THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEY CONCEPCION Y PEREZ, APPELLANT.

G.R. NO. 169060 [Formerly G.R. No. 154915]. February 06, 2007

Ponente: TINGA, J.

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TINGA, J.:

For review is the Decision[1] of the Court of Appeals affirming with modification the Judgment[2] dated 24 June 2002 of the Regional Trial Court[3] (RTC) Branch 12 of Malolos, Bulacan, finding appellant Joey Concepcion y Perez guilty beyond reasonable doubt of the crime of murder, and sentencing him to suffer the penalty of reclusion perpetua.

In an Amended Information[4] filed by Assistant Provincial Prosecutor Salvador R. Santos, Jr. on 1 December 1998, appellant was charged with murder, thus:

> Criminal Case No. 423-M-98
>
> That on or about the 26[th] day of December 1997, in the municipality of Bustos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill one Rolando F. Nicolas, with treachery, did then and there wilfully (sic), unlawfully and feloniously attack, assault and stab with the said knife said [sic] Rolando F. Nicolas, hitting him on his abdomen, thereby inflicting upon him serious physical injuries which directly caused the death of the said Rolando F. Nicolas.
>
> Contrary to law.

On 19 March 1998, appellant was originally charged with homicide in an Information[5] filed before the RTC, Branch 77 of Malolos, Bulacan. However, following the execution of her Karagdagang Sinumpaang Salaysay,[6] eyewitness Carmencita Baliña (Baliña),[7] common-law wife of victim Rolando F. Nicolas (Nicolas), filed a motion for reinvestigation[8] before the RTC, Branch 77. This motion was granted[9] and after the completion of reinvestigation, the Amended Information for murder was filed. The case was thus re-raffled and assigned to RTC, Branch 12.

When arraigned, appellant pleaded not guilty to the charge.[10] Subsequently, the defense manifested at pre-trial that while appellant indeed stabbed Nicolas in the stomach once, he did so however in self-defense. For this reason, the trial court, upon agreement of the parties, ordered the conduct of reverse proceedings with the defense first to present its evidence on the alleged self-defense.[11]

The pre-trial order[12] issued by Judge Crisanto C. Concepcion embodied the stipulations agreed upon by the parties as follows: (1) the identities of the accused and the victim; (2) the date, time and place of the commission of the charged offense, that is, 26 December 1997, 12:10 in the morning, in Barangay Tanawan, Bustos, Bulacan; (3) that the cause of death of the victim was the single stab wound to the stomach; and (4) that prosecution witnesses Baliña, Jeffrey Lopez (Lopez) and Precy Baldazo (Baldazo) gave their respective statements to the

police authorities, and this being so, the testimonies of the police officer who took the statements and the medico-legal officer may already be dispensed with.[13]

Trial promptly ensued thereafter. To substantiate his theory, the defense presented as witnesses the appellant, appellant's father, appellant's mother, and SPO4 Eduardo Cuison, the arresting officer. The defense's version of the incident runs, thus:

At about 11 o'clock in the evening of 25th of December 1997, appellant and his friend Lopez joined Nicolas, Baliña, and their companions Gilbert de Guzman and Lenin Baldazo at the drinking session and holiday festivities then going on in the house of appellant's aunt Precy Baldoza.[14]

The trouble that night allegedly began when appellant attempted to flirt with Baliña by touching her hand when she passed the videoke microphone to him. According to appellant, what he did angered the victim, causing the latter to utter in a loud voice, "Putang ina mo, multo ka."[15] Immediately thereafter, Baliña purportedly asked appellant to leave to avoid further problems. Thus, appellant claims to have gone, but that he was prompted to return to retrieve his mother, who had been left there in the course of their heated argument.[16]

As he returned to fetch his mother, while situated about two (2) meters from his aunt's house, so appellant narrates, Nicolas suddenly appeared and pulled out a knife. Appellant approached Nicolas and asked, "Ano ba ang problema?" In the course of their argument, appellant allegedly attempted to wrestle the knife away from the victim. Consequently, in their struggle to gain possession of the knife, appellant and Nicolas fell on the ground, with the latter landing on top of appellant. According to appellant, he was surprised to see that the knife had pierced the stomach of Nicolas. Confused, as he was himself bloodied, appellant explains, he ran away and left the victim without helping him.[17]

Appellant went straight to his home where he told his wife and father about what had transpired. His father then went to the police station and came back with two (2) police officers.[18]

To counter the defense's account of the incident, the prosecution presented Baliña who claimed to have witnessed the killing of the victim. Her testimony attested to the following facts:

In the evening of 25 December 1997, appellant and Lopez joined a get-together at the house of Baldazo where, among others, Nicolas and Baliña were present. Throughout the night, the group drank beer and sang in celebration of the holidays. Sometime during the drinking spree, however, Baliña noticed that appellant had surreptitiously left in a hurry without explanation and thereafter disappeared for a considerable amount of time. Baliña believes that at that point, appellant went home to get the murder weapon as his mother appeared at the venue of the festivities thereafter and inquired whether her son had a fight with anyone.[19]

At around 11:45 that evening, the festivities ended uneventfully. Appellant, who was first to leave the group, seated himself in the veranda outside the house. He was followed by his mother, Nicolas, Baliña and the rest. As Baliña and Nicolas were going out of the house and into the veranda, the latter paused and stooped slightly to light a cigarette.[20]

Baliña saw appellant suddenly stand up, rush toward Nicolas and stab him. Thereafter, appellant fled. Nicolas was stunned, managing to utter only the words, "Why, Joey?" before collapsing. He was rushed to a nearby hospital where he expired.[21]

The Autopsy Report[22] on the victim shows that the cause of his death was the stab wound in his abdomen. It describes the stab wound as follows:

x x x x

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> STAB WOUND -
>
> gaping, 2.5 cms. located on the abdomen, along the anterior median line, 102 cms. from the right heel, one end is sharp, the other is contused, directed backwards and upwards involving the skin and underlying soft tissues, severing the omentum and intestines and hitting the liver with a depth of 8-9 cms.
>
> x x x x

The prosecution asserts that appellant harbored ill-feelings toward Nicolas as a result of a disagreement some three (3) years back. Nicolas had purportedly reprimanded appellant for extorting money from those engaged in quarrying operations in their area. The victim had then allegedly poked a gun at appellant in one of their encounters.[23]

To prove actual damages, Baliña presented receipts in the amount of P50,000.00 representing the expenses incurred during the wake and the service for the victim's funeral.[24]

Finding the prosecution's version to be more credible than appellant's allegation of self-defense, the trial court found appellant guilty of murder and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P75,000.00, in addition to P50,000.00 for funeral expenses as actual damages, and P50,000.00 as moral damages.[25]

Conformably with this Court's decision in People v. Mateo,[26] appellant's appeal was remanded to the Court of Appeals. On 9 May 2005, the appellate court rendered its decision affirming the appellant's conviction, with modification as to appellant's civil indemnity. The dispositive portion of the decision states:

> WHEREFORE, the appealed Decision of the Regional Trial Court of Malolos, Bulacan (Branch 12), dated June 24, 2002, in Criminal Case No. 423-M-98, finding appellant Joey Concepcion y Perez guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and awarding actual and moral damages in favor of the legal heirs of the victim Rolando F. Nicolas is AFFIRMED with MODIFICATION that the civil indemnity awarded by the trial court also in favor of the said heirs is reduced to Fifty Thousand Pesos (P50,000.00). No pronouncement as to costs.
>
> SO ORDERED.[27]

Appellant maintains that the court a quo gravely erred: (1) in giving full faith and credence to the testimony of Baliña instead of the self-defense interposed by appellant; (2) in appreciating the qualifying circumstance of treachery; and (3) in finding appellant guilty beyond reasonable doubt of the crime of murder.[28]

Appellant argues that all the essential elements of self-defense were sufficiently established to exculpate him from liability. He contends that no evidence on record shows that he intended to kill the victim; if at all, the death of the victim was purely accidental and only triggered by the provocation committed by the victim when he attacked appellant with a knife.[29]

We are convinced of the appellant's guilt beyond reasonable doubt, however, the downgrading of the offense involved and the reduction of the penalty are in order.

Case law has established that in invoking self-defense, whether complete or incomplete, the onus probandi is shifted to the accused to prove by clear and convincing evidence all the elements of justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[30]

We find that appellant has miserably failed to demonstrate that the death of Nicolas had occurred on the occasion of a legitimate self-defense on his part. The accused, in cases of self-defense, must rely on the strength of his own

evidence and not on the weakness of the prosecution's evidence since he admits the commission of the alleged criminal act.[31] One who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence, for even if the evidence of the prosecution were weak, it could not be disbelieved after the accused himself had admitted the killing.[32] Self-defense, like alibi, is a defense which can easily be concocted. If the accused's evidence is of doubtful veracity, and it is not clear and convincing, the defense must necessarily fail.[33]

Accordingly, there can be no self-defense unless there was unlawful aggression on the accused. It thus follows that the accused has the burden of proof to show that he was the victim of an unlawful aggression in order to be entitled to his claim of self-defense.[34] This is so, because it is a fundamental principle that one who exculpates himself with an allegation of justification has the burden of fully showing the concurrence of all the elements constituting the defense invoked.[35]

Unlawful aggression presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb.[36] It is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked.[37]

Hence, it is crucial to determine whether or not the victim Nicolas was indeed the unlawful aggressor. He was not. Aggression to be unlawful must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense or to others whom that person is seeking to defend. As adequately established by the prosecution, there was no incident to speak of which would amount to aggression, much less unlawful aggression, on the part of the victim. Correspondingly, appellant failed to present any corroborative evidence to buttress his bare allegations, despite the presence of many persons during the incident who could have been called to testify. His lone testimony in support of his claim of self-defense under the circumstances is simply not enough to establish his defense.

Appellant is not even sure of his real defense. He asserts that his acts were made in self-defense, but he suggests at the same time that the victim's death was accidental. The incongruent claims make his overall theory implausible.

While appellant's slaying of Nicolas is a proven fact, the prosecution however failed to prove the presence of treachery to qualify the killing to murder.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [38]

In the case at bar, the Courts below should not have appreciated the presence of treachery to qualify the killing to murder. The only prosecution evidence on the matter is the bare testimony of Baliña, the victim's common-law wife, that his head was bent while lighting a cigarette when appellant launched his attack. Baliña made the claim for the first time in her Karagdagang Sinumpaang Salaysay,[39] as she failed to mention it in her first Sinumpaang Salaysay.[40] The amendment appears to be a mere afterthought made precisely to upgrade the charge to murder.

Significantly, two of the companions of Nicolas during the festivities gave statements to the police authorities.[41] However, the prosecution did not present them as witnesses. Hence, their statements cannot be considered as evidence.[42]

In the absence of conclusive proof on the manner in which the aggression against Nicolas was commenced, treachery cannot be appreciated as a modifying circumstance.[43] It bears stressing that treachery cannot be

presumed. It must be proved with the same quantum of evidence as the crime itself.[44]

The barefaced fact that the victim might have been unaware or helpless when he was stabbed does not constitute proof of treachery.[45] The prosecution has the burden to prove that at the time of the attack, the victim was not in a position to defend himself, and that the offender consciously and deliberately adopted the particular means, method and forms of attack employed by him.[46] When the prosecution fails to prove treachery, as in this case, the accused may be held liable only for homicide not murder.[47]

As a final matter, we address the issue of appellant's claimed mitigating circumstance of voluntary surrender. For voluntary surrender to be considered, the following requisites must concur: (a)

the offender was not actually arrested; (b) he surrendered to a person in authority or to an agent of a person in authority; and (c) his surrender was voluntary.[48] There must be showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.[49] The records show that appellant did not surrender but was arrested in his residence by SPO4 Cuison. This arresting officer even had to go twice to appellant's home to effect the arrest, because during the first attempt, appellant would not come out of his house and his mother refused to turn him over to the arresting officer.[50]

Based on the foregoing, we modify the finding of guilt and the consequent penalty imposed as pronounced by the Court of Appeals. Article 249 of the Revised Penal Code (RPC), as amended, prescribes the penalty of reclusion temporal for the crime of homicide. There being neither mitigating nor aggravating circumstances in the commission of the deed in the instant case, the penalty of reclusion temporal in its medium period is imposed, in accordance with Article 64, paragraph 1 of the RPC. Further, applying Section 1 of the Indeterminate Sentence Law, the Court imposes the penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

We affirm, however, the award of damages. Consequently, the court finds appellant liable to the heirs of Rolando F. Nicolas in the amount of P50,000.00 as actual damages for funeral expenses, P50,000.00 as moral damages and P50,000.00 as civil indemnity.[51]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR No. 00519, is AFFIRMED WITH MODIFICATION. As modified, appellant JOEY CONCEPCION y PEREZ is convicted of the crime of homicide and sentenced to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. Appellant is further ordered to pay the heirs of Rolando F. Nicolas the amounts of P50,000.00 as actual damages, P50,000.00 as moral damages and P50,000.00 as civil indemnity. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 3-23; CA rollo, pp. 103-104. Penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rebecca De Guia-Salvador.

[2]CA rollo, pp. 20-24 and 63-67.

[3]Presided by Judge Crisanto C. Concepcion.

[4] Records, Vol. 1, pp. 60-61; Vol. II, pp. 1-2, 3-4 and 5-6.

[5] Id.

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[6]Id. at p. 33-34.

[7] Also referred to as Carmencita Balena and Carmencita Baleña in the case records.

[8] Records, Vol. 1, pp. 31-32.

[9] Id. at 62-63. Resolution dated 15 October 1998.

[10] Id. at 90; Order dated 27 February 2001.

[11]Id. at 92; Order dated 9 March 2001.

[12] Id.

[13]Id.; TSN, 9 March 2001, pp. 2-9.

[14]TSN, 19 June 2001, pp. 8-9.

[15] Id. at 10-11; TSN, 17 July 2001, pp. 2-3.

[16]TSN, 17 July 2001, pp. 3-4; 2 August 2001, p. 2.

[17] TSN, 2 August 2001, pp. 2-5.

[18] Id. at pp. 5-6.

[19]Records, Vol. 1, p. 39.

[20] TSN, 22 January 2002, pp. 5-6; Records, p. 4.

[21] TSN, 22 January 2002, pp. 6-7, 11.

[22]Id. at 155.

[23] Supra note 5; TSN, 22 January 2002, supra at pp. 9-10.

[24] TSN, 22 January 2002, pp. 15 and 16.

[25] CA rollo, pp. 23-24 and 66-67.

[26] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[27] Rollo, p. 22; CA rollo, p. 123.

[28] CA rollo, p. 51.

[29]Id. at 59-61.

[30] Roca v. Court of Appeals, 403 Phil. 326, 335 (2001) citing People v. Gadin, Jr., G.R. No. 130658, 4 May 2000, p. 6, citing People v. De la Cruz, 313 SCRA 189 (1999); People v. Bitoon, 309 SCRA 209 (1999), and People v. Villamor, 292 SCRA 384 (1998).

[31] Id. citing People v. Caverte and Caverte, G.R. No. 123112, 30 March 2000, p. 19, citing People v. Obzunar, 265 SCRA 547 (1996).

[32] Cabuslay v. People, G.R. No. 129875, 30 September 2005, 471 SCRA 241, 256, citing People v. Belbes, 389 Phil. 500, 507; 334 SCRA 161, 167-168 (2000).

[33] People v. Artiaga, G.R. No. 115689, 30 June 1997, 274 SCRA 685, 693, citing Cantos v. Court of Appeals,

234 SCRA 375 (1994).

[34] Francisco, Evidence (1996, 3rd ed.) 397 citing People v. Barrieta, 45 O.G. 3945.

[35]Id. citing People v. Bona, 37 O.G. 657.

[36] People v. Cabuslay, supra note 32 at 257 citing People v. Sabdani, 389 Phil. 840, 847; 334 SCRA 498, 505 (2000); People v. Janairo, 370 Phil. 59, 72; 311 SCRA 58, 71 (1999).

[37] R. Kapunan and D. Faylona, Criminal Law (1993 ed.) 58; People v. Cabuslay, supra note 32 at 257 citing People v. Cawaling, 355 Phil. 1, 37; 293 SCRA 267 (1998); People v. Tan, 373 Phil. 990, 1009, 315 sCRA 375, 392 (1999); People v. Aglipa,391 Phil. 879, 888; 337 SCRA 181, 189 (2000); Salcedo v. People, G.R. No. 137143, 8 December 2000, 347 SCRA 499, 507; People v. Asuela, 426 Phil. 428, 443-444; 376 sCRA 51, 64 (2002); People v. Magnabe, Jr., 435 Phil. 374, 390; 386 SCRA 351, 364 (2002) .

[38] Revised Penal Code, Art. 14, No. 16, par. 2.

[39] Records, Vol. 1, pp. 33-34.

[40] Id. at 4-5.

[41] Rollo, p. 7.

[42]People's Bank and Trust Company v. Leonidas, G. R. No. 47815, 11 March 1992, 207 SCRA 165, 166 citing People v. Brioso, L-28482, 37 SCRA 336 (1971).

[43]People v. Santiago, 446 Phil. 323, 340 (2003); citing People v. Macaliag, 337 SCRA 502 (2000).

[44] People v. Santiago, supra.

[45] Id.

[46] People v. Ramos, G.R. No. 125898, 14 April 2004, 427 SCRA 207, 214; citing People v. Castillano, Sr., G.R. No. 139412, 2 April 2003, 400 SCRA 401.

[47] People v. SPO2 Magnabe, Jr., 435 Phil. 374 (2002).

[48] People v. Suyum, 428 Phil. 465, 481 (2002); People v. Ignacio, 382 Phil. 257, 267 (2000); People v. Deopante, 331 Phil. 998 (1996).

[49] Roca v. Court of Appeals, 403 Phil. 326, 338 (2001) citing People v. Salas, G.R. No. 115192, 7 March 2000, p. 10.

[50] TSN, 4 October 2001, p. 8.

[51]People v. Manalo, G.R. No. 173054, 5 December 2006.

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