

ALEX ASUNCION AND ADONIS ASUNCION, PETITIONERS, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 140247. October 23, 2003*

Ponente: CALLEJO, SR., J.

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Before the Court is the petition for review on certiorari filed by Alex Asuncion and Adonis Asuncion, seeking to reverse and set aside the Decision[1] dated June 30, 1999 of the Court of Appeals in CA-G.R. CR No. 17138. The assailed decision affirmed the conviction of the petitioners for the felony of homicide by the Regional Trial Court of Pampanga, Branch 47.[2]

The Information filed against the petitioners reads as follows:

That on or about the 23[rd] day of September, 1991, in the Municipality of San Fernando, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALEX ASUNCION and ADONIS ASUNCION, conspiring and confederating together and mutually helping each other, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one Diosefino M. Isip by hitting him on the head with a piece of stone and hitting him with a piece of wood and giving him kick blows on the different parts of his body, thereby inflicting mortal injuries upon said victim which were the direct and immediate cause of his death thereafter.

All contrary to law.[3]

The prosecution presented Reynaldo de Jesus, a bus dispatcher, Michael de Guzman, Dr. Allan Macapinlac, to prove the corpus delicti, and Domini Isip, on the civil liabilities of the petitioners.

At about 11:30 a.m. on September 23, 1991, Michael de Guzman, a fourteen-year-old quail eggs vendor, was at the waiting shed in front of the McDonald's Restaurant in Gapan, San Fernando, Pampanga. Michael was peddling his goods when he was called by petitioner Alex Asuncion.[4] The latter told the boy not to sell in the place anymore. Petitioner Alex twisted the boy's arm, consequently crushing the quail eggs that he was selling. Michael immediately reported the incident to his boss, the victim Diosefino M. Isip, for whom he sold the quail eggs.

Later, while Alex and his wife were on their way home, Diosefino approached the former and confronted him about the incident. Alex curtly told Diosefino, "I have no business with you. Son of a bitch." Alex pushed Diosefino aside, and the latter stumbled to the ground. Diosefino instinctively picked up a piece of wood. The two assumed a fighting stance against each other. Just then, petitioner Adonis Asuncion, Alex's brother, arrived at the scene. Adonis instantaneously grabbed the piece of wood held by Diosefino. Finding himself outnumbered and weaponless, Diosefino decided to flee from his opponents. Alex hurled a stone at the fleeing Diosefino but missed. Alex and Adonis then pursued Diosefino, caught up with him at the CAP building, and cornered him thereat. Adonis then hit Diosefino with the piece of wood. Diosefino fell, and while he was lying prostrate on the ground, Alex picked up a stone and hit him on the head. Because of the injuries inflicted by Adonis and Alex,

Diosefino died.

Alex interposed self-defense. His version of the incident is as follows: When he and his wife Marina were on their way home for lunch, Diosefino suddenly blocked their way. Diosefino confronted Alex about his destroying the quail eggs sold by Michael. Alex denied Diosefino's accusation and promised to talk to him again on the matter after lunch. Diosefino, however, refused to let Alex and his wife pass. Diosefino uttered, "a makanyan." Thereafter, Diosefino struck Alex with a 2"x2" piece of wood, hitting the latter on the left side of his head. Alex fell to the ground. He picked up a stone and threw it at Diosefino, but he missed. Diosefino took out a knife. Alex threw another stone at him before Diosefino could thrust his knife at the couple. Without knowing whether or not he hit Diosefino, Alex, together with his wife, ran to the police station to report the matter. Thereafter, he rushed to the hospital to seek treatment for his injuries. Marina, wife of petitioner Alex, and her sister Edna Lee corroborated his account of the incident.

Adonis did not testify in his defense nor offer any evidence in his behalf.

After due proceedings, the court rendered judgment finding Alex and Adonis guilty beyond reasonable doubt of homicide. The dispositive portion of the RTC decision reads:

Accordingly, finding accused Alex Asuncion and Adonis Asuncion guilty beyond reasonable doubt of Homicide, the Court hereby sentences both accused to suffer imprisonment ranging from seven (7) years as minimum to twelve (12) years and one (1) day as maximum and to suffer the accessory penalties provided by law.

Accused Alex Asuncion and Adonis Asuncion are likewise ordered, jointly and severally, to pay the heirs of the deceased Isip the following:

- 1) P50,000 - indemnity for the death of Isip;
- 2) P20,000 - as moral damages in favor of Domini Isip;
- 3) P13,625.55 - as actual damages re expenses incurred in favor of Domini Isip.

SO ORDERED.[5]

On appeal, the Court of Appeals rendered the assailed decision, affirming in toto the decision of the trial court. The appellate court gave credence to the trial court's findings on the credibility of witnesses. Like the trial court, the CA found the prosecution witnesses more credible than the defense witnesses, whose testimonies were given scant consideration on account of their manifest partiality. The CA likewise held that the trial court correctly found the existence of conspiracy between the petitioners. The dispositive portion of the assailed CA decision reads:

WHEREFORE, foregoing premises considered, the Decision of the Court a quo dated 14 February 1994 is hereby AFFIRMED in toto.[6]

Undaunted, the petitioners now come to this Court alleging that the Court of Appeals erred in affirming the findings of the RTC that the prosecution established the petitioners' guilt beyond reasonable doubt for homicide.

The petitioners assail the trial court's and the CA's reliance on the testimony of Reynaldo de Jesus, the bus dispatcher, in establishing their guilt for the killing of Diosefino. They assert that the testimony of Michael, the fourteen-year-old quail eggs vendor and also a prosecution witness, should have been given equal credence. Michael's testimony allegedly corroborated petitioner Alex's claim that he acted in self-defense and in defense of his wife. Further, the boy's testimony refuted the existence of conspiracy, as he averred that petitioner Adonis was not present during the incident.

The petition is bereft of merit.

The sole issue raised by the petitioners touch on the credibility of witnesses. The petitioners insist that the trial court and the CA erred in giving credence and probative weight to the testimony of De Jesus. The contention of the petitioners does not hold water. The assignment of values to the testimonies of witnesses is essentially the domain of the trial court. Consequently, the trial court's assessment as to which version of the commission of the crime should be believed is entitled to great respect.[7] This is because the trial judge had the opportunity to observe the demeanor of the witnesses on the stand and thus determine who of the witnesses deserve credence.[8] The Court is convinced that there is no cogent reason to deviate from the findings of the trial court on the credibility of witnesses in this case, especially as these findings were affirmed by the appellate court.

Significantly, the petitioners failed to ascribe any ill motive on the part of De Jesus to falsely testify against them. In giving due weight to the testimony of de Jesus, the trial court declared:

Of all the witnesses presented by both sides, the Court is of the opinion that the witness, who may be considered possibly the least biased and non-partisan, or perhaps, no bias or partiality at all, is prosecution witness Reynaldo de Jesus, who is a bus dispatcher of the Victory Liner performing his task at the time of the incident at the junction of the Olongapo-Gapan road and Dolores, San Fernando, Pampanga, the situs of the incident. The Court notes that the defense witnesses are the wife of the accused Alex Asuncion, Marina Asuncion, and the sister of the latter, Edna Lee.

The credibility and impartiality of Reynaldo de Jesus has not been destroyed or his bias shown by the defense to allow this Court to exercise caution on his testimony. It is on this score that the Court is constrained to give the testimony of Reynaldo de Jesus its due weight.[9]

The trial court found the testimony of Alex inconsistent with that of his wife Marina and the latter's sister Edna:

All told, the Court is inclined to sustain the credibility of the prosecution witnesses, particularly the testimony of prosecution witness Reynaldo de Jesus. On the defense witnesses' testimonies, it may be noted that Alex Asuncion and his wife's testimonies were even at odds as to whether Isip was hit by the first stone thrown by Alex Asuncion. Alex Asuncion would allege that Isip was not hit by the first throw of the stone made by him, whereas Marina Asuncion would state that Isip was hit. Moreover, defense witnesses Marino Asuncion and Edna Lee were categorical in their statement that Isip was nit by the second throw of the stone done by Alex Asuncion, Edna Lee even testifying that Isip was hit in the head, whereas Alex Asuncion would not categorically state that he hit the victim with the stone he threw for the second time.[10]

Absent any evidence of any improper motive for De Jesus to testify falsely, the logical conclusion is that no such improper motive exists, and his testimony is thus worthy of full faith and credence:[11]

Reynaldo de Jesus testified that while the victim Isip and accused Alex Asuncion assumed a fighting stance, "naggigirian", as he would describe, accused Adonis Asuncion came and grabbed the stick of Isip, who then ran downward towards the CAP building, when Alex Asuncion threw a stone at Isip but missed; that Adonis Asuncion later cornered Isip as Alex Asuncion picked the stone he used earlier and went to the place where Isip was cornered and where Alex Asuncion threw again the stone at Isip while the latter was already lying flat with Adonis Asuncion hitting Isip with a stick.[12]

In light of the foregoing testimony of De Jesus, which was characterized by the appellate court as "straightforward, candid and consistent,"[13] petitioner Adonis' barefaced denial and petitioner Alex's self-defense must fail. Petitioner Adonis' denial certainly cannot prevail over De Jesus' positive and unequivocal identification of him as one of the assailants.[14]

Further, it is axiomatic that self-defense must be established with clear and convincing evidence.[15] The accused

must rely on the strength of his own evidence and not on the weakness of that of the prosecution, especially so since he himself has admitted the killing. If the accused fails to discharge his burden, he can no longer be acquitted.[16] There are three requisites to successfully invoke self-defense: (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.[17] Unlawful aggression has been defined as an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely a threatening or intimidating attitude.[18] Unlawful aggression is indispensable, it being the main ingredient to self-defense.[19]

In this case, petitioner Adonis even failed to testify in his behalf. Petitioner Alex failed to prove that the killing of Diosefino was justified, and therefore, no criminal liability has attached. Petitioner Alex specifically failed to establish unlawful aggression on the part of the victim. Although the victim provoked petitioner Alex, the victim, however, fled to escape from the petitioners who pursued him. When they caught up with him at the CAP building, petitioner Adonis hit the victim with a stick, causing him to fall to the ground. While Diosefino was still lying on the ground, Alex threw a stone at him. Clearly, by his overt acts, Alex retaliated against the victim's provocation.

The petitioners' claim that the victim was initially armed with a stick and later with a knife is belied by their failure to surrender the piece of wood and knife to the police authorities.

Finally, the RTC and the appellate court correctly held that the petitioners conspired in perpetrating the offense. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] Proof of the conspiracy need not be based on direct evidence because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of a crime.[21] The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[22]

The petitioners' acts, as found by the RTC, indubitably showed concerted action and common design or understanding between them to commit the crime charged:

While the evidence is clear that it was Alex Asuncion who threw the stone at Isip, after the latter had already ran away from their initial confrontation, may his co-accused Adonis Asuncion be also held liable for the death of Isip? The Court would say, yes. The prosecution evidence showed, despite the protestation of Alex Asuncion, that his brother, Adonis, was not present during the incident, that Adonis took participation during the affray by grabbing the stick from Isip; he participated in chasing and cornering Isip and hitting him (Isip) with a stick. Needless to add, the Court sees a concurrence of will and unity of action and purpose in the minds of both accused brothers, Alex and Adonis Asuncion.[23]

The acts of petitioner Alex are, thus, attributable to petitioner Adonis and vice-versa, since in conspiracy, the act of one is the act of all. The petitioners are liable as co-principals by direct participation.

The trial court failed to award moral damages to the heirs of the victim despite the testimony of the victim's wife Domini Isip that because of her husband's death, she suffered shock and anguish. In line with current jurisprudence, she is entitled to an award of P50,000 as moral damages. Thus, the decision of the trial court has to be modified.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated June 30, 1999 of the Court of Appeals in CA-G.R. CR No. 17138 is AFFIRMED with MODIFICATION. The petitioners are ordered to pay, jointly and severally, Domini Isip in the amount of P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Fourteenth Division. Penned by Associate Justice Demetrio G. Demetria, with Associate Justices Ramon A. Barcelona and Mercedes Gozo Dadole, concurring.

[2] Penned by Judge Edgardo F. Sundiam, now Associate Justice of the Court of Appeals.

[3] Rollo, p. 22.

[4] Also known as "Alton."

[5] Id. at 30-31.

[6] Id. at 72.

[7] Ardonio v. People, 365 SCRA 579 (2001).

[8] Ibid.

[9] Rollo, p. 26.

[10] Id. at 27-28.

[11] Maandal v. People, 360 SCRA 209 (2001).

[12] Rollo, p. 27.

[13] Id. at 68.

[14] People v. Samson, 377 SCRA 25 (2002).

[15] People v. Javier, 377 SCRA 300 (2002).

[16] People v. Caras, 234 SCRA 199 (1994).

[17] Article 11, Revised Penal Code.

[18] People v. Javier, *supra*.

[19] Ibid.

[20] Article 8, paragraph 2, Revised Penal Code.

[21] People v. Matic, 377 SCRA 314 (2002).

[22] Ibid.

[23] Rollo, p. 28.

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