

ROSENDO TANDOC Y DE LEON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,

G.R. NO. 150648. November 23, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari[1] of the Decision[2] of the Court of Appeals in CA-G.R. CR No. 23259, convicting Rosendo de Leon Tandoc (Rosendo) of the crime of frustrated homicide and the Resolution[3] of the same court denying his Motion for Reconsideration.

A complaint for frustrated homicide was filed against Rosendo in the Office of the City Prosecutor. Rosendo did not appear or submit a counter-affidavit on preliminary investigation. On October 2, 1995, a case for frustrated homicide was filed against Rosendo in the Regional Trial Court (RTC) of Quezon City, Branch 81, in an Information which reads:

That on or about the 9th day of May, 1995, in Quezon City, Philippines, the said accused, did then and there willfully and unlawfully and feloniously with intent to kill, attack, assault and employ personal violence upon the person of one Mario Candaliza by then and there hitting him with a bladed weapon on his left face and left hand finger, thereby inflicting upon him serious and grave wounds, thus the accused performing all the acts of execution that would produce the crime of homicide, as a consequence but nevertheless was not produced by reason of some causes independent of the will of the perpetrator, that is, by the timely arrival of the bystanders, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[4]

The RTC issued a Warrant of Arrest against Rosendo, however, the same was returned unserved because he could not be located. On August 23, 1996, the case was archived since Rosendo's whereabouts were unknown.[5] Two years after the incident, or on April 30, 1997, Rosendo was arrested. On May 2, 1997, he was arraigned and pleaded not guilty to the charge. On the same day, he posted bail and was released from detention.[6] During trial, it was established that Rosendo left his residence after the stabbing incident and lived at Agoho Street, Barangay Duyan-Duyan, Marikina City. He ran for the office of Barangay Chairman in the May 1997 elections and won.[7]

It appears that at the time of the incident on May 9, 1995, Rosendo and Mario Candaliza (Mario) were neighbors in Project 3, Quezon City. Mario was a resident of No. 22 Dapdap Street, while Rosendo lived at No. 6 in the same street.[8]

The evidence for the prosecution shows that on April 25, 1995, Rosendo placed political campaign streamers in front of the house of Mario. The latter found the streamers a nuisance and removed the same. The removal of the streamers infuriated Rosendo. On April 27, 1995, he confronted Mario about it. Mario was apologetic, but Rosendo ran after him with a knife but failed to reach him. Mario reported the incident to the police but did not institute a case against Rosendo.[9]

On May 9, 1995, around 9:30 in the evening, while Rosendo and his friends were having a drinking spree in a store near Mario's house, Mario and his girlfriend Marie Antonnette Timbol (Marie), who lived at No. 40-D Molave Street, Project 3, Quezon City, arrived, as Marie intended to make a call from the telephone in the store. Mario was standing beside Marie who was making a call when Rosendo approached the couple and asked Mario why he boxed him the month before. A heated argument between Mario and Rosendo ensued. Rosendo pulled a double bladed knife from his pants and stabbed Mario but missed. Horrified by the sudden turn of events, Marie fled to her house and told her brother, Rodel Timbol, of the ongoing fight. Rodel ran to the scene. In the intervening time, Mario tried to wrest possession of the knife from Rosendo. The two fell to the ground, Rosendo on top of Mario. Rosendo stabbed Mario, hitting the latter's face. Rosendo stabbed Mario again, but to elude the thrust, Mario held the blade of the knife with his left hand. By that time, onlookers were then able to take hold of Rosendo. They also took possession of the knife. Thereafter, Rosendo fled from the scene.[10]

Marie and Rodel proceeded to the police station to report the incident and to give their sworn statements, while Mario was brought to the Quezon City Medical Center by his mother and sister. In the hospital, Mario was bleeding profusely. He was immediately operated by Dr. Alfredo Lo (Dr. Lo).

In his testimony in open court, Dr. Lo said that Mario's left side of the face sustained a laceration thru and thru to the back of the neck, damaging facial muscles and the parotid gland;[11] the second, third, and fourth fingers of the left hand were badly lacerated; and the internal tendon of the fourth finger was also injured. Dr. Lo testified that if Mario's injuries had not been immediately attended to, he would have died from loss of blood. Dr. Lo issued a Medical Certificate relative to the injuries sustained by Mario who was confined for four days.[12]

It was also shown that Mario had an employment contract with Atlantic Gulf & Pacific Company (AG & P) for a period of twelve months with a monthly salary of U.S. \$875.00 plus two hours guaranteed overtime every working day at U.S. \$6.31 per hour. Due to the injuries he sustained, Mario was not able to leave the country on May 10, 1995 and work in Algeria as a Field Electrical Engineer. It was only ten months after the incident that Mario was able to secure another foreign employment, for a different salary and destination.[13]

In his defense, Rosendo denied having inflicted any injuries on Mario. He testified that on May 9, 1995, about 9:00 to 9:30 in the evening, he was in the compound of Abe Lazo talking to Major Fajardo, Samina Balta and Eliza. He then went to the store to buy cigarettes; there he saw Mario and Marie. Mario confronted Rosendo, and then all of a sudden boxed him. He retaliated. Mario then took out a knife from his waist, but Rosendo wrestled for the possession of the knife. In the process, they fell to the ground with Mario on top of him. They continued to grapple for possession of the knife, with both of them holding the handle of the knife, and Mario's hand holding the portion next to the blade. Mario bit Rosendo's right arm and his left wrist was hit by the knife. Momentarily, a bystander intervened; in the process Rosendo's left wrist was injured. The bystander got hold of the knife from them. Both of them stood up. Afraid that the person who took the knife from them was not on his side, Rosendo ran towards Aurora Boulevard and then took a ride to Cubao. He afterward proceeded to Quezon City Hall and slept in one of the tents there. He did not report the incident to the police, neither did he go to a hospital for treatment of the injuries he sustained in the fight. The next day, he learned that Mario filed a case against him but he did not go to the police to air his side.[14]

Rosendo explained that Mario's hand was injured because he held the handle of the knife near the blade. Mario's left side of the face must have been injured when he bit Rosendo's hand while they were scuffling for the possession of the knife.[15]

Rosendo claimed that Mario nurtured a grudge against him, allegedly for failing to support Mario when he ran for Kagawad in 1994, because he supported instead the latter's political rival.[16] Moreover, a month before the May

9, 1995 incident, Mario and his brother, Roland Candaliza, who is a drug user, boxed him as he was passing by. However, he did not report the matter to the police authorities.[17]

The prosecution presented four witnesses, Mario, Marie, Rodel Timbol and Dr. Alfredo L. Lo.[18] Only Rosendo testified for the defense.[19]

On May 14, 1999, the RTC rendered a Decision[20] convicting Rosendo of the crime charged. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds accused Rosendo Tandoc guilty beyond reasonable doubt of the crime of frustrated homicide. The imposable penalty is prision mayor in its medium period, there being neither aggravating nor mitigating circumstances. Applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment for a term ranging from four years and two months of prision correccional as minimum, to eight years and one day of prision mayor as maximum, and to pay private complainant Mario Candaliza the amount of P50,000.00 as moral damages, plus the amount of P218,750.00, the peso equivalent of U.S.\$8,750.00 (at P25.00 per dollar, the exchange rate prevailing in 1995) which Candaliza failed to earn when he was not able to leave for abroad for ten months.

IT IS SO ORDERED.[21]

In his appeal to the Court of Appeals (CA), Rosendo averred that the RTC committed reversible error in not believing his plea of self-defense when he inflicted the injuries on Mario. Also, assuming arguendo that he was guilty of the crime charged, there was allegedly no basis for the award of actual and moral damages.[22]

On March 13, 2001, the CA rendered a Decision[23] affirming in toto the judgment of the RTC. A Motion for Reconsideration was duly filed by Rosendo, but the same was denied in a Resolution[24] dated September 26, 2001.

In this petition for review on certiorari,[25] Rosendo avers that he was deprived of due process because of the incompetence of his counsel, viz.:

Gleaned from the records is the naked fact that the prosecution presented no less than four (4) witnesses to buttress the case for the people. Petitioner, for his defense presented no witness other than his own self. Petitioner's counsel of record (Atty. Raul Tolentino; tsn., pp. 1-30, Hearing on November 19, 1998) marked a single documentary evidence. But he didn't even make a formal offer of his exhibit, a clear indication of a lackadaisical attitude if not gross incompetence, highly prejudicial to petitioner's right to due process of law. In his testimony, petitioner named various witnesses who could have corroborated his testimony to bolster his defense. They are "Mr. Abe Lazo," Major Fajardo, a certain "Elsa" and Samina Balta (tsn., p. 3, Hearing on Feb. 08, 1999). But his above-named counsel didn't even exert any effort whatsoever to present anyone of them. Clearly, said counsel displayed his incompetence, ignorance or inexperience in violation of CANON 12, Rule 12.01, CODE OF JUDICIAL CONDUCT x x x.

x x x x

It appearing that the incompetence of petitioner's counsel before the lower court is too blatant and palpable, his acts should not be binding upon petitioner.[26]

Additionally, Rosendo contests the award of actual damages in favor of Mario. He claims that Mario was hospitalized only for four days. A month after his hospitalization, it was established during trial that Mario was able to go back to his previous job at AG & P; and after ten months, Mario was able to get another job abroad. Rosendo argues that the CA committed reversible error in awarding actual damages for Mario's alleged loss of income for ten months. He maintains that Mario did not lose any income during the ten-month period after the May 9, 1995 incident and that the award of damages based on the alleged loss of income is without legal and

factual bases.[27]

The petition must fail.

The CA committed no reversible error in affirming the Decision of the RTC. Rosendo was not deprived of his day on court. He was given the opportunity to clearly present his side during the trial. The Court notes that the alleged negligence of Rosendo's counsel, if there was any, was not so gross or appalling that it amounted to denial of his right to counsel. Based on the findings of facts of the RTC, as sustained by the CA, the evidence of Rosendo's culpability was overwhelming and his claim of self-defense was highly improbable. It is only when the findings of the trial court and the Court of Appeals are absurd, contrary to the evidence on record, impossible, capricious, arbitrary, or based on a misappreciation of facts that this Court may delve into and resolve factual issues.[28] Not one of these circumstances is present in the case at bar.

Furthermore, the trial court was categorical in saying that the prosecution witnesses testified in a candid and straightforward manner. In contrast, Rosendo was uncertain of his answers to the questions propounded to him; thus, the RTC gave no credence to his testimony. Much weight is given to the factual findings of the trial judge on the credibility of witnesses and their testimonies as he is in the best position to observe the demeanor of witnesses during trial.[29]

On the issue of self-defense, we adopt the finding of both the RTC and CA. Whether or not the accused acted in self-defense is a factual issue. By invoking self-defense, Rosendo, in fact, admitted that he inflicted injuries on Mario. The burden of proving with clear and convincing evidence the justifying circumstances to exculpate him from criminal liability was thereby shifted to him.[30] We find appropriate the RTC's disquisition on the matter, thus:

In particular, the Court cannot believe the allegation of the accused [Rosendo] that it was [Mario] Candaliza who drew a knife. The Court observed that [Mario] Candaliza is much bigger than the accused [Rosendo] and could easily beat the accused [Rosendo] in a one-on-one fistfight. There was no need for him to use a knife. By the same token, it was the accused [Rosendo] who needed a knife to fight [Mario] Candaliza. Furthermore, [Mario] Candaliza was scheduled to leave for abroad the very next day. Why should he provoke a fight and risk losing a once-in-a-lifetime opportunity?

Likewise, the allegation of the accused [Rosendo] that [Mario] Candaliza was holding the knife near the blade is improbable. If, as claimed by the accused [Rosendo], [Mario] Candaliza owned the knife and drew it from his waist while the accused [Rosendo] grabbed it, [Mario] Candaliza would have been holding the knife properly while it would have been the accused [Rosendo] who would have been holding the knife near its blade.

There is also the undisputed fact that immediately after the stabbing incident, the accused [Rosendo] left his place of residence and evaded arrest for two years. It is established doctrine that flight is an indication of guilt for the guilty flee[s] even when no man pursueth but the innocent stand bold as a lion.

The evidence is clear that it was the accused [Rosendo] who approached [Mario] Candaliza and provoked the fight. As testified to by [Mario] Candaliza and Marie Antonnette, it was the accused [Rosendo] who drew a knife, not [Mario] Candaliza who merely reacted to protect himself. The Court gives credence to the positive testimony of [Mario] Candaliza, corroborated by Rodel Timbol, that the accused [Rosendo] stabbed [Mario] Candaliza while they were lying on the ground, hitting [Mario] Candaliza on the left face causing a laceration thru' and thru' that damaged the facial muscles and parotid gland, and injuring three fingers of his left hand, one finger suffering tendon damage (Exh. "A"). The trajectory of the stabbing thrusts which were aimed at [Mario] Candaliza's body shows intent to kill and the only reason no vital organs were hit is because [Mario] Candaliza kept moving while he and the accused [Rosendo] were struggling and he bravely stopped the thrust

with his bare hands. As testified by Dr. Alfredo Lo, [Mario] Candaliza's injuries would have caused his death were it not for [the] timely medical attention (tsn, 11-19-98, p. 6).[31]

The matter on the award of damages is also a factual issue that was aptly addressed by the trial court, viz.:

The evidence is likewise clear that as a result of his injuries, [Mario] Candaliza was not able to leave for abroad and thus lost an opportunity to earn U.S. \$875.00 a month plus guaranteed two hours overtime every working day at U.S. \$6.31 per hour (Exhs. "B," "B-3," "E" & "F"; tsn, 11-10-87, pp. 39-40). However, expenses for [Mario] Candaliza's hospitalization were paid for by his employer, Atlantic Gulf & Pacific Co. (tsn, 11-10-97, p. 37).[32]

We see no reason to annul or modify the amount of actual or compensatory damages awarded to Mario. The same was based on facts and law. We recognize that it is within the domain of lower courts to determine the proper amount of damages that may be awarded, and such determination binds this Court especially if sufficiently supported by evidence and not unconscionable or excessive.[33]

Rosendo should be held liable for all the natural and probable consequences of his criminal acts. It is only proper that he compensate Mario for the amount of money that the latter lost because of his failure to work abroad due to the injuries he sustained from Rosendo.

WHEREFORE, in view of the foregoing, the petition is DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. CR No. 23259 is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Romeo J. Callejo, Sr., with Associate Justices Renato C. Dacudao and Josefina Guevarra-Salonga, concurring; rollo, pp. 19-34.

[3] Id. at 39.

[4] Rollo, p. 40.

[5] Id. at 42.

[6] Id. at 43.

[7] Id. at 22.

[8] Id. at 43.

[9] Id.

[10] Id. at 20.

[11] The parotid gland is the largest of the salivary glands. It is found wrapped around the mandibular ramus, and it secretes saliva through Stensen's duct into the oral cavity, to facilitate mastication and swallowing. (visited October 19, 2007).

[12] Id. at 44-45.

[13] Id. at 45.

[14] Id. at 45-46.

[15] Id. at 46.

[16] Id.

[17] Id.

[18] Id. at 45.

[19] Id. at 46.

[20] Penned by Presiding Judge Wenceslao I. Agnir, Jr.; id. at 42-49.

[21] Id. at 49.

[22] Rollo, p. 23.

[23] Supra note 2.

[24] Rollo, p. 39.

[25] Id. at 8-17.

[26] Id. at 11-12.

[27] Id. at 13-15.

[28] Tad-y v. People, G.R. No. 148862, August 11, 2005, 466 SCRA 474, 492.

[29] People v. Roma, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427; People v. Dimaano, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658; Vidallon-Magtolis v. Salud, A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439, 458; People v. Macapal, Jr., G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400; Llanto v. Alzona, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

[30] Cabuslay v. People, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 256; People v. De los Reyes, G.R. No. 140680, May 28, 2004, 430 SCRA 166, 172.

[31] Rollo, pp. 47-48.

[32] Id. at 48-49.

[33] YHT Realty Corporation v. Court of Appeals, G.R. No. 126780, February 17, 2005, 451 SCRA 638, 660.

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