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

G.R. No. 167683. June 08, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to set aside the 20 December 2004 Decision[1] and the 18 March 2005 Resolution[2] of the Court of Appeals in CA-G.R. CR No. 27671. The Court of Appeals affirmed in toto the 23

June 2003 Decision[3] of the Regional Trial Court, Br. 33, Bauang, La Union in Criminal Case No. 1948-BG, finding Sergio Beninsig (petitioner) guilty of the crime of homicide.

The Information dated 30 June 1996 charging petitioner of homicide reads:

> That on or about the 15th day of January, 1996, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, and with intent to kill ROMEO R. CALICA, attack, assault and stab said ROMEO R. CALICA with the use of a bolo, thereby inflicting upon him [a] stab wound on the left ventricle which directly caused his death, to the damage and prejudice of the heirs of said victim.
>
> CONTRARY TO LAW.[4]

Upon arraignment, petitioner entered a "not guilty" plea. During trial, the prosecution presented three witnesses, including one (1) eyewitness to the killing, Federico Calica (Federico).

Federico is the cousin of Romeo R. Calica (Romeo) and likewise a relative of petitioner.[5] He testified that on 15 January 1996, he and Romeo were about to gather tobacco shoots when they saw Dominador Abuan (Abuan) and Ariel Tabucol (Tabucol) putting up fences and fixing the post near the house of petitioner. Federico went to check if the boundary is correct when suddenly petitioner emerged from his house which was located north of Federico's house. Petitioner approached them and said in Ilocano, "Lotdit yo, parteng idi, parteng ita" ("Your penis, the boundary before is still the same as today"). Romeo answered back: "Lak-lakayanak Amboy, denggen nak kadi" ("I am older Amboy, please listen to me"). Federico told them to stop but petitioner suddenly stabbed Romeo in the chest with a bolo. Romeo fell down while petitioner remained standing. Federico immediately sought for help. Willie Calica and Larry Gadaza brought Romeo to the Ilocos Regional Hospital where the latter expired.

Dr. Bernardo Parado conducted the autopsy on the cadaver of Romeo at Joces Funeral Homes.[6] Testifying on his Autopsy Report,[7] he stated that the stab wound on the left anterior chest wall penetrated the left ventricle of the heart which caused the victim to go into a hypovolemic shock and eventually led to cardio-respiratory arrest resulting to his death.[8]

According to Lydia Cabal, a sister of Romeo, she incurred expenses totaling P24,200.00 for funeral services, vigil, commemoration, funeral mass, tomb and lot.[9] She also prayed for payment of exemplary damages in the

amount of P20,000.00.[10]

Petitioner himself and Oscar Reyes (Oscar) testified for the defense.

Petitioner rendered a different account of the incident alleging that he killed Romeo in self- defense. He claimed that on 15 January 1996, he was feeding his carabao with the corn he gathered when four (4) persons, namely: Napoleon Calica, Romeo, Abuan and Tabucol, blocked his way. Romeo reportedly told petitioner: "Sika ti aginlalaing idtoy" ("You act as if you are the superior here"). Thereafter, the group threw stones at petitioner prompting him to retreat to his house. Romeo allegedly followed petitioner to his house and started to thrust a razor blade at him, saying "Patayen ka man laengen" ("I might as well kill you.") Fearing that Romeo might actually kill him, petitioner stabbed him with a bolo.[11]

Oscar corroborated the story of petitioner. He alleged that on that fateful day, he was visiting petitioner at the latter's residence. He saw Tabukol, Napo, Romeo and two (2) others erecting a fence towards petitioner's house. When asked by petitioner why they were erecting the fence, Romeo went near petitioner challenging him to a fight while brandishing his razor blade. Thereafter, Oscar saw Romeo bleeding and he concluded that since only petitioner was standing in front of Romeo, it was the former who accidentally stabbed the latter.

On 23 June 2003, the trial court rendered judgment finding petitioner guilty beyond reasonable doubt for the crime of homicide, sentencing him to suffer the indeterminate penalty of ten (10) years of prision mayor medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum; and ordering him to pay the legal heirs of Romeo the amount of P50,000.00 as death indemnity, P50,000.00 as moral damages, an additional amount of P24,200.00 as actual damages to be paid to Lydia Cabal and the costs of the suit.[12]

On appeal, the Court of Appeals affirmed petitioner's conviction. Petitioner moved for reconsideration of the decision but it was denied by virtue of a Resolution dated 18 March 2005.

Aggrieved, petitioner comes to this Court imputing the following errors on the part of the appellate court: (1) in not appreciating self-defense in his favor; and (2) convicting him of homicide despite the fact that his guilt was not proven beyond reasonable doubt.[13]

There is no doubt that petitioner is the perpetrator of the crime. By invoking self- defense, he necessarily admits killing Romeo.[14] It is therefore incumbent upon petitioner to prove the elements of self-

defense, to wit: (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 claiming self-defense.[15] Hence, the only issue to be resolved is whether petitioner has shown by clear and convincing evidence that he had indeed acted in self-defense in stabbing Romeo. This issue involves a question of fact properly evaluated by the trial court.[16] Unless the records show that certain facts have been overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case, this Court will not disturb the factual findings of the lower courts.[17] After a thorough review of the records, we do not find any justification to modify the lower court's findings.

Petitioner alleges that there was unlawful aggression on the part of the victim when the latter thrust his razor blade while threatening to kill him; that the use of a bolo to neutralize the victim and free himself from imminent danger was reasonable under the circumstances; and that there was no sufficient provocation coming from him.[18] His defense was corroborated by Oscar who declared in open court that he saw Romeo attacking petitioner with a razor blade.[19] On the other hand, an eyewitness for the prosecution, Federico, testified that it was petitioner who actually approached Romeo and his companions and after an exchange of words, petitioner stabbed him with

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a bolo on his chest.[20] Between these conflicting testimonies, the trial court, which had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, subscribed to the version of the prosecution witness that there was no unlawful provocation on the part of the victim, viz:

> There was no unlawful aggression on the part of the victim when accused stabbed him. Accused would want this Court to believe that he stabbed the victim in self-defense because he was about to be stabbed himself when the victim thrusted a razor blade to him, saying, "I might as well kill you." This is not sufficient provocation to merit killing another person. Such act is not deemed sufficiently threatening to subject him to imminent danger which must be repelled by an equal or reasonable force. Besides, prosecution witness Federico Calica testified that it was the accused who approached them saying, "Lutdit yo, parteng idi, parteng ita" ("Your penis, the boundary before is still the same today"), and after the deceased answered him, "Laklakayanakon Amboy, denggennak kadi" ("I am older Amboy, listen to me"), accused who was holding a bolo immediately stabbed the deceased on his chest. Hence, accused became the unlawful aggressor.[21]

The Court of Appeals found that the trial court correctly appreciated the testimonies of the prosecution witness:

> Like the trial court, We cannot subscribe to the version of defendant-appellant that it was the victim who initiated the assault by rushing towards him with a razor blade. That claim is definitely contrived. Federico Calica, another prosecution witness, testified that his cousin Romeo Calica was not armed at the time of the fateful incident. Indubitably, appellant had a greater motive in harming the deceased after Federico and victim Romeo Calica had allegedly committed a wrong against them, by insinuating that appellant's group had fenced on a wrong boundary. There is that possibility of having been defamed thus causing appellant to lose his cool leading to the shouting match then finally to the stabbing.[22]

These observations of the trial court and the Court of Appeals find support in the testimony of Federico who stated as follows:

> Q:
>
> Where were you on January 15, 1996 at 4:30 o'clock in the afternoon?
>
> WITNESS:
>
> A:
>
> I was in our house, ma'am, at barangay Parian Este, Bauang, La Union.
>
> FISCAL MALIAMAN:
>
> Q:
>
> What were you doing on that date and time?
>
> A:
>
> At 4:30 o'clock in the afternoon, I was about to gather tobacco shoots and I was with Romeo Calica, ma'am.
>
> Q:
>
> Where will you gather tobacco shoots?
>
> A:
>
> At the western portion at the place where they were fencing, ma'am.
>
> Q:

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Who were fencing?

A:

Dominador Abuan and one person by the family name of "Tabtabocol" [Tabucol], ma'am.

Q:

How far is that fence [sic] - How far is that place where the two were fencing, to that place where you were to gather tobacco shoots?

A:

More than 15 meters, ma'am.

Q:

What happened while you were gathering tobacco shoots?

A:

They were fixing the post, so I went to see the post in order to see if the boundary is right, ma'am.

Q:

What happened when you went to check up if the boundary is correct?

A:

Then Amboy Beninsig came and said, "Lotdit yo, parteng idi, parteng ita."

FISCAL MALIAMAN:

Q:

They used a rope in measuring the boundary?

WITNESS:

A:

Yes, ma'am, they used the string to measure the boundary.

Q:

You said the accused Sergio Beninsig arrived?

A:

Yes, ma'am.

Q:

Where did he come from?

A:

In their house, because their house is located north of my house, ma'am.

Q:

When you went to see the boundary being put up, where was Romeo Calica?

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A:

He was a little bit far, about 10 meters away from Sergio Beninsig, ma'am.

Q:

Who were present when Sergio Beninsig arrived and uttered the words, "Lotdit yo, parteng idi, parteng tatta [sic]?" Who were present when the accused uttered those words?

A:

The two (2) persons who were fencing at that time, ma'am.

Q:

You are referring to Dominador Abuan and Ariel Tabocol?

A:

They were the ones who were my companions, ma'am.

Q:

What transpired when the accused uttered those words? What happened next?

A:

Romeo Calica answered, "Lak-lakayanak Amboy, denggen nak kadi." (I am older Amboy, please listen to me.)

FISCAL MALIAMAN:

Q:

What happened after that?

WITNESS:

A:

After a while, Romeo Calica went near Sergio Beninsig, ma'am.

ATTY. ASUNCION:

May we ask the witness to repeat what he said.

WITNESS:

A:

When Romeo Calica went near Sergio Beninsig, I said, "Stop that [sic] children." After that, Sergio Beninsig, who was holding a bolo, stabbed Romeo Calica, ma'am.

FISCAL MALIAMAN:

Q:

How far were you from Beninsig and Romeo Calica when the accused stabbed Romeo?

A:

I was 4 meters away from them, ma'am. (Emphasis supplied)

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Q:

What weapon was used by the accused in stabbing Romeo?

A:

A bolo with this length, ma'am. A sharp bolo.

INTERPRETER:

Witness is indicating a length of the bolo. . .

COURT:

Agree on the length of the bolo.

FISCAL MALIAMAN:

About 2 feet including the handle.

COURT:

More or less, 2 feet.

FISCAL MALIAMAN:

Q:

What part of the body of Romeo Calica was hit?

WITNESS:

A:

At the chest, ma'am.[23]

Petitioner offers no convincing reason or argument that would dissuade us from not accepting the credibility of witness Federico's testimony. Thus, we are obliged to apply the doctrinal rule that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses.[24]

Further lending credence to the testimony of the prosecution witness is the absence of proof of any motive on his part to falsely testify against petitioner, especially so that they are related to each other.[25]

Notably, the defense witness' account of the incident, considering that it allegedly corroborates that of petitioner, was found unreliable by the trial court, thus:

> x x x Accused failed to corroborate his claim of self-preservation as the testimony of Oscar Reyes did not establish that the act was committed for self-preservation, as there was no actual, sudden, unexpected attack or imminent danger thereof and not merely a threatening or intimidating attitude. Accused, in this case failed to present proof of positively strong act of real aggression. [26]

The Court of Appeals likewise rejected the testimonies of petitioner and his corroborating witness, to wit:

> At bar, appellant miserably failed to discharge the burden and did not adequately support his allegation of self-defense. No one corroborated his testimony that the aggression was initiated by the victim, save for the self-serving testimonies [sic] of his own friend. On the contrary, records show that when the deceased tried to pacify the appellant by reminding him that he was much older than the latter, appellant immediately confronted the victim. Clearly, at that moment, the latter was the one who initiated the aggression, which necessarily

negates self-defense.[27]

Noticeably, petitioner did not mention in his testimony that Romeo and his companions were fencing near petitioner's house at the time of the incident, alleging instead a wholly different context of activity preceding the incident. However, Oscar's testimony, which was supposed to corroborate petitioner's version, aheres to the factual version of the prosecution as it adverted that the attack was preceded by the very act of fencing, as follows:

Q:

When you arrived at the residence of the accused, is the accused already there, Mr. witness?

A:

Yes, sir.

Q:

And after you saw these people that you mentioned, what happened next if any?

A:

Mr. Beninsig left the residence.

Q:

Do you know why he left the residence, [M]r. witness?

A:

He wants to take care of the carabao, sir.

Q:

And after that[,] what happened next, [M]r. witness?

A:

Sergio Beninsig came back, sir.

Q:

Came back to?

A:

To his residence, sir.

Q:

And how long a time elapse from that time Sergio Beninsig left the residence and the time that he returned the residence?

A:

Thirty (30) minutes, sir.

Q:

And what happened next if any, [M]r. witness? After he arrived in their house?

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A:

I saw the [sic] five (5) persons fencing his way going to his house, sir.

Q:

You mean to say that [sic] you saw him, these four people fencing his right of way?

A:

Yes, sir.

x x x x

Q:

What happened next, [M]r. witness?

A:

Sergio Beninsig questioned why the five (5) persons fencing[sic] the place.

Q:

And how did Sergio Beninsig do that, [M]r. witness? Did he utter any words [sic]?

A:

Yes, sir, he uttered the word why they are fencing.[28]

Moreover, at that time, Oscar was not positioned in such a way that he could clearly witness the actual stabbing incident. On cross-examination, he stated:

Q:

Mr. Witness, you said that you were at the scene of the incident. Where were you relative to Sergio Beninsig and Romeo Calica when he was stabbed [sic]?

A:

About four (4) meters from them, ma'am.

Q:

And relative to their position, could you see, we withdraw that, Your Honor. You could see the, which portion of the bodies of Beninsig and Calica?

A:

I saw the back of Sergio Beninsig and the front of Calica, ma'am.[29]

Clearly, the act of Romeo in answering back to petitioner is insufficient to constitute unlawful aggression. There can be no self-defense, complete or incomplete, unless the accused proves unlawful aggression on the part of the victim. Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person–a mere threatening or intimidating attitude is not sufficient. There must be actual physical force or a threat to inflict physical injury.[30] In the case at bar, there was no previous attack that might have put petitioner on a defensive and violent stance. On the contrary, Federico testified on cross-examination that Romeo was not armed at that time.[31]

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Consequently, the stabbing was not a reasonable and necessary act employed by petitioner who presumably took offense after a heated exchange with the victim. Neither were the victim's actuations tantamount to sufficient provocation. Despite the harsh words uttered

by petitioner, Romeo merely reminded the former that he ought to listen to him. Petitioner retaliated by stabbing him. If at all, the provocation came from petitioner.

By invoking self-defense, the burden of evidence shifts to petitioner to show that the killing was justified and that he incurred no criminal liability.[32] Based on the foregoing, we hold that petitioner failed to overcome this burden. Hence, his defense must fail and his guilt upheld.

WHEREFORE, the instant petition is DENIED and the assailed decision and resolution of the Court of Appeals in CA-G.R. CR No. 27671 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio-Morales, and Velasco, Jr. JJ., concur.

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[1]Rollo, pp. 130-136. Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta of the Sixth Division.

[2]Id. at 142.

[3]CA rollo, pp. 19-24. Penned by Judge Rose Mary R. Molina-Alim.

[4]Rollo, p. 18.

[5]TSN, 10 November 1998, p. 4.

[6]TSN, 13 March 2000, p. 3.

[7]Records, p. 13.

[8]TSN, 13 March 2000, p. 5.

[9]TSN, 8 December 1998, pp. 8-9.

[10]Id. at 10.

[11]TSN, 22 January 2001, pp. 4-5.

[12]CA Rollo, p. 24.

[13]Rollo, pp. 15-16.

[14]People v. Mahilum, 438 Phil. 641, 647 (2002).

[15]Baxinela v. People, G.R. No. 149652, 24 March 2006, 485 SCRA 331, 342; Cabuslay v. People, G.R. No. 129875, 30 September 2005, 471 SCRA 241, 253; Soplente v. People, G.R. No. 152715, 29 July 2005, 465 SCRA 267, 282.

[16]Ladiana v. People, 441 Phil. 733 (2002).

[17]People v. Agudez, G.R. No. 138386-87, 20 May 2004, 428 SCRA 692; People v. Dela Cruz, G.R. No. 140385, 14 April 2004.

[18]Rollo, pp. 19-21.

[19]TSN, 18 March 2003, p. 7.

[20]TSN, 10 November 1998, pp. 5-7.

[21]CA rollo, pp. 50-51.

[22]Rollo, p. 133. Citations omitted.

[23]TSN, 10 November 1998, pp. 4-8.

[24]Ferrer v. People, G.R. No. 143487, 22 February 2006.

[25]TSN, 10 November 1998, p. 4.

[26]CA rollo, p. 51.

[27]Rollo, pp. 134.

[28]TSN, 18 March 2003, pp. 6-7.

[29]Id. at 12.

[30]Sanchez v. People, G.R. No. 161007, 6 December 2006.

[31]TSN, 10 November 1998, p. 18.

[32]Catalina Security Agency v. Gonzalez- Decano, G.R. No. 149039, 27 May 2004, 429 SCRA 628, 641-642.

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