victim that he was already pacified when actually he was not, when he stabbed the victim in this case – a mode or means which he consciously adopted to insure the commission of the crime without entailing risk to himself as assailant.[6]

Accordingly, the trial court concluded as follows:

WHEREFORE, . . . judgment is hereby rendered finding herein accused Nelson Mahilum @ "Nel" guilty beyond reasonable [doubt] for the crime of Murder and sentencing him to suffer the penalty of imprisonment of reclusion perpetua.

The said accused is hereby further ordered to pay the heirs of the late Pableo Fernandez @ "Willy" the following amounts:

[1] The sum of P200,000.00 as compensatory damages;

[2] The sum of P100,000.00 as moral damages;

SO ORDERED.[7]

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

I

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF HEREIN ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN AWARDING THE SUM OF P200,000.00 AS COMPENSATORY DAMAGES AND IN AWARDING P100,000.00 AS MORAL DAMAGES.[8]

The issue now is whether the trial court erred in convicting appellant despite his claim of self-defense, and whether it also erred in awarding damages.

At the outset, we note that appellant admitted having stabbed the victim.[9] However, he denied liability for any crime because, according to him, he acted in self-defense. He contends that there must have been unlawful aggression on the part of the victim because “[i]t is so unnatural and highly incredible that appellant after seeking forgiveness from the person who slapped him, will suddenly stab another who was merely pacifying him.”[10]

Having pleaded self-defense, appellant necessarily admits that he killed the victim, and the burden is on appellant to prove by clear and convincing evidence the existence of the justifying circumstance of self-defense. It devolves upon him to establish the elements of self-defense, to show that the killing was justified and, consequently, he incurred no criminal liability therefor.[11] Otherwise, having admitted the killing, his conviction is inescapable. Concomitantly, to prove self-defense he must rely on the strength of his own evidence and not on the weakness of the prosecution’s evidence.[12]

Self-defense cannot be proved except by sufficient and credible evidence. On one hand, it excludes any vestige of unlawful aggression on the part of the person invoking it.[13] On the other hand, self-defense fails where unlawful aggression on the part of the victim is not properly established.[14] In this case, appellant’s claim of the existence of unlawful aggression on the victim’s part is purely speculative. It is unsubstantiated by credible evidence. There being no unlawful aggression by the deceased, there can be no self-defense, complete or incomplete, which appellant could claim.

The trial court found that the victim, Pableo Fernandez, was trying to pacify appellant, not attack him.[15] As testified in court by witnesses Rodulfo Perolino and Dodo Aviles, Fernandez was merely trying to pacify appellant, Nel Mahilum. The testimonies of Perolino and Aviles corroborate each other, and support the prosecution’s stance. They are also more in accord with human experience.

Self-defense is induced by necessity.[16] Yet, nowhere in appellant’s version of the incident can it be gleaned that he was hard-pressed to defend himself. There was no proof at all that his life was placed in danger, or that circumstances existed that called for stabbing the victim with a deadly weapon. Taken in the light of the testimonies of eyewitnesses Perolino and Aviles, we find appellant’s evidence utterly inadequate to prove that he was justified in killing Pableo Fernandez.[17]

However, the finding of the trial court that treachery attended the commission of the crime is open to doubt. Well-settled is the rule that treachery must be proved by clear and convincing evidence as conclusively as the killing itself. It is necessary that the existence of the qualifying circumstance of treachery be proven as fully as the crime itself in order to aggravate the liability or penalty of the culprit.[18] Any doubt as to the existence of

treachery must be resolved in favor of the accused.[19] We are thus constrained to review the evidence concerning treachery.

A thorough examination of the records of this case reveals that it is not clear whether the victim was beside or in front of the appellant. The testimonies of Perolino and Aviles are conflicting as to the exact position of the victim relative to that of appellant at the precise moment the stabbing occurred. On the one hand, Perolino declared that when Demetrio Mahilum arrived, appellant disengaged from Pableo's arms and approached Demetrio. Allegedly, only after having talked with Demetrio did appellant face Pableo to stab him. Pableo no longer had his arms around Mahilum at the time of the stabbing.[20] On the other hand, Aviles testified that at the time of the stabbing, the victim was still beside appellant and had his arms around appellant.[21] These conflicting versions surrounding the circumstances when appellant stabbed the victim give rise to doubt as to whether treachery attended the commission of the crime. There being no clear proof that appellant deliberately sought to attack the victim, by taking advantage of the latter's vulnerability, treachery cannot be appreciated to qualify the offense to murder. The crime committed is only homicide.

Under Article 249 of the Revised Penal Code, the prescribed penalty for homicide is reclusion temporal. There being no mitigating nor aggravating circumstances, the imposable penalty should be in its medium period, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Under the Indeterminate Sentence Law, "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code..." Thus, appellant's sentence should properly be eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

Coming now to appellant's civil liability, the trial court made no award for civil indemnity in favor of the victim's heirs. However, pursuant to prevailing jurisprudence, an award of P50,000 as civil indemnity is proper, without need of proof other than the fact of the victim's death. The award of moral damages is also proper, considering the testimonies of witnesses on the injuries inflicted on the victim, but following current jurisprudence the award should be reduced to only P50,000. But the award of compensatory damages cannot be sustained for lack of competent evidence to support it. In lieu thereof, appellant should pay temperate damages in the amount of P15,000 in accordance with our ruling in *People vs. Sumibcay*, G.R. Nos. 132130-31, May 29, 2002.[22] Under Art. 2224 of the Civil Code, temperate damages "may be recovered when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

WHEREFORE, the appealed decision of the Regional Trial Court of Toledo City is MODIFIED. Appellant NELSON MAHILUM is found GUILTY beyond reasonable doubt of the crime of HOMICIDE and sentenced to suffer the penalty of imprisonment from eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. Appellant is also ordered to pay the heirs of the victim, Pableo A. Fernandez, P50,000.00 as civil indemnity for the victim's death, P50,000.00 as moral damages, and P15,000.00 as temperate damages.

Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur. Mendoza, J., on official leave.

[1] Rollo, pp. 22-26.

[2] Also known as “Willy / Willie”.

[3] Rollo, p. 4.

[4] Id. at 120-122.

[5] Id. at 52.

[6] Id. at 25.

[7] Id. at 25-26.

[8] Id. at 47.

[9] Id. at 53.

[10] Id. at 54.

[11] *People vs. Galapin*, 293 SCRA 474, 488 (1998).

[12] *People vs. Basadre*, 352 SCRA 573, 583 (2001).

[13] *People vs. Flores*, 356 SCRA 332, 345 (2001).

[14] *People vs. Pagador*, G.R. Nos. 140006-10, April 20, 2001, p. 10.

[15] TSN, September 6, 1995, pp. 4-5; TSN, October 10, 1995, pp. 8, 11, 14.

[16] *People vs. Lao-as*, G.R. No. 126396, June 29, 2001, p. 6.

[17] See *People vs. Flores*, supra, note 13 and *People vs. Jabian*, 356 SCRA 348 (2001).

[18] *People vs. Peralta*, 350 SCRA 198, 211 (2001).

[19] *People vs. Ayupan*, G.R. No. 140550, February 13, 2002, p. 19; *People vs. Ocumen*, 319 SCRA 539, 563-564 (1999).

[20] TSN, September 6, 1995, pp. 14-15.

[21] TSN, October 10, 1995, p. 13.

[22] See also *People vs. Del Valle*, G.R. No. 119616, December 14, 2001, p. 10.

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