

ALBERTO GARONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 148971. November 29, 2006

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

Where two criminal cases arose from one incident, and the accused cries self-defense, it is incumbent upon the accused to prove all of its elements. Self-defense is a factual allegation which should be proved during trial. Since the findings of the trial court are regarded with finality, we cannot review such factual issue on appeal.

The Case

This is a Petition for Review on Certiorari[1] under Rule 45 assailing the August 9, 1996 Decision[2] of the Court of Appeals (CA) and the March 10, 2000 Resolution[3] which denied petitioner's Motion for Reconsideration in the case docketed as CA G.R. No. 14852, People of the Philippines, Plaintiff-Appelle, v. Alberto Garong, Accused-Appellant. The CA affirmed the March 3, 1993 Joint-Decision of the Regional Trial Court (RTC), Branch 39, Calapan, Oriental Mindoro in Criminal Case No. C-3406 convicting petitioner of frustrated homicide. We previously denied petitioner's Motion for Extension of time to file petition in our August 15, 2001 Resolution[4] for breach of the material dates rule. We further denied petitioner's Motions for Reconsideration in our October 3, 2001[5] and January 23, 2002[6] Resolutions. On June 19, 2002, however, we set aside said Resolutions because of the failure of petitioner's counsel to state the material dates in petitioner's Motion for Extension of time to file petition.[7] We likewise granted petitioner's request for a counsel de oficio on June 18, 2003.[8]

The Facts

The case arose from the incident in the evening of February 19, 1991 in Barangay Tibag, Calapan, Oriental Mindoro which gave rise to two (2) criminal cases. One was filed on May 10, 1991 against private complainant Gerson Morta, which reads:

Criminal Case No. C-3402

That in the evening of February 19, 1991, or thereabout, in barangay Tibag, municipality of Calapan, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, accused GERSON MORTA, alias "BOYET" with intent to kill and malice aforethought, did then and there, willfully, unlawfully and feloniously entered the residential house of Efren Fajardo by forcibly destroying a portion of the fence located at the back thereof and once inside said premises, accused hurled a piece of wood at Efren Fajardo who was injured on his face and immediately thereafter, accused attacked, assaulted and stabbed Cesar Guevarra and Alberto Garong with a pair of knife thrusts on their bodies, thus commencing the commission of the crime of homicide, but did not perform all the acts of execution which should produce it by [reason] of some cause[s] other than his own spontaneous desistance and i.e., the victims were able to successfully parry away and evade the knife thrusts from their bodies and the sound of a gunshot that scared the accused; thus, accused executed

by overt acts all the elements necessary for the commission of MULTIPLE ATTEMPTED HOMICIDE with the generic aggravating circumstance of unlawful entry being attendant in the commission thereof.

CONTRARY TO ARTICLE 249 IN RELATION TO ARTICLES 250 AND 48 OF THE REVISED PENAL CODE.[9]

The other case was filed on May 16, 1992 against petitioner together with Cesar Guevarra and Efren Fajardo for the crime of frustrated homicide, to wit:

Criminal Case No. C-3406

That in the evening of February 19, 1991, or thereabout, in barangay Tibag, municipality of Calapan, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, accused ALBERTO GARONG y VILLANUEVA alias "Bert", CESAR GUEVARRA y GARCIA and EFREN FAJARDO y GUEVARRA, with intent to kill and conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously use violence upon the person of one [G]ERSON MORTA with the use of hand knives and by firing a hand gun at said victim, thereby inflicting upon him a gunshot wound located at the left inferior buttocks producing severe hemorrhage, which would necessarily cause his death, thus performing all the acts of execution which should produce the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical management rendered on said victim which prevented his death; thus, all of the accused executed by overt acts all the elements necessary for the commission of the crime of FRUSTRATED MURDER.

CONTRARY TO ARTICLE 249 IN RELATION TO ARTICLES 250 AND 48 OF THE REVISED PENAL CODE. [10]

To remedy the apparent inconsistent position of the State to prosecute the two (2) criminal cases which arose from one incident and involved the same parties, the parties agreed that the prosecution's evidence in one criminal case would be adopted as defense evidence in the other case and vice-versa.[11] On March 3, 1993, the Oriental Mindoro RTC, Branch 39 made a finding of facts which were adopted by the CA as follows:

On February 19, 1991, in the evening, while Gerson Morta was on his way home from work, and while passing the narrow alley (iskinita) in front of the house of Efren Fajardo the former pulled the nipa roofing of the house of the latter who was then inside. This act was seen by Cesar Guevarra who took offense and berated and scolded Gerson Morta, saying "Putang ina mo Boyet, nagbabarako ka yata" and to which Gerson Morta replied "Ano ngayon sa iyo kung haklitin ko yon".

As both Gerson Morta and Cesar Guevarra were tipsy, one word led to another until they were poised to come to grips had it not been for the timely intervention of one Efren Gentaroy who separated them. Before leaving the place after the intervention of Efren Gentaroy, Cesar Guevarra threw things at Gerson Morta, one of which, a casserole, hitting Gerson Morta at the back of his head. Because of this, Morta left with this parting threat, "Babalikan kita."

A few minutes thereafter, Gerson Morta returned crashing thru the wooden fence at the back of the house of Efren Fajardo and once inside the compound, hurled the piece of wood he was carrying which landed on the face of Efren Fajardo and thereafter proceeded to attack Cesar Guevarra with his "gulukan" who, however, was not hit by the stab blows delivered by said Morta because Alberto Garong was able to pull Guevarra away, and because of this, Morta turned his attention to Alberto Garong and proceeded to attack him (Garong) with the same gulukan, but Garong was able to evade the stabbing blows delivered by Morta.

It was while Morta was attacking Garong who was retreating and the trying [sic] to avoid the thrusts of the former when a single shot was fired. Morta stopped, turned around and scampered away towards the direction of his house passing through the same fence which he earlier destroyed.

On the other hand, the version of Gerson Morta may be stated as follows:

While coming from work that night in question, [Morta] accidentally slipped on a canal causing him to lean rather heavily on the nipa wall of the house of Efren Fajardo which called the attention of Cesar Guevarra who then scolded him and even hurled things against him. One of the things thrown which landed on [sic] his (Morta's) head at the back was a casserole. Morta proceeded on his way to his house because, according to him, they were drunk.

Upon reaching his house Morta asked his wife to prepare his clothes as he was going to attend the Bible study in a place along the provincial road. To wash himself he opened the faucet located on the ground floor of the house of his mother who was his neighbor and finding that there was no water in the faucet or tap, he borrowed a pail from a neighbor, disrobed, got a towel and proceeded to the well to clean or wash himself.

When he was on his way to a well and only about one meter away from the house of Cesar Guevarra and Efren Fajardo he saw the two with Garong blocking the road (nakaharang sa kalye) and sensing trouble, he turned around and intended to return to his house and while his back was turned he was shot from behind by Alberto Garong and company rushing towards him and so he forced himself to get up and walked towards the direction of his house and Garong and company pursued him but his (Morta's) wife interceded.

Shortly after the incident Police Officer Cristobal Ramos repaired to the crime scene and saw drops of blood on the alley leading to the house of [Gerson] Morta.

PO1 Ricardo Vivas together with PO3 Asilo investigated the incident in question. When PO1 Ricardo Vivas investigated Gerson Morta at the Oriental Mindoro Provincial Hospital, Gerson Morta told him that Alberto Garong shot him. When said policeman went to the scene of incident he talked with Cesar Guevarra [and] Efren Fajardo but the two did not tell anything about the assault made by Gerson Morta against them and Alberto Garong.

For the gunshot wound sustained, Gerson Morta was confined and treated in the Oriental Mindoro Provincial Hospital for around ten days and for which he incurred expenses in the amount of P10,000.00. Had it not been for the timely and able medical assistance rendered, Gerson Morta would have died.

He was likewise prevented from performing his customary labor as carpenter, thereby depriving him of his daily income of P120.00 a day.[12]

The trial court rendered the March 3, 1993 Joint Decision:

ACCORDINGLY, in Criminal Case No. C-3402, accused Gerson Morta is acquitted of the crime charged with costs de oficio, for failure of the prosecution to prove his guilt beyond reasonable doubt and the bail posted for his provisional liberty is hereby cancelled.

x x x x

In Criminal Case No. C-3406, the Court finds accused Alberto Garong guilty beyond reasonable doubt, as principal, of the crime of Frustrated Homicide penalized under Article 249 in relation to Articles 6 and 50 of the Revised Penal Code by prision mayor.

Considering the peculiar facts of the case and applying Article 250 of the Revised Penal Code the penalty lower by one degree than that provided by law may be imposed.

Applying the Indeterminate Sentence Law accused Alberto Garong is hereby sentenced to suffer imprisonment of FOUR MONTHS of arresto mayor, as minimum, to FOUR YEARS and TWO MONTHS of prision correccional, as maximum, together with accessory penalties provided by law and to pay the costs.

Accused Alberto Garong is likewise ordered to indemnify the victim Gerson Morta in the amount of

P15,000.00 by way of actual and compensatory damages, without subsidiary imprisonment in case of insolvency.[13]

Garong appealed the trial court's decision to the CA; however, his appeal in CA-G.R. CR No. 14852 was turned down as the August 9, 1996 Decision of the CA affirmed the March 3, 1993 Joint Decision of the Calapan, Oriental Mindoro RTC.

His Motion for Reconsideration was likewise rejected in the March 10, 2000 Resolution[14] of the CA.

Persistent, Garong now seeks relief from the adverse rulings of the CA through the instant petition before this Court.

The Issues

WHETHER THE CA PROPERLY AFFIRMED THE TRIAL COURT'S REJECTION OF PETITIONER'S PLEA OF SELF-DEFENSE; AND

WHETHER THE CA PROPERLY AFFIRMED THE TRIAL COURT'S CONVICTION OF PETITIONER FOR FRUSTRATED HOMICIDE

The Court's Ruling

The petition has no merit.

Petitioner contends that he acted in self-defense against the real aggressor, Gerson Morta. He theorizes that the plea of self-defense, if considered, "would introduce an element of reasonable doubt which would entitle him to acquittal." [15] Petitioner also asserts that reasonable doubt exists in his favor given the inconsistencies of the complainant's eyewitness, Reylita Nery, who identified the petitioner as the gunman. To bolster petitioner's claim that Gerson Morta was the aggressor, he presented the testimony of Gliceria Aldovino, a witness who allegedly saw Gerson Morta attack the petitioner. [16] Petitioner also disputes the circumstantial evidence against him as insufficient proof of his culpability; and lastly, he argues that his motive was not proven in trial and that the trial court erred in awarding damages. [17]

In essence, what petitioner is actually asking the Court is to determine whether he acted in self-defense, which is essentially a question of fact. [18] We have held repeatedly that this Court is not a trier of facts. In petitions brought under Rule 45 of the Revised Rules of Court, only questions of law can be reviewed. [19] Since the petition is anchored on the claim of self-defense which is a factual allegation already rejected by the trial and appellate courts, the petition can be denied outright.

Although there are exceptions to Section 1, Rule 45, the instant petition does not convincingly fall in any of the exceptions. The grounds relied upon by the petitioner: when the lower court has gravely abused its discretion, when the judgment is based on a misapprehension of the facts, when the findings of fact are not supported by the records or are so glaringly erroneous or are not supported by competent evidence, [20] are not present in this case. In contrast, the trial court's findings of fact are supported by evidence and as such, were affirmed by the CA.

Petitioner however charges the CA for departing from the usual course of judicial proceedings in affirming the findings of the trial court. [21] On the contrary, we have consistently held that findings of trial courts are accorded the highest degree of respect, if not finality. Factual findings of the trial court, adopted and confirmed by the CA, are final and conclusive and may not be reviewed on appeal. [22] Moreover, we do not see any departure from the usual course of appellate review—the CA weighed the assignments of error made by petitioner against the trial court's findings.

The CA considered the following circumstantial evidence found by the trial court:

- Neither Garong nor any of his companions reported the incident in question to the police authorities or to the barangay officials of Tibag, Calapan, Oriental Mindoro.
- Efren Fajardo who claimed that he was hit on the face by Morta with a wooden club did not submit himself to medical examination or treatment.
- Shortly after the incident the police officer who repaired to the crime scene saw drops of blood on the alley leading to the house of Gerson Morta.
- Gerson Morta told the police investigator who investigated him in the hospital that Alberto Garong shot him while Cesar Guevarra and Efren Fajardo did not tell the policeman, who went to the crime scene and talked to them, anything about the assault made by Gerson Morta against them and Garong.
- Alberto Garong admitted that he had a gun which he used to fire during New Year and which he surrendered during the last election.[23]

For self-defense to prosper, there must be: (1) unlawful aggression; (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.[24] The burden of proving the elements of self-defense shifts to the accused. In this case, the prosecution presented the following compelling evidence, among others: 1) positive identification by the complainant; 2) physical evidence of blood drops found by the police officer; 3) the admission of petitioner that he had a gun at the time of the incident; and 4) the point of entry of the gunshot in the complainant's left buttock. The foregoing circumstantial and pieces of physical evidence disprove the claim of self-defense. While petitioner harps on the alleged complainant's unlawful aggression, the trial court found that there was no proof beyond reasonable doubt against the complainant. Hence, Gerson Morta was acquitted in Criminal Case No. C-3402. Assuming *arguendo* that Gerson Morta was the aggressor, petitioner must prove the existence of the two (2) other elements of self-defense: the aforecited second (2nd) and third (3rd) elements. A mere allegation of self-defense will not exempt Garong from criminal liability. Petitioner should squarely meet the circumstantial and physical evidence presented by the prosecution. Unfortunately, there was no sufficient or satisfactory explanation for the aforementioned evidence against the petitioner.

With regard to petitioner's failure to immediately report the incident to the police, the Solicitor General pointed out in his Comment[25] that petitioner's excuse—that he had to attend a funeral in Manila—is feeble. It is contrary to common human experience to immediately leave the place of the incident without reporting to the police.[26] As regards the inconsistencies in the testimony of the witness, the CA held:

Regarding the inconsistencies and discrepancies referred to by accused-appellant, suffice it to state that they are only minor details which do not affect the credibility of the witnesses. In fact, they are even considered badges of truth and candor (*People vs. Gamboa*, 194 SCRA 572). Besides, Our Supreme Court in the case of *People vs. Gabaton* (203 SCRA 447) ruled that witnesses possessed with different capacities for observation cannot be expected to recall with accuracy or uniformity, matters connected to the main overt act.

From the People's brief and the records of the case, it can be gleaned that the Solicitor-General correctly observed that proof beyond reasonable doubt is shown by questioning the testimony of the complainant in court[27] x x x

We reiterate that the determination of the sufficiency of evidence and the said court's determination on the credibility of witnesses are a question of fact that is not, as a general rule, subject to the Court's review.[28] As regards petitioner's claim that motive was not proven during trial, the CA reasoned:

An apparent lack of motive for committing a criminal act, as argued by accused-appellant, does not necessarily mean that there is none. It may be hidden away or inaccessible to Our observation (People vs. Taneo, 58 Phil. 255).

Moreover, the rule is well-settled that the prosecution need not prove motive on the part of the accused when the latter has been positively identified as the author of the crime (People vs. Conceron, 229 SCRA 551). Motive would not bar conviction of the accused as long as the crime itself and the identity of the perpetrator had been indubitably established (People vs. Layam, 234 SCRA 424). In the case at bench, accused-appellant was positively identified. Therefore, there is no dispute about identification.[29]

Given these findings, we find no reason to warrant the reversal of the judgment of conviction.

WHEREFORE, the instant petition is DISMISSED. The August 9, 1996 Decision and the March 10, 2000 Resolution of the Court of Appeals in CA-G.R. CR No. 14852 and the March 3, 1993 Joint Decision of the Calapan, Oriental Mindoro Branch 39 Regional Trial Court in Criminal Case No. C-3406 are AFFIRMED IN TOTO.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 9-26.

[2] Penned by Associate Justice Jainal D. Rasul, with Associate Justices Hector L. Hofileña and Hilarion L. Aquino concurring, id. at 27-36.

[3]Id. at 38.

[4]Id. at 7.

[5] Id. at 93-94.

[6] Id. at 109.

[7] Id. at 121-122.

[8]Id. at 281.

[9] Id. at 301.

[10] Id. at 302.

[11] Id.

[12] Id. at 27-30.

[13] Id. at 239-240.

[14] Id. at 38.

[15]Id. at 15-16.

[16] Id. at 20-22.

[17]Id. at 12-13.

[18] People v. Galvez, G.R. No. 130397, January 17, 2002, 374 SCRA 10, 16, citing People v. Dano, G.R. No. 117690, September 1, 2000, 339 SCRA 515 and Jacobo v. Court of Appeals, G.R. No. 107699, March 21, 1997, 270 SCRA 270.

[19] Revised Rules of Court, Rule 45, Sec. 1.

[20] Rollo, pp. 24-25.

[21]Id. at 16.

[22]Lubos v. Galupo, G.R. No. 139136, January 16, 2002, 373 SCRA 618, 622; Montecillo v. Reynes, G.R. No. 138018, July 26, 2002, 385 SCRA 244, 255.

[23] Supra note 2, at 34-35.

[24] People v. Callet, G.R. No. 135701, May 9, 2002, 382 SCRA 43; People v. Candido, G.R. Nos. 134072-73, June 10, 2002, 383 SCRA 296, 306.

[25] Rollo, pp. 235-258.

[26] Id. at 252.

[27] Id. at 32.

[28] Vallejo v. People, G.R. No. 136363, September 17, 2002, 389 SCRA 114, 123.

[29] Rollo, p. 35.

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