

PEOPLE OF THE PHILIPPINES, APPELLEE, VS JAIME LOPEZ, ROGELIO REGALADO, AND ROMEO ARAGON, APPELLANTS. D E C I S I O N

G.R. No. 177302. April 16, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Jaime Lopez, Rogelio Regalado and Romeo Aragon (appellants) were charged of Murder by an Information filed before the Regional Trial Court (RTC) of Surigao del Sur, the accusatory portion of which reads:

That on or about 3:30 o'clock in the afternoon of April 25, 1996 at Bandola Street, Pob. Municipality of Hinatuan, Province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another for a common purpose, with treachery and evident premeditation and with deliberate intent to kill, and armed with sharp bladed instruments (knives and "Tare"), did then and there willfully, unlawfully and feloniously attack, assault, box and stab to death EDENCITO CHU Y VILLAHERMOSA, thereby inflicting upon the latter fatal multiple stab wounds as certified to by a doctor, which caused his instantaneous death, to the damage and prejudice of the heirs of the said CHU.

CONTRARY TO LAW: (In violation of Article 248 of the Revised Penal Code of the Philippines, with the aggravating circumstances of superior strength).[1]

From the evidence for the prosecution, the following version of events is culled:[2]

At around 3:30 P.M. of April 25, 1996, appellant Rogelio Regalado (Regalado), who was outside Bantogan[3] Tailoring, a tailoring shop at Bandola street corner Villaluz, Hinaruan, Surigao del Sur, called out: "You let Bonjong come out so we could measure his courage!," referring to Edencito Chu (Chu) whose nickname is "Bonjong." Chu thereupon emerged from his mother's bakery, Purity Bakery, fronting the tailor shop, put his arms around Regalado's shoulders and asked for forgiveness. Regalado, however, pushed Chu's arms aside, drew a curved four to five inches long knife as he uttered "Putang Ina, ka Jong!" and stabbed Chu below the left nipple.

As Chu ran towards Villaluz street, Regalado chased him and picked up two pieces of firewood along the way with which he hit Chu.

Appellant Jaime Lopez (Lopez) in the meantime surfaced from a house beside the tailoring shop and, armed with a hunting knife, joined the chase.

Soon appellant Romeo Aragon (Aragon) also surfaced from the back of the tailoring shop and also joined the chase.

The three appellants caught up with Chu at the corner of Lindo and Bandola streets at which Aragon boxed Chu, causing the latter to fall. Aragon kicked Chu. Lopez then stabbed Chu several times as Regalado looked on. When Chu was no longer moving, the three appellants left. Chu expired before reaching the hospital.

Post-mortem examination of Chu's body yielded the following findings:

STAB WOUND LEFT DELTOID 4CM MUSCLE DEEP

PENETRATING STAB WOUND LEFT POSTERIOR AXILLARY LINE AT THE LEVEL OF T10, 3CM

PENETRATING STAB WOUND RIGHT POSTERIOR AXILLARY LINE AT THE LEVEL OF T8, 1.5 CM

PENETRATING STAB WOUND RIGHT ANTERIOR TRUNK AT THE LEVEL OF T10, 1 CM

PENETRATING STAB WOUND LEFT ANTERIOR AXILLARY LINE 1 CM

STAB WOUND LEFT NIPPLE 1 CM SUBCUTANEOUS DEEP

2 LACERATED WOUNDS LEFT ELBOWS SKIN DEEP 0.5 CM EACH[4]

Autopsy of Chu's body yielded results which coincided with those of the post-mortem examination, thus:

Body, embalmed, well-preserved.

Embalming incisions, sutured: neck, antero-lateral aspect, right, 3.5 cm.; supra-umbilical region, right, 1.0 cm.

Contused-abrasions, patellar region, bilateral right, 5.0 x 11.5cm; left, 11.0 x 12.0cm.

Incised wounds, modified by suturing and embalming: chest, infra-mammary region, right, 1.5 cm.; inguinal region, right, 1.5 cm.; forearm, proximal third, postero-lateral aspect, left, 1.6 cm.

Stab wounds, modified by suturing and embalming:

- Roughly curved-shaped, 4.5cm., edges are clean-cut, oriented vertically, superior extremity is blunt, inferior extremity is sharp. Located at the left arm, proximal third, antero-lateral aspect, 23.0cm. above the left elbow, directed backward, downward, and laterally, involving the soft tissue, cutting the major blood vessels with an approximate depth of 7.5cm.

- Roughly spindle-shaped, 2.3cm., edges are clean-cut, oriented vertically, superior extremity is sharp, inferior extremity is blunt. Located at infra-mammary region, between sixth (6th) and seventh (7th) intercostal space, lateral aspect, left, 16.0cm. from anterior median line, directed, backward, downward, and medially, involving the soft tissues, into the thoracic cavity, into the pericardial sac, penetrating the left ventricle of the heart with an approximate depth of 10.0cm.

- Roughly spindle-shaped, 1.8cm., edges are clean-cut oriented vertically, superior extremity is sharp, inferior extremity is blunt. Located at supra-mammary region; left, 1.0cm. from anterior median line, directed backward, sideward, and medially involving the soft tissues, cutting the sternum superficially, with an approximate depth of 5.0cm.

- Roughly spindle-shaped, 2.0cm., edges are clean-cut, oriented vertically, superior extremity is blunt, inferior extremity is sharp. Located at the infra-scapular region, right, 20.0cm. from posterior median line, directed forward, downward, and laterally, involving the soft tissues only, with an approximate depth of 5.0cm.

- Roughly curved-shaped, 3.5 edges are clean-cut, oriented horizontally, lateral extremity is blunt, medial extremity is sharp. Located at the infra-scapular region, 11.0cm. from posterior medial line, directed forward, downward and medially, involving the soft tissues only with an approximate depth of 5.2cm.

Hemopericardium, residual clotted blood - 250cc.

Brain & other visceral organs, pale, embalmed.

Stomach - small amount of grayish food particles.[5]

Dr. Ricardo M. Rodaje, who conducted the autopsy, explained that wounds 1 and 5 were caused by a curve-shaped weapon.[6]

At the witness stand,[7] Regalado claimed as follows:

At 3:00 P.M. on April 25, 1996, after he bought a hotcake from the hotcake stand of Angelina Aragon (Angelina), wife of appellant Aragon and daughter of appellant Regalado, at the corner of Bandola and Villaluz streets, Chu approached and choked him.

He elbowed Chu and extricated himself. He then left but Chu pursued him as he (Regalado) proceeded to Angelina's house at the corner of España and Villaluz streets where he hid for around two minutes.

When he returned to the hotcake stand, his son-in-law appellant Lopez summoned him, telling him "I have done something, you accompany me in going to the police station because I am going to surrender."

He and Lopez thereupon boarded a tricycad and repaired to the police station where Lopez surrendered, handed a knife to the police, and was detained. As he (Regalado) was about to go home, he was restrained as he might be waylaid by Chu. The following morning, he was detained because the police found him to have participated in the killing of Chu.

As for appellant Lopez, he interposed "defense of relative" and "self-defense." [8]

His version goes as follows:

At 3:00 P.M. of April 25, 1996, while he was at one Lily Balbuena's mahjong house along Villaluz street, he heard a woman's voice shouting. "Police, police, police!" He thus stepped out and saw Chu chasing Regalado, his father-in-law, prompting him to go to Regalado's nearby house to get a knife, and to thereafter follow Chu as he was chasing Regalado. Lopez soon

intercepted Chu who boxed him as he (Chu) posed "Are you going to defend your father-in-law?" He thereupon stabbed Chu several times and surrendered to the police station in the company of Regalado.

Appellant Aragon invoked alibi,[9] claiming that at 3:00 P.M. of April 25, 1996, he went to the wharf which is 40 meters away from Angelina's hotcake stand to buy fish. He waited for 30 minutes for fishermen but no one came, so he went home. Before reaching his house he was surprised to see many people at the corners of Villaluz and Bandola streets. Angelina soon met him and told him that Lopez had stabbed Chu because he choked Regalado.

He later learned that police investigator Pedic Mangin was looking for him, hence, he visited the latter who told him that they would talk things over at the municipal hall. When he reached the municipal hall, he was immediately detained.

The defense presented evidence of Chu's supposed reputation as a bully who picked fights for no reason and who had an existing criminal record.[10]

Branch 29 of the Bislig City RTC found the three appellants to have killed Chu, qualified by treachery which absorbed "abuse of superior strength". The trial court thus disposed:

WHEREFORE, finding the accused JAIME LOPEZ alias "DODONG", ROGELIO REGALADO alias "ROGER", and ROMEO ARAGON, all co-principals by direct participation, guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, this Court hereby sentences them to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law.

To pay the heirs of the victim the sum of one hundred nine thousand six hundred seventy five pesos and forty (P109,675.40) centavos as interment and burial expenses, fifty thousand (P50,000.00) pesos as life indemnity twenty-three thousand (P23,000.00) pesos as attorney's fees, and ten thousand (P10,000) pesos as exemplary damages.

To pay the cost.

SO ORDERED.[11]

On appeal, appellants faulted the trial court for

I

x x x FINDING THAT CONSPIRACY ATTENDED THE KILLING OF THE VICTIM.

II

x x x NOT CONSIDERING THE DEFENSES INTERPOSED BY THE ACCUSED-APPELLANTS.[12]

III

x x x CONVICTING THE ACCUSED APPELLANTS OF MURDER.[13]

The Court of Appeals affirmed the trial court's decision,[14] hence, the present appeal.[15]

The appeal is bereft of merit.

This Court finds no reason to overturn the factual findings of the trial court, especially since the prosecution's version is culled from the testimony of eyewitnesses.

Appellants' disclaimer of the presence of conspiracy fails. The evidence shows that they cooperated in a common design to kill Chu. Regalado initiated the killing when he stabbed Chu on the chest, and the two other appellants joined Regalado in chasing Chu, with Regalado hitting Chu with firewood along the way. Then, when the three of them had cornered Chu, Aragon boxed and kicked Chu, enabling Lopez to stab him several times. These indicate a conspiracy.

Aragon's alibi does not persuade. As the trial court held:

x x x From the ocular inspection of the wharf conducted in Hinatuan, Surigao del Sur on February 26, 2000,[16] it was established that the wharf was located at the dead-end portion of Villaluz Street. Aragon was at the wharf at about the same date and time of the stabbing incident, allegedly to buy fish. He was seated at the last step of the wharf. He stayed there for thirty (30) minutes to wait for a pump boat bringing in fish but there was none. At about the time of the incident, the water level was supposed to be low tide[17] so that no pump boat, if there was any, can dock on the wharf. Applying common sense, nobody in his right mind would wait for about thirty (30) minutes just to buy fish where no pump boat is in sight. x x x Aragon was positively identified by prosecution witnesses, hence his defense of being at the wharf does not hold water. For alibi to prosper, accused must prove not only (1) that he was somewhere else when the crime was committed; but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, the wharf was only a few meters from the scene of the incident. Ergo, Aragon could have been physically present at the place or its immediate vicinity at the time of the commission of the crime. (Citations omitted)[18]

Neither does Lopez's "defense of relative." As the Court of Appeals held:

Under [Paragraph 2 of Article 11 of the Revised Penal Code], the elements of the justifying circumstance of defense of relatives are as follows:

- Unlawful aggression;
- Reasonable necessity of the means employed to prevent or repel it;
- In case provocation was given by the person attacked, that the one making the defense had no part therein.

Even if We adopt accused-appellants' version of the incident, We still find the foregoing elements absent in the case at bar.

As alleged by Lopez, he merely heard someone shouting "police, police, police!" and when he looked out he allegedly saw his father-in-law being chased by Chu. He then went to Regalado's house to get a knife and when he caught up with Chu, he no longer saw accused-appellant Regalado and it was only Chu who was there. He allegedly stabbed Chu because of the latter's threatening words, "Are you going to defend your father-in-law?"

We cannot, by any stretch of imagination, consider said remarks threatening as to consider it unlawful aggression. It bears stressing that unlawful aggression, as defined under the Revised Penal Code, contemplates assault or at least threatened assault of an immediate and imminent kind. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause injury shall have been made. A mere threatening or intimidating attitude is not sufficient...there must be a real danger to life and personal safety.

Even assuming *ex gratia argumenti*, that there was unlawful aggression on Chu's part when he chased Regalado, Lopez was not justified in stabbing Chu since as admitted by him, he did not see accused-appellant Regalado anymore when he was able to catch up with Chu. The unlawful aggression of Chu, had it indeed been present, had already ceased when upon reaching Chu, as Regalado, whom Lopez allegedly wanted to protect, was no longer there. When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.

We further do not find any reasonable necessity in the means employed by Lopez to repel Chu's alleged aggression.

Nowhere in the records is it shown that when Chu allegedly chased Regalado, the former was wielding a weapon. Thus, the intention of Lopez to get a knife for his protection and that of his father-in-law was unwarranted.

The fact that Chu allegedly boxed and taunted him prompting him to stab the victim several times in retaliation negates the reasonableness of the means employed to repel Chu's aggression assuming that indeed, Chu started the aggression. x x x

x x x x

The wounds sustained by Chu xxx indicate that the assailant who inflicted the same was more in a killing rage than one who was merely acting in defense of a relative.[19] (Underscoring supplied)

Finally, appellants' denial of the existence of treachery in this wise does not convince:

x x x Based on the prosecution witnesses' testimony, the victim was allegedly asking forgiveness from accused-appellant Rogelio Regalado and placed his hands on his shoulder when the latter stabbed the former. Based from the foregoing, it is apparent that the victim committed a wrongful act against herein accused-appellant, which was so grave that there was a need for him to ask for forgiveness. Thus, x x x the victim was expecting a retaliation from herein accused-appellant.[20] (Underscoring supplied)

The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[21]

In the case at bar, Chu was caught off-guard when, after he was asking forgiveness from Regalado, the latter suddenly drew a curved knife and stabbed and pursued the following victim. And once Regalado and his co-appellants cornered Chu, Aragon kicked and punched him while Lopez stabbed him several times to thus preclude Chua from defending himself.

WHEREFORE, the appeal is DENIED. The September 22, 2008 Decision of the Court of Appeals is AFFIRMED.

Costs against appellant.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, p. 27.

[2] Vide TSN, December 10, 1996, pp. 6-37; TSN, February 27, 1997, pp. 2-53; TSN, May 5, 1997, pp. 2-31; TSN, May 21, 1997, pp. 2-35; TSN, June 23, 1997, pp. 2-33; TSN, July 7, 1997, pp. 2-23; TSN, August 15, 1997, pp. 2-28; records, p. 149; Documentary Exhibits, pp. 143-172.

[3] Sometimes spelled as "Bantugan" or "Bantayan."

[4] Exhibit "C," Documentary Exhibits, p. 152.

[5] Exhibit "F," Documentary Exhibits, p. 156.

[6] TSN, May 21, 1997, pp. 13-14.

[7] Vide TSN, July 24, 1998, pp. 3-29; TSN, September 10, 1998, pp. 2-33; TSN, October 15, 1998, pp. 2-32; TSN, May 11, 1999, pp. 2-17; TSN, July 9, 1999, pp. 2-29; Exhibits "1" - "6" and submarkings, Documentary Exhibits, pp. 313-329; Records, p. 283.

[8] Vide TSN, November 10, 1999, pp. 3-29; TSN, November 16, 1999, pp. 2-21.

[9] Vide TSN, February 18, 2000, pp. 2-40; TSN, February 26, 2000, p. 2-12.

[10] Vide TSN, July 10, 2000, pp. 2-13; Exhibits "4" - "6" and submarkings, Documentary Exhibits, pp. 319-329.

[11] Records, p. 370.

[12] CA rollo, pp. 76-77.

[13] Id. at 81.

[14] Decision of September 22, 2006, penned by Court of Appeals Associate Justice Rodrigo F. Lim, Jr. with the concurrence of Associate Justices Teresita Dy-Liaco Flores and Mario V. Lopez. CA rollo, pp. 157-179.

[15] CA rollo, pp. 180-182.

[16] Vide TSN, February 26, 2000, pp. 2-12.

[17] Vide TSN, February 18, 2000, p. 37.

[18] Records, pp. 383-384. Citing *Dela Cruz v. Court of Appeals*, 414 Phil. 171 (2001).

[19] CA rollo, pp. 171-174.

[20] CA rollo, p. 82.

[21] Vide *People v. Malejana*, G.R. No. 145002, January 24, 2006, 479 SCRA 610, 626; *People v. Beltran, Jr.*, G.R. No. 118051, September 27, 2006, 503 SCRA 715, 735.

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