

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCELO ALETA, FERDINAND ALETA, ROGELIO ALETA, MARLO ALETA, JOVITO ALETA, APPELLANTS.

G.R. No. 179708. April 16, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the July 9, 2007 Court of Appeals Decision[3] affirming with modification the October 25, 2001 Decision[4] of the Regional Trial Court (RTC) of Ilocos Norte, Branch 19, with station at Bangui, convicting accused-appellant Marcelo and his sons-co-appellants Ferdinand, Rogelio, Marlo and Jovito, all surnamed Aleta, of Murder in two cases.

Two Informations dated June 21, 1994 for the death of Celestino Duldulao (Duldulao) and Fernando Acob (Acob) were filed against accused-appellants:

The accusatory portion of Criminal Case No. 1102-19 reads:

That on about May 22, 1994, at about 3:00 o'clock in the afternoon, all the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with abuse of superior strength, did then and there willfully, unlawfully and feloniously strike and club with the use of hard objects one Celestino Duldulao y Yadao inflicting upon the latter bodily injuries which caused his death as a consequence thereof.

CONTRARY TO LAW.[5] (Underscoring supplied)

The accusatory portion of Criminal case No. 1103-19 reads:

That on about May 22, 1994, at about 3:00 o'clock in the afternoon, all the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with abuse of superior strength, did then and there willfully, unlawfully and feloniously strike and club with the use of hard objects one FERNANDO ACOB inflicting upon the latter bodily injuries which caused his death as a consequence thereof. (Underscoring supplied)

CONTRARY TO LAW.[6]

The victim Acob was the son of appellant Marcelo's sister Marina Acob (Marina), while the other victim Duldulao was the victim Acob's father-in-law.

Culled from the evidence for the prosecution is its following version:

While the deceased Acob's mother Marina was at the community center of Barangay Nagsurot, Burgos, Ilocos Norte on May 22, 1994, she heard a commotion at the yard of appellants. Soon after returning home, she told Acob that there was a quarrel at appellants' compound.

Against his mother's pleas, Acob repaired to appellants' compound. Marina followed and upon reaching

appellants' compound, she saw her nephew appellant Rogelio striking her son Acob twice at the left cheek and at the back of his head with a piece of wood, causing Acob to fall on the ground. She thereafter saw Rogelio striking Acob's father-in-law Duldulao twice on the face drawing his eyes to pop up, and again on the head causing him to fall on the ground.

Rogelio then ran towards the family house whereupon Marina heard gunshots. Rogelio's brothers-co-appellants Jovito, Marlo and Ferdinand and their father Marcelo at once began clubbing Acob and Duldulao with pieces of wood, mainly on the face and head, as well as on different parts of their bodies.

Even while the victims were already lying prostrate on the ground, Marcelo, Jovito, Marlo, and Ferdinand continued to hit them. And when Rogelio emerged from the house, he got another piece of wood and again clubbed the victims.

As found by Dr. Arturo G. Llabore, a medico-legal officer of the National Bureau of Investigation-Regional Office, San Fernando, La Union who supervised the exhumation and autopsy of the bodies of Acob and Duldulao on June 3, 1994, the two victims suffered multiple abrasions, lacerations, open wounds, contusions and fractures on their face, head, scalp, arms, legs and thighs; that Acob's death was due to "hemorrhage, intercranial, severe, secondary to traumatic injuries, head" while Duldulao's was due to "hemorrhage, intercranial, severe, secondary to traumatic injuries, head, multiple;" that both victims could have died within one (1) hour after the infliction of the injuries; and that because of the severity and multiplicity of the injuries sustained, the same could not have been inflicted by only one person.

Upon the other hand, appellants Ferdinand and Marlo interposed self-defense and defense of relative, respectively. Additionally, Marlo invoked voluntary surrender as a mitigating circumstance. Marcelo, Rogelio and Jovito invoked alibi. Their version of the incidents follows:

At around 3:00 in the afternoon, while Ferdinand and Marlo were resting at their compound, Acob arrived, uttering "Oki ni inayo" (Vulva of your mother") and drew out a knife about six inches long. As Acob repeatedly uttered "Vulva of your mother, I will kill all of you!," he thrust the knife at Ferdinand and was able to evade it. Acob and Ferdinand slipped and fell on the ground. After some struggle, Acob succeeded in stabbing Ferdinand on the thigh. As Acob was about to stab Ferdinand again, Marlo took a piece of wood and struck him three times on the face. Ferdinand thereafter fell on the ground at which instant Marlo dropped the wood.

Duldulao soon emerged and at about 10 meters away from Marlo, he uttered "Vulva of your mother." As Duldulao looked as though he was going to strike Marlo with a piece of wood, Marlo took a piece of wood and hit Duldulao twice on the left cheekbone, causing him to fall on the ground. He went on to club Duldulao, as well as Acob, to make sure that "they will no longer live." Marlo thereafter pocketed the knife used by Acob in stabbing Ferdinand.

Marlo never noticed where prosecution witnesses including Marina were during the incidents. Nor did he notice where his father Marcelo and his brothers Rogelio and Jovito were.

Ferdinand later went to the Batac General Hospital where Dr. Edgar Cabading treated his stab wound, ½ to 1 centimeter deep, at his inner thigh.

The following morning, Marlo surrendered to the police. Marcelo and the other appellants also surrendered days later.

Crediting the prosecution version, the trial court found appellants guilty beyond reasonable doubt of Murder in both cases and sentenced each of them to suffer the death penalty and to pay, jointly and severally, P250,000 to

the heirs of Duldulao, and another P250,000.00 to the heirs of Acob by way of civil damages.

In arriving at its Decision, the trial court held that although what triggered the incidents was never explained, Acob and Duldulao died as a result of the attacks on them, qualified by abuse of superior strength and cruelty.

In brushing aside Marlo's claim of self-defense and Ferdinand's defense of relative, the trial court held that, assuming arguendo that there was unlawful aggression on the part of the victims, the same ceased when the victims were already on the ground after Marlo hit them; and that force beyond what was necessary to repel the aggression was employed when the victims were repeatedly clubbed.

The trial court also brushed aside Marcelo, Jovito and Rogelio's alibi that they were inside their house attending to a sick relative during the incidents, given their silence and failure to deny the imputations against them, their alibi having been invoked not by them but by Ferdinand and Marlo on their behalf.

Also brushing aside Marlo's claim of voluntary surrender, the trial court noted that there was no conscious effort on his part to surrender or acknowledge his guilt; and that that he did not resist but went peacefully with the police did not amount to voluntary surrender.

Appellants moved for a reconsideration of the trial court's decision, contending that there was no abuse of superior strength as the same was not consciously adopted; and that the testimonies of the prosecution witnesses, particularly Marina's, are incredible or inconsistent. The motion for reconsideration having been denied by Order[7] dated January 29, 2003, appellants appealed to the Court of Appeals, before which it raised the same issues as those in their motion for reconsideration before the trial court. Additionally, they questioned the penalty imposed upon them.

By the challenged Decision dated July 9, 2007, the appellate court affirmed appellants' conviction of murder but lowered the penalty imposed from death to reclusion perpetua. And it modified the damages awarded from P250,000.00 to the heirs of each victim to the following amounts: P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

In modifying the penalty from death to reclusion perpetua, the appellate court noted that in the absence of any mitigating or aggravating circumstance, the lesser of the two indivisible penalties should be imposed.

Hence, the present appeal, appellants maintaining that both the trial and the appellate courts erred in giving full weight and credence to the testimonies of the prosecution witnesses.

As in most criminal cases, the present appeal hinges primarily on the issue of credibility of witness and of testimony. As held in a number of cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, unless: (1) the testimony is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion.[8]

From a considered review of the records of the cases, the Court finds that none of the above-stated exceptions is present to warrant a reversal of the factual findings of the trial and appellate courts.

As held in a catena of cases and correctly applied by both lower courts, Marina's positive identification of all appellants as the assailants and her accounts of what transpired during the incidents, which were corroborated on all material points by prosecution witnesses Loreta Duldulao (Loreta) and Willie Duldulao (Willie), as well as the findings of the medico-legal officer, carry greater weight than appellants' claims of self-defense, defense of relative and alibi. More particularly, that Marina's narration was so detailed all the more acquires greater weight

and credibility against all defenses, especially because it jibed with the autopsy findings.[9]

Respecting the defense's questioning of Loreta's testimony that Willie had told her that Duldulao was already dead, but was later to claim that on reaching the scene of the crime, Duldulao was still alive, lying on the ground and being clubbed by appellants, the same deserves scant consideration. Far from being inconsistent, the same is in sync with the other witnesses' claim and Marlo's own admission that appellants continued to club the two victims even as they lay motionless and helpless on the ground.

At any rate, inconsistencies in the testimonies of witnesses which refer to minor and insignificant details, such as whether Duldulao was still alive or not, cannot destroy Loreta's testimony. Minor inconsistencies in fact even guarantee truthfulness and candor.[10]

A witness' testimony deserves full faith and credit where there exists no evidence to show any dubious reason or improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[11] That the prosecution witnesses are all related by blood to appellants should a fortiori be credited, absent a showing that they had motive to falsely accuse appellants.

As to the claims of self-defense, defense of relative, and alibi relied upon by appellants, the lower courts' finding the same unsubstantiated is well taken. *People v. Caabay*[12] instructs:

Case law has it that like alibi, self-defense or defense of relatives are inherently weak defenses which, as experience has shown, can easily be fabricated. If the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of self-defense, namely: (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. Defense of a relative requires the following essential elements: (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 of the victim; and (c) in case of provocation given by the person being attacked, the one evading the attack, defense had no part therein. For the accused to be entitled to exoneration based on self-defense or defense of relatives, complete or incomplete, it is essential that there be unlawful aggression on the part of the victim, for if there is no unlawful aggression, there would be nothing to prevent or repel. 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. (Emphasis supplied)

Assuming arguendo that Acob was indeed the aggressor, the aggression ceased the moment he was disarmed and already lying on the ground after being struck by Marlo. Even if Marlo's account that Duldulao approached with a piece of wood above his head, the same, albeit intimidating, cannot be said to reek of imminent and actual danger. When Marlo then continued to club Acob while in a prone position, and struck Duldulao after he had fallen, self-defense and defense of relative no longer avail.[13]

It is settled that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression was still existing when the aggressor was injured by the accused. (Emphasis supplied)

Besides, the self-defense claimed to have been employed by Marlo cannot be said to be reasonable.

The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful

aggression. The nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor as well as those of the person who invokes self-defense; and the place and the occasion of the assault also define the reasonableness of the means used in self-defense.[14] (Emphasis supplied)

Thus, even if Ferdinand's and Marlo's accounts of what transpired were true, Marlo's repeated clubbing of the already unarmed and helpless victims inside their own compound is clearly unreasonable. Consider the following admission of Marlo during his direct examination:

Q.:

And what happened to him when you were able to strike him?

A:

He fell down, sir.

Q.:

And when he fell down, what did you do next?

A:

I again clubbed him, sir.

Q.:

And after clubbing him for the second time, what did you do next?

A:

I clubbed them alternately, sir.

Q.:

Why did you club them alternately?

A.:

Because they might still live and will again attacked (sic) us, sir.

Q.:

Whom did you club alternately?

A.:

Fernando Acob and Celestino Duldulao, your honor. (Emphasis supplied)

Marlo did not thus intend to merely repel the alleged attack. He wanted to be sure that the two victims would not survive.

That Ferdinand sustained a ½ to 1 centimeter deep stab wound in the thigh does not necessarily prove that he acted in self-defense or that Marlo acted in defense of a relative.[15] Parenthetically, the knife, allegedly used by Acob which Marlo claims to have taken, was not even presented in evidence.

As for the alibi of Marcelo, Rogelio and Jovito, for it to prosper, it must be shown that it was physically impossible for them to have been at the scene of the crime at the approximate time of its commission.[16] That

they were in Marcelo's house attending to a relative who was allegedly having difficulty breathing, did not render it impossible for them to have been at the scene of the crimes, the house being a mere 13.5 meters away,[17] more or less. Besides, it is impossible that they could not have noticed the commotion that preceded and attended the incidents.

It bears noting that appellants enjoyed superiority in number (five) over the two victims, clearly showing abuse of superior strength and that the force used by them was out of proportion to the means of defense available to the victims.[18]

More. Contrary to the contention of appellants, conspiracy was present during the attack. When two or more persons aim their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative indicating closeness of personal association and a concurrence of sentiment, conspiracy may be inferred. And where there is conspiracy, the act of one is deemed the act of all.[19]

The appellate court's reduction of the penalty of death to reclusion perpetua in its July 9, 2007 decision is in order, there being no mitigating nor aggravating circumstance in the present cases. In any event, in view of the enactment of Republic Act No. 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines on June 24, 2006, the imposition of the death penalty could not have been maintained. So too is the lowering of the civil indemnity for the heirs of Fernando and Duldulao.

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals dated July 9, 2007 is, in light of the foregoing discussion, AFFIRMED.

SO ORDERED.

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

[1] Died on January 20, 2006, during the pendency of the appeal before the Court of Appeals. Criminal liability extinguished pursuant to Art. 89 of the Revised Penal Code. See Resolution of the Court of Appeals dated August 30, 2007, rollo, pp. 20-22.

[2] Spelled as "Marlou" in the records.

[3] CA rollo, pp. 177-191. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[4] Records, Vol. I, pp.270-283. Penned by Judge Manuel L. Argel, Jr.

[5] Id. at 20.

[6] Records, Vol II, p. 1.

[7] CA rollo, pp. 73-76. Penned by Judge Manuel L. Argel, Jr.

[8] People v. Casela, G.R. No. 173243, March 23, 2007, 519 SCRA 30, 39.

[9] Vide People v. Barrameda, G.R. No. 130177, October, 11, 2000, 342 SCRA 568, 573.

[10] Vide People v. Vallador, 327 Phil. 303, 312 (1996).

[11] People v. Comiling, G.R. No. 141405, March 4, 2004, 424 SCRA 698, 721.

- [12] G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486, 507-508.
- [13] Razon v. People, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 301.
- [14] Id. at 301-302.
- [15] Vide People v. Caabay, supra, p. 512.
- [16] People v. Monieva, G.R. No. 123912, June 8, 2000, citing People v. Maguad, 287 SCRA 535 (1998).
- [17] See location sketch, records, Vol. I, p. 29.
- [18] Vide People v. Barrameda, supra, p. 575
- [19] Vide People v. Delmo, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 434..

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