

NEMROD GOTIS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 157201. September 14, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

In order to determine the sufficiency of a provocation for the purpose of mitigating a crime, one must look into the act constituting the provocation, the social standing of the person provoked, and the place and time when the provocation is made.[1] In the present case, a finding that the act of the victim did not constitute unlawful aggression does not automatically negate the attendant circumstance of sufficient provocation.

The Case

This Petition for Review on Certiorari[2] under Rule 45 seeks the annulment of the August 30, 2002 Decision[3] and February 12, 2003 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CR No. 22536 entitled *People of the Philippines v. Nemrod Gotis*. The assailed Decision affirmed the October 29, 1997 Decision[5] of the Irosin, Sorsogon Regional Trial Court (RTC), Branch 55, convicting petitioner Nemrod of the crime of homicide. The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

On October 21, 1990, at around six o'clock in the evening, petitioner, Nemrod Gotis, and his brother, Nahom, arrived at Eddie Bautista's coconut plantation in Barangay Bonga, Bulan, Sorsogon looking for Serafin Gotis. Serafin's wife, Carmen, and daughter, Nilda, were then at the plantation. Petitioner and Nahom, who were both armed with bolos, angrily approached Carmen and Nilda and asked them where Serafin was. Not being able to find Serafin, Nahom pointed his bolo at Nilda and said, "We will kill your father!"[6]

After petitioner and Nahom had left, Carmen and Nilda went to the house of Adolfo Malinao to wait for Serafin. When Serafin arrived, Carmen told him what had happened at the plantation and prevented him from going home. Serafin, however, disregarded Carmen's warning and insisted on going home.[7]

On their way home, Serafin and his family had to pass by Nahom's house. Upon reaching the gate of Nahom's house, Serafin called for Nahom and asked him to come out. When Nahom heard the shouts of Serafin, he immediately called petitioner for help. Petitioner came over and advised Serafin to go home, but he refused to leave. Instead, Serafin attempted to hack petitioner and tried to enter the gate of Nahom's house.[8] Thereafter, Nahom struck Serafin on the head with a bolo.[9] Meanwhile, petitioner entered his brother's house to look for a bolo.[10]

After being hit, Serafin ran away. Petitioner, however, pursued him, and hit him several times on the back and arm.[11] Carmen, who was then following Serafin, saw the incident and cried for help. Serafin's brother, Jose, responded, but before he could extend any help, petitioner poked a Batangas knife on his neck. Jose, however, was able to parry the blow with his arm. Thereafter, petitioner ran away.[12]

Serafin was brought to a hospital in Irosin, Sorsogon, but he eventually died during treatment.

On January 16, 1991, the following Information was submitted before the trial court:

That on or about the 21st day of October, 1990 at about [seven] o'clock in the evening at Barangay Bonga, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with bolos and with intent to kill, did then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and hack one Serafin Gotis in the different parts of his body which caused his instantaneous death, to the damage and prejudice of his legal heirs.[13]

Petitioner admitted having killed Serafin. He, however, interposed the justifying circumstance of self-defense. He claimed that he hit Serafin merely to defend himself against the latter's attack.

After trial, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, the Court renders judgment in Crim. Case No. 676 finding the accused Nahom Gotis and Nemrod Gotis guilty beyond reasonable doubt of the crime of Homicide as defined in Article 249, of the Revised Penal Code. With respect to Nahom Gotis[,] the mitigating circumstance of incomplete self-defense and defense of relative should be appreciated in his favor. Applying the provisions of Article 69 of the Revised Penal Code[,] the court hereby sentences the accused Nahom Gotis to suffer imprisonment of an indeterminate [s]entence of six (6) months of arresto mayor maximum as the minimum to six (6) years of prision correccional maximum as the maximum. The accused Nemrod Gotis is to be credited the mitigating circumstances of sufficient provocation and voluntary surrender and applying the provisions of Article 64 (5) of the Revised Penal Code[,] the said accused is to suffer imprisonment for an [i]ndeterminate [s]entence of [f]our (4) years [and] two (2) months of prision correccional medium as the minimum to [t]en (10) years of prision mayor medium as the maximum. The accused Nahom Gotis shall jointly and severally indemnify the heirs of Serafin Gotis the amount of P50,000.00 and to pay the cost.

x x x x

SO ORDERED.[14]

Nahom applied for probation which was granted by the trial court. Petitioner, on the other hand, appealed to the CA.

The Ruling of the Court of Appeals

The appellate court held that petitioner failed to satisfactorily prove the elements of self-defense. Particularly, the CA held that unlawful aggression did not exist at the time that petitioner attacked the victim. It observed that the unlawful aggression against petitioner's life had already ceased when petitioner went inside his brother's house and the victim ran away. Thus, "[petitioner's] coming out of the house with a bolo is indicative of a determination to kill Serafin Gotis and not merely to defend himself." [15]

However, the CA ruled that petitioner is not entitled to the mitigating circumstance of sufficient provocation because "this circumstance is anchored on [petitioner's] plea for self-defense which stands discredited by the trial court x x x." [16]

Also, on the award of damages, the CA granted actual damages in the amount of PhP 3,000, observing that "expenses for the embalmment of the deceased x x x [were] duly documented by a receipt." [17]

The fallo of the August 30, 2002 Decision of the CA reads:

WHEREFORE, the Decision finding [petitioner] Nemrod Gotis guilty of Homicide is AFFIRMED with the

modification that he is hereby sentenced to suffer a prison term of eight (8) years of prison mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum and to pay the heirs of Serafin Gotis the amount of P3,000.00 as actual damages in addition to the P50,000.00 [as] civil indemnity awarded by the trial court.[18]

Hence, we have this petition.

The Issue

Whether or not the Honorable Court of Appeals gravely erred in affirming with modification the Decision of the Regional Trial Court disregarding petitioner's plea of self-defense.[19]

The Court's Ruling

The petition is partly meritorious.

Factual Questions Not Reviewable

The present petition was brought under Rule 45 of the Rules of Court. It is a settled doctrine that petitions of this nature should only raise questions of law.[20] Moreover, the general rule is that questions of fact are not reviewable, subject only to certain exceptions as when the judgment is not supported by sufficient evidence or is premised on a misapprehension of facts.[21]

In the present case, petitioner maintains that the CA failed to appreciate that he had acted in self-defense, and thus, he should not be held liable for Serafin's death. However, petitioner failed to show that the CA's findings of fact should be disregarded. The factual findings are borne out by the records and are supported by substantial evidence.

Article 11(1) of the Revised Penal Code provides the elements of self-defense as a justifying circumstance, thus:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful Aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression by the victim is a primordial element of self-defense; without it, there can be no self-defense, complete or incomplete.[22] To be appreciated, the unlawful aggression must be a continuing circumstance or must have been existing at the time the defense is made.[23] A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased.[24] In this case, the trial and appellate courts correctly held that while Serafin initially attacked petitioner with a bolo, the unlawful aggression already ceased when the latter was able to go inside his brother's house and the former ran away. At this point, there was no longer any danger on his life; thus, there was also no necessity to "defend" himself by pursuing and attacking Serafin.

Sufficient Provocation as a Mitigating Circumstance

The trial court appreciated the mitigating circumstance of sufficient provocation. However, the appellate court reversed the trial court's ruling explaining that sufficient provocation is not compatible with the finding that petitioner did not act in self-defense. By faulting petitioner for inflicting injuries on the victim after the latter had run away, the CA likened sufficient provocation with unlawful aggression. The CA erred.

As an element of self-defense, unlawful aggression presupposes an actual, sudden, and unexpected attack, or

imminent danger of the attack, from the victim.[25] On the other hand, as a mitigating circumstance, sufficient provocation is any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity.[26] Notably, while an act cannot be considered an unlawful aggression for the purpose of self-defense, the same act can be considered as sufficient provocation for the purpose of mitigating the crime.

In *Pepito v. CA*, [27] the victim, before the killing, had challenged the accused's family with a bolo and an "indian pana." After this attack, the victim went home. The accused thereafter grabbed a bolo, pursued the victim, and killed him. The Court did not consider the victim's act as an unlawful aggression for the purpose of self-defense. However, such was considered a provocation sufficient to mitigate the crime. *People v. Ubaldo* [28] had likewise disregarded the violent act of the victim before the shooting incident as an unlawful aggression, but appreciated it as a mitigating circumstance of sufficient provocation.

Moreover, the retaliation of the accused in *Romero v. People*, [29] although not considered an unlawful aggression, was nevertheless deemed as sufficient provocation. The Court explained, "Thrusting his bolo at petitioner, threatening to kill him, and hacking the bamboo walls of his house are, in our view, sufficient provocation to enrage any man, or stir his rage and obfuscate his thinking, more so when the lives of his wife and children are in danger." [30]

In the present case, petitioner was merely pacifying Serafin when the latter suddenly attempted to hack the former. Although petitioner evaded the attack, Serafin's act was enough provocation to anger petitioner and cause him to strike back.

Thus, we find that sufficient provocation attended the crime. The prison term imposed by the trial court in its October 29, 1997 Decision is hereby REINSTATED.

WHEREFORE, the petition is PARTIALLY GRANTED. The August 30, 2002 Decision in CA-G.R. CR No. 22536 is AFFIRMED with MODIFICATION on the penalty, as follows:

Petitioner is hereby found GUILTY of Homicide, and sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of prisión correccional as minimum to ten (10) years of prisión mayor as maximum, and to pay the heirs of Serafin Gotis PhP 50,000 as indemnity for his death and PhP 3,000 as actual damages.

No pronouncement as to costs.

SO ORDERED.

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

Carpio Morales, J., no part due to participation in the decision of the Court of Appeals.

[1] L. Reyes, *THE REVISED PENAL CODE BOOK ONE* 265 (13th ed., 1993).

[2] Rollo, pp. 9-24.

[3] *Id.* at 85-95. The Decision was penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Conchita Carpio Morales (now a Member of this Court) and Martin S. Villarama, Jr.

[4] *Id.* at 113.

[5] *Id.* at 29-38.

[6] *Id.* at 86.

[7] Id.

[8] Id. at 87.

[9] Id. at 86.

[10] Id. at 34.

[11] Id. at 87.

[12] Id. at 32.

[13] Id. at 26.

[14] Supra note 5, at 37-38.

[15] Supra note 3, at 91.

[16] Id. at 92-93.

[17] Id. at 93.

[18] Id. at 94.

[19] Supra note 2, at 16; original in uppercase.

[20] Sec. 1.

[21] See *Gaisano Cagayan, Inc. v. Insurance Company of North America*, G.R. No. 147839, June 8, 2006, 490 SCRA 286; *Republic v. Estonilo*, G.R. No. 157306, November 25, 2005, 476 SCRA 265; *Sta. Rosa Realty Development Corp. v. Amante*, G.R. No. 112526, March 16, 2005, 453 SCRA 432.

[22] *Baxinela v. People*, G.R. No. 149652, March 24, 2006, 485 SCRA 331, 342-343; *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 109; *People v. Cajurao*, G.R. No. 122767, January 20, 2004, 420 SCRA 207, 214.

[23] *People v. Annibong*, G.R. No. 139879, May 8, 2003, 403 SCRA 92, 100; citing *People v. More*, G.R. No. 128820, December 23, 1999, 321 SCRA 538, 545 and *People v. Dijan*, G.R. No. 142682, June 5, 2002, 383 SCRA 15, 20.

[24] *People v. Cajurao*, supra note 22, at 215.

[25] Supra note 1, at 148.

[26] Id. at 264-265.

[27] G.R. No. 119942, July 8, 1999, 310 SCRA 128.

[28] G.R. No. 129389, October 17, 2001, 367 SCRA 432.

[29] G.R. No. 151978, July 14, 2004, 434 SCRA 467.

[30] Id. at 471.

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