

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BINGKY CAMPOS AND DANNY BOY ACABO, APPELLANTS.

G.R. No. 176061. July 04, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

We reiterate in this case the time-honored doctrine that although it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits the commission of the crime and invokes self-defense.

This is an appeal from the September 25, 2006 Decision [1] of the Court of Appeals (CA) in CA-G.R. CEB-CR H.C. No. 00241. The CA affirmed in toto the April 2, 2004 Decision [2] of the Regional Trial Court (RTC) of Negros Oriental, Branch 37, Dumaguete City finding appellants Bingky Campos (Bingky) and Danny "Boy" Acabo (Danny) guilty beyond reasonable doubt of the crime of murder.

In an Information filed by the Assistant Prosecutor of Dumaguete City, Bingky and Danny were charged with the crime of murder committed as follows:

That on August 19, 2001 at about 8:00 o'clock in the evening at Arellano Street, Poblacion Zamboanguita, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other, with deliberate intent to kill, armed with a "plamingco" - a bladed weapon of which said accused were armed and provided, and [by] means of treachery, and disregard of the respect due the offended party on account of his age, did then and there willfully, unlawfully and feloniously attack, stab and wound ROMEO F. ABAD, 64 years of age, thereby inflicting upon the latter "stab [sic] wound with injury to the liver, gallbladder thru/thru; duodenum thru/thru; pancreas", which cause[d] his death on the following day while undergoing medical treatment at the Holy Child Hospital.

Contrary to Article 248 of the Revised Penal Code, as amended. [3]

Arraigned on September 25, 2001, appellants, assisted by counsel, pleaded not guilty. The pre-trial was deemed terminated on March 25, 2002. Trial on the merits thereafter proceeded.

Version of the Prosecution

A brief summary of the pertinent facts constituting the prosecution's version of the incident was unveiled by the Office of the Solicitor General (OSG) in this manner:

[A]t around [8:00] o'clock in the evening of August 19, 2001, prosecution eyewitness Lester Huck Baldivino (Lester) was tending his sari-sari store near his house located at Arellano St., Brgy. Calango, Zamboanguita, Negros Oriental when [the victim] Romeo Abad (Romeo), his maternal uncle, came to buy cigarettes and candies. Lester was about to call it a night and was already preparing to close his store, but Romeo lit up a cigarette and started to converse with him.

Romeo was jesting about Lester's skin rashes, as the latter was applying medicine on his irritated skin. They were in this bantering mood, when Lester, who was facing the highway, suddenly heard footsteps and immediately saw Danny Boy Acabo (Acabo) running towards his uncle's direction, closely followed by Bingky Campos (Campos). Before Lester can utter a word of warning, Danny swiftly stab[bed] Romeo at the lower right side of the latter's abdomen with a "plamingko" while Bingky stood nearby. Immediately after stabbing Romeo, Danny and Bingky fled.

Lester was shocked but darted out of his store to apply pressure on Romeo's wound when he heard the latter cry out for help. Lester told Romeo to hang on and ran inside his house to call his mother and Romeo's son and told them to prepare the car.

Romeo was brought to the Holy Child Hospital where he died.

The medical examination conducted by Dr. Johnny B. Yee (Dr. Yee), the attending physician at the Holy Child Hospital who prepared the Certificate of Death, revealed that Romeo sustained a stab[bed] wound that could have been inflicted by a sharp and pointed long instrument. The weapon hit him at the right upper quadrant of the abdomen, penetrating and causing injury to the liver, with through and through laceration of the gall bladder and the duodenum, and transecting the whole length of the pancreas. Dr. Yee further testified that the injury to the pancreas caused the massive blood loss which [made] Romeo to suffer hypovolemic shock [resulting to] cardio-pulmonary arrest [and, eventually, his] death. [4]

Version of the Defense

For the defense, the following is their own version of the incident as narrated in their Brief:

On August 19, 2001 while on their way to the house of their uncle, Danny and Bingky met four men who mauled Bingky. When Bingky was able to run away, they approached Danny and kicked his buttocks. Danny pulled out a knife and thrust it towards one of the men. Danny then ran away to escape. [5]

Bingky corroborated the testimony of Danny that four men approached him (Bingky) and mauled him. He does not know who these persons were. [6]

Ruling of the Regional Trial Court

On April 2, 2004, after evaluating the conflicting evidence before it, the RTC meted out a judgment of conviction and sentenced both Bingky and Danny to reclusion perpetua and ordered them to indemnify jointly and severally the heirs of Romeo the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages plus cost. [7]

Appellants appealed to this Court in view of the penalty imposed on them. On September 15, 2004, this Court accepted the appeal and notified the parties to file briefs. [8] On March 7, 2005, [9] the Court transferred the case to the CA in conformity with the Decision in *People v. Mateo*. [10]

Ruling of the Court of Appeals

The CA found no error in the appreciation of the evidence and applicable law by the trial court. On September 25, 2006, the appellate court, in rendering its assailed Decision, dispositively ruled:

WHEREFORE, premises considered, Judgment is hereby rendered affirming the Decision of the trial court in toto.

SO ORDERED. [11]

Hence, this appeal.

On May 3, 2007 [12] and May 7, 2007, [13] appellants and appellee People of the Philippines, through the Office of the Solicitor General (OSG), respectively, filed similar manifestation that they are no longer filing their supplemental briefs.

Appellants pray for the reversal of their conviction alleging that the prosecution failed to prove their guilt beyond reasonable doubt. They claim that the stabbing of the victim was done in self-defense. They take exception to the finding of the trial court regarding the presence of conspiracy asserting that the mere presence of Bingky at the scene of the crime does not prove the existence of conspiracy.

For the appellee, the OSG argues that Danny failed to prove his plea of self-defense; that conspiracy attended the killing of the victim and that appellants' guilt was proven beyond reasonable doubt. Appellee thus prays for the affirmance of the judgment of conviction with modification as to the award of civil indemnities.

Our Ruling

The appeal lacks merit.

Well-settled is the rule in criminal cases that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt. [14] However, once the accused admits the commission of the offense charged but raises a justifying circumstance as a defense, the burden of proof is shifted to him. He cannot rely on the weakness of the evidence for the prosecution for even if it is weak, it cannot be doubted especially after he himself has admitted the killing. [15] This is because a judicial confession constitutes evidence of a high order.

Danny categorically admits that he stabbed Romeo. However, he boldly claims that he did it in self defense. He avers that on that fateful night of August 19, 2001, he and Bingky were attacked along the way home by four unknown persons for no apparent reason. He observed that one of the men was pulling an object from his waistband which he thought was a bladed weapon so he drew his own knife and thrust it at the man rushing at him, hitting the latter on the right side of his body. His reaction, he asserts, was defensive arising from a prior act of aggression and provocation by the victim and his companions.

The essential elements of the justifying circumstance of self-defense, which the accused must prove by clear and convincing evidence are: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the accused defending himself. [16] The first element of unlawful aggression is a condition sine qua non. There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; for otherwise, there is nothing to prevent or repel.

In the present case, Danny's claim of self-defense is belied by his own testimony:

Q

Now after they attacked Bingky Campos what did they do?

A

They were not able to hit again Bingky because Bingky ran away.

Q

How about you? What did they do to you?

A

I was held by the other person when he approached me because Bingky was no longer there.

Q

And who was that person who held you?

A

I do not know him.

Q

How about now, do you know his name?

A

What I know only was Jaime and Iko.

Q

Who [between] the two, Jaime and Iko [took] hold of you?

A

Jaime and Iko were not able to hold me.

Q

Was there an attempt by Jaime and Iko to maul you also?

A

Yes.

Q

What did they do?

A

They kicked my left butt and the other person held me.

Q

Then what did you do?

A

I pulled a knife from my waist.

Q

Who [between] the two kicked you at your butt and who was the person who took hold of you?

A

It was Iko who kicked my buttocks but the other person who held me, I do not know his name.

Q

Now what happened when you drew you[r] knife?

A

The two persons who attempted to attack me, when I pulled a knife, I thrust the knife to the person who rushed at me.

Q

Did you hit that person?

A

Yes, he was hit.

Q

Where was he hit?

A

At the side.

Court Interpreter:

The witness is touching his lower right side.

Atty. Vailoces:

Q

And what were the other companions doing at that time?

Witness:

A

After thrusting the knife to the person, I ran away and the three (3) ran after me. [17]

As can be gleaned from the foregoing narration, there is no mention at all that Romeo was among the four persons who allegedly attacked Danny and Bingky. Likewise, there is nothing in the narration which evinces unlawful aggression from Romeo. Danny's testimony shows that there was only an attempt, not by Romeo but by Jaime and Iko, to attack him. Following his version, Danny then became the aggressor and not the victim. Even if the version of Danny is given a semblance of truth, that there was an attempt to hurt him, though intimidating, the same cannot be said to pose danger to his life and limb. This conclusion was drawn from the fact that no bladed weapon was found at the alleged scene of the crime and nobody testified about it. For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude" [18] and the accused must present proof of positively strong act of real aggression. For this reason, Danny's observation that one of the men was pulling an object from his waist is not a convincing proof of unlawful aggression. "[A] threat, even if made with a weapon or the belief that a person was about to be attacked, is not sufficient." [19] An intimidating or threatening attitude is by no means enough. In this case, other than the self-serving allegation of Danny, there is no evidence sufficiently clear and convincing that the victim indeed attacked him. The prosecution's rebuttal witnesses Jaime Maquiling and Francisco Austero [20] who admittedly were among those whom Danny and Bingky had an encounter with on the night of August 19, 2001, never said in their testimonies that Romeo attacked Danny and a bladed weapon was used. These witnesses were categorical that Romeo was not with them during the incident. This testimonial evidence was not refuted by the defense. Even Bingky who claimed to be a friend of Romeo [21] was not able to identify the latter as one of those present at the time. Candid enough, Bingky declared that it was only a certain Ago and Jaime who confronted Danny. [22] Resultantly, Danny failed to discharge his burden of proving unlawful aggression, the

most indispensable element of self-defense. Where "no unlawful aggression is proved, no self-defense may be successfully pleaded." [23]

Moreover, as testified to by the attending physician Dr. Yee, Romeo sustained a stab wound causing injuries on his liver, gall bladder, duodenum and the pancreas which resulted to massive blood loss. [24] He eventually died of multiple vital organ failure. Clearly the wound inflicted by Danny on Romeo indicate a determined effort to kill and not merely to defend. [25] As has been repeatedly ruled, the nature, number and location of the wounds sustained by the victim disprove a plea of self-defense. [26]

Furthermore, Danny's actuation in not reporting the incident immediately to the authorities cannot take out his case within the ambit of the Court's jurisprudential doctrine that the flight of an accused discloses a guilty conscience. The justifying circumstance of self-defense may not survive in the face of appellant's flight from the scene of the crime coupled with his failure to promptly inform the authorities about the incident. [27]

Indeed, appellants' conviction was principally anchored on the testimony of Lester as an eyewitness. Like the courts below, we too find Lester's testimony consistent, credible and trustworthy. We have reviewed his declaration in court as contained in the pertinent transcript of stenographic notes and we discern nothing therein that casts doubt on his credibility. His testimony is clear, positive in its vital points and full of details substantiating the circumstances of how, where and when the offense charged happened including the identity of the knife wielder, Danny. It is most unlikely that he could narrate all the details of the crime with clarity and lucidity unless he was personally present at the situs criminis before and during the incident. The testimony of a witness, giving details of a startling incident that cannot easily be fabricated, deserves credence and full probative weight for it indicates sincerity and truthfulness in the narration of events. [28] Findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court. [29] Though there are recognized exceptions to this rule, none is present in this case. We are bound by the trial court's assessment, as affirmed by the appellate court, that the stabbing of Romeo took place in the manner proven by the prosecution, that is, in front of the store of Lester and not elsewhere, at the time the victim was buying cigarette and candies.

Treachery attended the killing of the victim

The trial court, in convicting appellants of murder, ruled that the killing was qualified by treachery.

We agree.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to ensure the execution of the crime without risk to himself arising from the defense which the offended party might make. [30] To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and, (b) that the offender consciously adopted the particular means of attack employed. [31]

In this case, it is at once evident that Danny's attack on the victim was sudden and deliberate as testified by eyewitness Lester. The attack was unexpected and without the slightest provocation on the part of the unarmed Romeo considering that he was casually talking to Lester after buying something from the store with no inkling that an attack was forthcoming. The attack was executed in a manner that Romeo was rendered defenseless and unable to retaliate. The severity of the lone stab wound forestalled any possibility of resisting the attack. Danny without doubt took advantage of this situation. As correctly held by the trial court, the act of Danny in positioning himself in a place where Romeo could not see him and then suddenly and deliberately inflicting a fatal wound are clear indications that he employed means and methods which tended directly and specifically to ensure the successful execution of the offense. [32]

Conspiracy adequately established

Notably, a relevant portion of the appellants' brief was focused on the discussion of the conspiracy angle in the commission of the crime. The defense challenges the trial court's finding of conspiracy, arguing that Bingky's mere presence at the scene of the crime does not prove the existence of conspiracy.

Appellants' argument is untenable.

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. [33] "Direct proof is not essential to prove conspiracy [for] it may be deduced [from] the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime." [34]

Indeed, mere presence at the scene of the incident, by itself, is not a sufficient ground to hold a person liable as a conspirator. However, conspiracy may be inferred from proof of facts and circumstances which when taken together indicate that they are parts of the scheme to commit the crime. In the present case, Bingky's presence at the scene of the crime at the time of its commission as testified to by prosecution eyewitness Lester was never rebutted. According to Lester, Danny arrived first at the scene of the crime followed by Bingky. During the stabbing incident, Bingky was around three meters away from Danny. Immediately after the incident, both appellants scampered away. [35] To the mind of the Court, Bingky's presence at the scene of the crime at the time of its commission was not just a chance encounter with Danny. His overt act of keeping himself around served no other purpose than to lend moral support by ensuring that no one could give succor to the victim. His presence at the scene has no doubt, encouraged Danny and increased the odds against the victim. One who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator. [36] Moreover, the record is bereft of any hint that Bingky endeavored to avert the stabbing of the victim despite the particular distance between them. Under the circumstances, we can hardly accept that Bingky has nothing to do with the killing. No conclusion can be drawn from the acts of Bingky except that he consented and approved the acts of his co-accused in stabbing the victim. Once conspiracy is established, the act of one is deemed the act of all. It matters not who among the accused actually killed the victim. Thus, the trial court did not err in its ruling that conspiracy existed between appellants in the commission of the crime charged.

The Proper Penalty

Treachery qualifies the killing to murder. [37] Under Article 248 of the Revised Penal Code (RPC), the penalty for murder is reclusion perpetua to death. The two penalties being both indivisible and there being no mitigating nor aggravating circumstance to consider, the lesser of the two penalties which is reclusion perpetua should be imposed pursuant to the second paragraph of Article 63 [38] of the RPC. Hence the penalty of reclusion perpetua imposed by the trial court and affirmed by the appellate court is proper.

As to Damages

The trial court likewise correctly awarded civil indemnity and moral damages to the heirs of the victim. However, in line with prevailing jurisprudence the award of civil indemnity shall be increased from P50,000.00 to P75,000.00. This amount is granted to the heirs of the victim without need of proof other than the commission of the crime. We retain the award of P50,000.00 as moral damages. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.

Significantly, both lower courts failed to award exemplary and actual damages to the heirs of the victim. Exemplary damages should be awarded in accordance with Article 2230 [39] of the Civil Code given the presence

of treachery which qualified the killing to murder. We therefore award the amount of P30,000.00 as exemplary damages to the heirs of the victim. [40]

Settled is the rule that only duly receipted expenses can be the basis of actual damages. Dominic Abad, son of the victim testified that the family spent P65,000.00 for the hospitalization of the victim, P45,000.00 for the coffin and P35,000.00 for the wake but failed to present receipts to prove these expenses. [41] However, notwithstanding the absence of receipts to prove actual damages, we find it imperative to award the amount of P25,000.00 as temperate damages in lieu of actual damages. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. [42]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid.

wherefore, the appealed judgment is **AFFIRMED** with the **MODIFICATIONS** that appellants Bingky Campos and Danny "Boy" Acabo are ordered to jointly and severally pay the heirs of the victim Romeo Abad, the amount of P75,000.00 as civil indemnity; P30,000.00 as exemplary damages; P25,000.00 as temperate damages, all in addition to the P50,000.00 moral damages which is retained, as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] CA rollo, pp. 116-122; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[2] Id. at 17-31; penned by Judge Jenny Lind R. Aldecoa-Delorino.

[3] Records, p. 1.

[4] CA rollo, pp. 86-88.

[5] Id. at 56.

[6] Id.

[7] Id. at 31.

[8] Id. at 34.

[9] Id. at 44.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. In this case, the Court provided a review by the Court of Appeals of cases where the penalty of reclusion perpetua or life imprisonment is imposed before same is elevated to the Supreme Court.

[11] CA rollo, p. 122.

[12] Rollo, pp. 11-12.

[13] Id. at 13-15.

[14] Boac v. People, G.R. No. 180597, November 7, 2008, 570 SCRA 533, 548.

- [15] Palaganas v. People, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 553-554.
- [16] Mahawan v. People, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 746.
- [17] TSN, November 11, 2002, pp. 10-11.
- [18] People v. Rubiso, 447 Phil. 374, 381 (2003).
- [19] Id.
- [20] They are the Jaime and Iko referred to by Danny in his abovequoted testimony; see TSN, April 1, 2003.
- [21] TSN, December 2, 2002, p. 13.
- [22] Id. at 12.
- [23] People v. Abesamis, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 311.
- [24] TSN, August 13, 2002, p. 13.
- [25] People v. Pateo, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 617.
- [26] Id.
- [27] David, Jr. v. People, G.R. No. 136037, August 13, 2008, 562 SCRA 22, 35.
- [28] People v. Clariño, 414 Phil. 358, 374 (2001).
- [29] Alcantara v. Roble de Templá, G.R. No. 160918, April 16, 2009, 585 SCRA 254, 266.
- [30] People v. Dela Cruz, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 721-722.
- [31] Id.
- [32] RTC Decision, CA rollo, p. 13.
- [33] People v. Pagalasan, 452 Phil. 341, 363 (2003).
- [34] People v. Martin, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 51.
- [35] TSN, July 1, 2002, p. 9.
- [36] People v. Sicad, 439 Phil. 610, 626 (2002).
- [37] People v. Ramos, 471 Phil. 115, 125 (2004).
- [38] ART. 63 - Rules for the application of indivisible penalties. - x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof.

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x

[39] ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from

finer and shall be paid to the offended party.

[40] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 531.

[41] TSN, October 14, 2002, p. 7.

[42] *People v. Surongon*, G.R. No. 173478, July 12, 2007, 527 SCRA 577, 588.

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