SERGIO MARZONIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 153794. June 26, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision[1] dated May 23, 2002 of the Court of Appeals in CA-G.R. CR No. 19489 affirming the guilty verdict for homicide of the Regional Trial Court against petitioner.

Petitioner Sergio Marzonia and his brother Mabini[2] Marzonia were charged with murder before the RTC of Romblon, Romblon, Branch 81, under an Information which reads:

> That on or about the 29[th] day of January, 1993, at around 10:00 o'clock in the evening, in barangay IV-Poblacion, Romblon, Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping each other, [did then] and there, by means of treachery and with evident premeditation, wilfully, unlawfully and feloniously attack, assault and stab with a small bolo, one ELISEO "ELY" MALLA, inflicting upon the latter, mortal wounds in different parts of his body which were the cause of his death.
>
> Contrary to law.[3]

On arraignment, the brothers pleaded not guilty. Trial soon after ensued.

The prosecution presented eyewitness Diosdado de Jesus. He testified that at about 10:00 p.m. on January 29, 1993, the victim Eliseo Malla and he were drinking beer outside Zorayda Mesana's store at L. Viñas St., Barangay IV, Romblon, Romblon.[4] When petitioner Sergio Marzonia came out of his house, located across the street, Eliseo greeted him. Sergio, carrying a bolo, approached them.[5] Recognizing Diosdado, Sergio returned to his house uttering challenge, "Who is brave?"[6] To which Eliseo replied, "I."[7] Soon, a shouting match between the two took place.[8]

Diosdado further testified that Sergio's brother, Mabini Marzonia, and one Danilo Bisnar also came out of Sergio's house and approached them.[9] While restraining Eliseo,[10] Diosdado told Danilo to also pacify Sergio.[11] But Eliseo freed himself from Diosdado's hold.[12] Eliseo ran towards Sergio, who then and there stabbed Eliseo.[13]

The autopsy report[14] showed that Eliseo sustained three external wounds. It also showed that his lung, diaphragm and liver were wounded.[15]

At the trial, Sergio claimed self-defense. He testified that his brother Mabini, Danilo and he were drinking gin inside his house when he heard someone shouting.[16] He opened his kitchen door and shouted at the noisy fellow (Eliseo) to keep quiet.[17] Annoyed, Eliseo cursed. He approached Eliseo.[18] When he saw Eliseo's companion Diosdado, he greeted Diosdado and Sergio said he retreated to his own home.[19] Glancing back, he saw Diosdado embracing Eliseo who was trying to free himself.[20]

When Eliseo had freed himself, Eliseo ran towards Sergio and pushed him.[21] When he fell, Eliseo pummeled him with fist blows on his chest.[22] Sergio said he pushed Eliseo away. Sergio got up and thinking that Eliseo was pulling a weapon from his right back pocket to stab him, Sergio grabbed a knife from the sink and stabbed Eliseo.[23] Sergio testified he could not remember how many times he stabbed Eliseo.[24]

On January 8, 1996, the Regional Trial Court of Romblon, Romblon, Branch 81, rendered its decision convicting Sergio of homicide. Thus, it decreed:

> WHEREFORE, this Court finds co-accused SERGIO MARZONIA GUILTY beyond reasonable doubt of the crime of Homicide and imposes upon him the penalty of SIX (6) 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, with the accessory penalties of the law; to indemnify (1) Mrs. Sylvia Malla, the widow of the deceased ELISEO "ELY" MALLA, actual damages in the amount of P18,000.00; (2) the heirs of the deceased, death indemnity in the sum of P50,000.00; and (3) to pay the costs.
>
> The preventive imprisonment he may have undergone shall be credited in his favor in accordance with Article 29 of the Revised Penal Code.
>
> Co-accused BENNY MARZONIA is entitled to acquittal, as he is hereby ACQUITTED x x x
>
> x x x x
>
> Co-accused SERGIO MARZONIA is allowed to continue on provisional liberty under the same bail bonds during the period to appeal subject to the consent of the bondsmen x x x
>
> SO ORDERED.[25]

Sergio appealed but the Court of Appeals affirmed the trial court's verdict, rejecting Sergio's theory of self-defense.

The appellate court noted that Mabini and Danilo, who were near the kitchen where, according to Sergio, the killing took place, did not corroborate Sergio's claim of self-defense. Both of them did not witness the alleged scuffle between Sergio and Eliseo. Both said they merely heard the sounds of the scuffle. The appellate court also held that the physical evidence did not support Sergio's claim that he was boxed several times on the chest by Eliseo, for Sergio neither sustained hematoma nor contusion, based on the medical certificate[26] issued by Dr. Jocelyn I. Ilagan. Sergio sustained the fracture on his first rib two to three weeks prior to the first x-ray done on February 4, 1993 while the alleged scuffle happened on January 29, 1993 or six days before the first x-ray. The appellate court further ruled that Sergio's failure to inform Felomino Balguma, Jr. and Police Officer Jose dela Cruz that he acted in self-defense was fatal to his claim. Lastly, the appellate court ruled that since the prosecution's main witness, Diosdado, was not actuated by improper motive, his testimony was entitled to full faith and credit.

In the instant petition, Sergio seeks a reversal of the Court of Appeals' decision and he raises for resolution a single issue:

> WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REJECTING PETITIONER'S THEORY OF SELF DEFENSE.[27]

We shall now resolve whether both trial and appellate courts erred in rejecting Sergio's theory of self-defense and in convicting him?

Petitioner argues that he had sufficiently established by clear and convincing evidence the three requisites to prove his claim of self-defense. Sergio contends that before he stabbed Eliseo, Eliseo attacked him by pushing

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him, causing him to fall, and by kneeling on his abdomen and by pummeling him with fist blows. These, he contends, all constituted unlawful aggression on the part of Eliseo. He adds that in stabbing Eliseo, he merely acted on his instinct of self-preservation, thinking that Eliseo was pulling a knife from his pants' back pocket. Thus, there was reasonable necessity of the means he employed to prevent or repel Eliseo's unlawful aggression. Lastly, petitioner claims that it was Eliseo who initiated the trouble by challenging him to a fight, calling him stupid and going after him. There was no provocation on his part, according to petitioner.

The State, through the Office of the Solicitor General (OSG), counters that Sergio failed to prove self-defense by credible, clear and convincing evidence. Sergio's plea of self-defense, the OSG adds, is uncorroborated and extremely doubtful, and cannot overcome the prosecution's version supported by an eyewitness' testimony.

Considering the submission of the parties and the testimonies of witnesses, we are unable to accept petitioner's plea. Self-defense cannot be justifiably appreciated, especially when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself.[28] We agree with the appellate court that Sergio's plea of self-defense is uncorroborated. Neither Mabini nor Danilo nor Rosemarie Mayor, all defense witnesses, corroborated Sergio's account of the alleged scuffle and stabbing. None of them saw any of the following acts: that Eliseo pushed Sergio, causing Sergio to fall; that Eliseo knelt on Sergio's abdomen and pummeled Sergio with fist blows; that Eliseo gestured as if to pull a hidden weapon from his back pocket; and that Sergio stabbed Eliseo in self-defense. All that they testified to was that they heard the noise generated by the alleged scuffle.[29] Moreover, it must be noted that Mabini was then in the sala of Sergio's house;[30] Sergio merely informed Mabini that he stabbed Eliseo in self-defense.[31] Danilo was in front of the store[32] and Rosemarie was inside the store,[33] during the crucial moments of the struggle.

In contrast, Diosdado's testimony as eyewitness to the crime was found credible by both the trial and appellate courts. Indeed, Diosdado's testimony is credible. He remained steadfast on his account of the incident during cross-examination by defense counsel, and in answering questions from the trial court. He had no improper motive to pin Sergio for the crime, which is admitted by Sergio.[34] Diosdado's positive, clear and credible testimony suffices to convict the petitioner of homicide. Truth is established not by the number of witnesses but by the quality of the testimonies.[35]

Sergio's plea of self-defense appears extremely doubtful. As aptly pointed out by the appellate court, the physical evidence disproves Sergio's account of the scuffle. Based on the medical certificate issued by Dr. Ilagan regarding Sergio's claim of chest pains the day after the incident,[36] Sergio neither sustained hematoma nor contusions over the areas where he was allegedly hit by Eliseo's fist blows.[37] Even the two x-ray results[38] showing that Sergio suffered a fractured rib do not support his claim that he was pummeled with fist blows. For it was established that Sergio possibly sustained the fracture two to three weeks before the first x-ray was taken on February 4, 1993, according to the testimony of Dr. Herminia Leyva.[39] Notably, the alleged scuffle between Sergio and Eliseo happened on January 29, 1993 or six days before the first x-ray was taken.

Significantly, by pleading self-defense, Sergio admitted killing Eliseo. To be exonerated of the crime, Sergio must prove the essential requisites of self-defense.[40] But the defense failed to establish by clear and convincing testimony that Eliseo had pushed Sergio and pummeled Sergio with fist blows. The medical evidence also could not support Eliseo's claim of any aggression by Sergio. All that was established from the testimonies of Danilo and Rosemarie was that Eliseo ran towards Sergio. Given the occurrence of the prior shouting match and mutual challenges between Sergio and Eliseo, Eliseo's alleged action cannot be considered a sudden and unexpected attack on Sergio as to constitute unlawful aggression. Unlawful aggression means an actual, sudden and unexpected attack on the life and limb of a person or an imminent danger thereof, and not merely a threatening or intimidating attitude.[41]

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In our view, the stabbing of Eliseo by Sergio when Eliseo ran towards him was not a reasonably necessary means of repelling Eliseo's action. More so since it was noted that Sergio is bigger than Eliseo,[42] who was unarmed. As the Court previously held, mortally wounding an assailant with a penknife is not a reasonably necessary means to repel fist blows.[43]

In sum, we find no reversible error on the part of the trial and appellate courts in convicting Sergio of homicide for killing Eliseo. The trial court has also imposed the proper indeterminate prison term and the P50,000 civil indemnity. However, the P18,000 award of actual damages must be deleted, in the absence of competent evidence, such as receipts, to support the award. Nonetheless, we rule that Mrs. Sylvia Malla is entitled to temperate damages of P25,000 for her pecuniary loss, the amount of which cannot be proved with certainty.[44] She is likewise entitled to moral damages of P50,000 for the mental anguish she suffered because of the death of Eliseo.[45]

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals dated May 23, 2002 and the judgment rendered by the Regional Trial Court are AFFIRMED with the MODIFICATION that the P18,000 award of actual damages is deleted. Petitioner Sergio Marzonia is also ordered to pay Mrs. Sylvia Malla P25,000 as temperate damages and P50,000 as moral damages.

Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 25-32. Penned by Associate Justice Marina L. Buzon, with Acting Presiding Justice Cancio C. Garcia (now a member of this Court), and Associate Justice Regalado E. Maambong concurring.

[2] Benny in other parts of the records.

[3] CA rollo, p. 8.

[4] TSN, June 16, 1994, pp. 2-3 (Diosdado de Jesus).

[5] Id. at 3.

[6] Id. at 3-4.

[7] Id. at 4.

[8] Id.

[9] Id. at 5.

[10] Id. at 6.

[11] Id. at 5.

[12] Id. at 6.

[13] Id. at 6-7.

[14] Exhibit "C", folder of exhibits, p. 2 (Post Mortem Report dated January 30, 1993).

[15] The report reads:

FINDINGS

[1] Incised wound, 5 cms. (length) x 3 cms. (width) x 6.5 cms. (depth), Anterior aspect, left upper arm, Directed towards to axilla

[2] Perforating wound, 5 cms. (width) x 9 cms. (depth) 3rd Right Intercostal Space, 8.5 cms. from the midsternal line just 0.4 cms. above the Right nipple, directed superolaterally

[3] Perforating wound, 3.5 cms. (width) x 6 cms. (depth), 6th Right Intercostal Space, 12 cms. from the midsternal line, directed medially

[4] Soft Tissue Hematoma, 3[rd] to 7[th] rib, Right Extending from the Right Parasternal to the (R) Posterior Axillary Line

[5] Comminuted Fracture, 3[rd] rib, Right

[6] Laceration, 2 cms. in width x 2 cms. in depth, Lung, Right Upper Lobe

[7] Perforation, 2 cms. Right Dome of Diaphragm

[8] Laceration, 2 cms. in width x 3.5 cms. in depth, Liver, Superior aspect of Right Lobe, with Subcapsular Hematoma

[9] Hemothorax, (R), 2 liters

CAUSE OF DEATH: Cardio-respiratory Arrest, Secondary to Massive Hemorrage or Hypovolemia

[16] TSN, June 6, 1995, pp. 6-8 (Sergio Marzonia).

[17] Id. at 10.

[18] Id. at 11.

[19] Id. at 12.

[20] Id. at 14.

[21] Id. at 15.

[22] Id. at 16.

[23] Id. at 16-17.

[24] Id. at 17.

[25] Rollo, pp. 41-42.

[26] Exhibit "F", folder of exhibits, p. 4.

[27] Rollo, p. 131.

[28] People v. Bajar, G.R. No. 143817, October 27, 2003, 414 SCRA 494, 505.

[29] TSNs, December 12, 1994, p. 19 (Rosemarie Mayor); December 13, 1994, p. 7 (Danilo Bisnar); March 2, 1995, p. 10 (Mabini Marzonia).

[30] TSN, March 2, 1995, p. 9.

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[31] Id. at 10.

[32] TSN, December 13, 1994, supra.

[33] TSN, December 12, 1994, supra.

[34] TSN, June 6, 1995, p. 52.

[35] People v. Gumayao, G.R. No. 138933, October 28, 2003, 414 SCRA 539, 550.

[36] TSN, June 6, 1995, pp. 23-25.

[37] Exhibit "F", supra note 26.

[38] Exhibits "1" and "2".

[39] TSN, October 27, 1995, p. 14 (Dr. Herminia Leyva).

[40] People v. Gumayao, supra at 548.

[41] Santos v. Court of Appeals, G.R. No. 126624, November 11, 2003, 415 SCRA 384, 396.

[42] TSN, June 16, 1994, p. 4.

[43] People v. Montalbo, 56 Phil. 443, 445 (1931).

[44] Rimano v. People, G.R. No. 156567, November 27, 2003, 416 SCRA 569, 581.

[45] Id.; CIVIL CODE, ART. 2206(3).

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