

DANILO “DANNY” MENDOZA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 139759. January 14, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari seeking the modification of the Decision[1] of the Court of Appeals, dated June 29, 1999, in CA-G.R. CR No. 21536, which affirmed the judgment of the Regional Trial Court (RTC), Branch 12, Laoag City, in Criminal Case No. 7190. In this case the trial court convicted accused Danilo Mendoza, petitioner herein, for homicide wherein the victim was Alfonso Nisperos. Petitioner does not seek an acquittal but merely prays that the privileged mitigating circumstance of incomplete self-defense be considered in his favor.

The Information charging petitioner with homicide is quoted as follows:

“That on 23 November, 1994, in the evening at Brgy. 19, San Nicolas, Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously stab ALFONSO NISPEROS on the different parts of his body which caused his death few moments thereafter.

CONTRARY TO LAW.”

Upon being arraigned on March 23, 1995, petitioner pleaded “Not Guilty.”

However, on July 11, 1995, petitioner manifested, through counsel, his desire to change his plea to that of “guilty” and to prove the privileged mitigating circumstance of incomplete self-defense.

Thus, on July 25, 1995, petitioner was re-arraigned and he entered a plea of “guilty.”

Evidence for the prosecution show that on November 23, 1994, one Willy Baluyot celebrated his birthday at his residence in Barangay 19, San Nicolas, Ilocos Norte. Among those invited were Danilo Mendoza, petitioner, Alfonso Nisperos, Gervacio Pascua, William Kiskis, Manuel dela Cruz, Jr., Erwin Vergara, and Nelson Romana.

During the party, Erwin Vergara got inebriated and had to be brought to a nearby hut by Alfonso Nisperos and Willy Baluyot to shake off the effects of his intoxication.

When the duo returned, petitioner suddenly smashed a pitcher of water on the table and shouted, “Bullshit! You are always asking us to drink.” The group was taken aback. Alfonso Nisperos asked petitioner, “Why, Mang Danny, why should we be the ones to quarrel?”

Petitioner then went to his house about 40 to 45 meters away.

The group was still talking about petitioner’s outburst when Daniel Nisperos, a brother of Alfonso Nisperos, joined them. Daniel noticed that petitioner’s mother was displeased since the group was discussing her son’s

behavior. She feared that something untoward might happen. This caused the party to break up and the Nisperos brothers headed for home. They were accompanied by their mother, Loreta Nisperos.

After sometime, Alfonso Nisperos stepped out of his house to get some soup. When he returned, he told his mother Loreta that he saw a person near their cow tied to a tamarind tree. Alfonso then went out again to check on the person he saw.

After a short while, Loreta suddenly heard Alfonso screaming, "Mother, help me!"

Loreta rushed to her son. She found him lying, face down, with petitioner on top of him, stabbing him with a knife.

Loreta then approached petitioner, pleading to him not to kill her son. But instead of heeding her plea, he suddenly attacked her with his knife, hitting her right arm. Petitioner then dashed away from the scene.

Danilo brought his brother, Alfonso, to the Batac General Hospital in Batac, Ilocos Norte where he was pronounced dead on arrival.

Petitioner testified that the victim was the aggressor who attacked him with a knife. Thus, he was forced to kill him with his own knife in order to defend himself.

On July 8, 1997, the trial court rendered its Decision convicting petitioner of homicide and sentencing him to suffer six (6) years and one (1) day of prision mayor, as a minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as a maximum, "having taken into consideration his plea of guilty." Petitioner was also ordered to pay the heirs of the victim P50,000.00 as damages.

On appeal, docketed as CA-G.R. CR No. 21536, the Court of Appeals affirmed the Decision of the trial court.

Hence, the instant recourse.

The sole issue for our resolution is whether or not the Court of Appeals erred in not finding that when petitioner committed the crime charged, the privileged mitigating circumstance of incomplete self-defense was present.

Petitioner, in his petition, relies on Article 69 of the Revised Penal Code quoted as follows:

"ART. 69. Penalty to be imposed when the crime committed is not wholly excusable. – A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking."

Petitioner contends that the trial court erred in holding that the witnesses for the prosecution who are close relatives of the victim are credible.

Petitioner also contends that the prosecution failed to prove any motive on his part in stabbing the victim.

Petitioner likewise faults the prosecution for its failure to present the knife used in attacking the victim.

In incomplete self-defense, unlawful aggression must be present, it being an indispensable requisite. What is absent is either one or both of the last requisites, to wit: reasonable necessity of the means employed to prevent or repel it; and, lack of sufficient provocation on the part of the person defending himself.[2]

Just as in complete self-defense, the burden of proof is upon petitioner to prove the elements of incomplete self-defense. It follows that he should have proved before the trial court that there was unlawful aggression on the

part of the victim. As found by the trial court, petitioner, to establish this element, testified that during that drinking spree, he had an altercation with Willy Baluyot, the birthday celebrant. Feeling bad, he (petitioner) slammed the table with a pitcher containing water. Then he left. At a distance, he heard the victim calling him. When they were close to each other, the victim blamed him for his conduct. He apologized but the victim started stabbing him with a knife. He tried to parry the attack as he retreated. That moment, his back was against a wall. He then grappled for the knife which he was able to wrench from the victim. They rolled over on the ground. At that point, he repeatedly stabbed the victim with his own knife.

The prosecution, to prove that petitioner was the aggressor presented Loreta Nisperos, victim's mother, who testified as follows:

“Q: And when you proceeded to that madre tree, what did you see?

A: My son was already lying flat on the ground facing the ground and this Danilo was on top of him and stabbing him.

Q: You said that you saw Danilo stabbing your son, what instrument did he use in stabbing your son?

A: Knife (immuko).

Q: Can you approximate the time, what time was that?

A: Between the hours of 8:00 and 9:00 o'clock.

Q: It was already nighttime and it was dark?

A: It was moonlight and there was also a light near the place where they were drinking.

Q: From the place where you saw Danilo Mendoza stabbing your son and the location of the bulb or the light, how far was it?

ATTY. BELLO:

There is no need of this question because the accused admitted that he stabbed the victim.

ASST. PROV'L PROS. MOLINA:

x x x

Q: When you saw Danilo Mendoza stabbing your son, what did you tell him?

A: I pleaded to him saying, 'Danilo, Danilo, Danilo, please do not kill him.'

Q: Upon saying those words, what happened next?

A: My son was able to move a little bit northward.

Q: And where did the accused go?

A: He still followed him.

Q: And when the accused followed your son, what did the accused do?

A: When I went near them, he also stabbed me.

Q: And what portion of your body was stabbed?

A: This one, sir. (Witness pointing to her right arm).”

As stated by the Solicitor General in the appellee's brief, petitioner was not defending himself from any attack but was himself the aggressor against the victim and his mother.

The trial court did not believe petitioner's testimony. Neither did the Court of Appeals. It bears stressing that factual findings of trial courts are accorded respect by appellate courts unless certain facts have been overlooked which, if considered, could affect the result of the case.[3] This exception is not present here.

We thus agree with the Court of Appeals that there was no unlawful aggression on the part of the victim. This element being absent, petitioner cannot be accorded the privileged mitigating circumstance of incomplete self-defense.

WHEREFORE, the appealed Decision of the Court of Appeals, sustaining the judgment of the trial court, is AFFIRMED, with costs de oficio.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 11-16. Per Associate Justice Roberto A. Barrios and concurred in by Associate Justices Godardo A. Jacinto and Eriberto U. Rosario, Jr., retired.

[2] People v. Ambrocio, et al., G.R. No. 140267, June 29, 2004, p. 18. See Revised Penal Code, Art. 11.

[3] People v. Agsalog, et al., G.R. No. 141087, March 31, 2004, citing People vs. Samson, 189 SCRA 700 (1990).

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