

RODEL URBANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 182750. January 20, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This petition for review under Rule 45 seeks to reverse and set aside the Decision[1] dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 25371 which affirmed with modification the April 30, 2001 Decision[2] of the Regional Trial Court (RTC), Branch 39 in Lingayen, Pangasinan in Criminal Case No. L-5028. The RTC found petitioner Rodel Urbano guilty beyond reasonable doubt of the crime of Homicide.

The Facts

In an Information filed before the RTC, petitioner was charged with Homicide, committed as follows:

That on or about the 28[th] of September 1993 in the evening, in Barangay Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hit and maul Brigido Tomelden, inflicting upon him mortal injuries and as borne out from the autopsy report the following findings:

EXTERNAL FINDINGS:

A- Softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear.

B- Clotted blood over the (R) occipito-temporal area.

C- No lacerations noted.

INTERNAL FINDINGS:

A- On opening the skull there is oozing of dark colored blood from the brain substances.

B- More darkened blood vessels at the (L) side of the brain.

CAUSE OF DEATH:

Cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident.

Which directly caused his death, to the damage and prejudice of the heirs of the said Brigido Tomelden.

CONTRARY to Article 249 of the Revised Penal Code.

Petitioner, when arraigned, pleaded not guilty to the charge. Following the parties' waiver of pre-trial, trial on the merits then ensued.

As summarized in the decision subject of review, the prosecution's evidence established the following facts:

On September 28, 1993, at around 8:00 p.m., the victim Brigido Tomelden and petitioner were at the compound of the Lingayen Water District (LIWAD) in Lingayen, Pangasinan, having just arrived from a picnic in the nearby town of Bugallon, Pangasinan, where, with some other co-workers, they drunk beer in a restaurant. While inside the compound, the two had a heated altercation in the course of which Tomelden hurled insulting remarks at petitioner. Reacting, petitioner asked why Tomelden, when drunk, has the penchant of insulting petitioner.

The exchange of words led to an exchange of blows. Cooler heads succeeded in breaking up the fight, but only for a brief moment as the protagonists refused to be pacified and continued throwing fist blows at each other. Then petitioner delivered a "lucky punch," as described by eyewitness Orje Salazar, on Tomelden's face, which made Tomelden topple down. Tomelden was on the verge of hitting his head on the ground had their companions not caught him and prevented the fall. The blow, however, caused Tomelden's nose to bleed and rendered him unconscious.

Petitioner and his other co-workers brought Tomelden to the office of the LIWAD general manager where he spent the night. He remained in the compound the following day, September 29, 1993. Upon arriving home at around 6:00 p.m. of that day, Tomelden informed his wife, Rosario, of the fight the previous night and of his having been rendered unconscious. He complained of pain in his nape, head, and ear which impelled Rosario to immediately bring him to the Lingayen Community Hospital where Dr. Daisy Arellano examined him and treated his lacerated left index finger, contusions, and hematoma at the right cerebrum.

On October 2 and 7, 1993, Tomelden went back to the hospital complaining of dizziness, headache, and other pains. The attending doctors observed the patient to be in a state of drowsiness and frequent vomiting. On October 8, 1993, Rosario brought Tomelden to the Sison Memorial Provincial Hospital in Dagupan City, where the attending physician, Dr. Ramon Ramos, diagnosed Tomelden suffering from "brain injury, secondary to mauling to consider cerebral hemorrhage." [3]

Tomelden was confined in the provincial hospital until 3:00 p.m. of October 10, 1993, and, due to financial constraints, was thereafter discharged despite signs negating physical condition improvement. Upon reaching their house, however, Tomelden again complained of extreme head pain, prompting his wife to bring him back to the Lingayen Community Hospital where Dr. Arellano again attended to him. This time, things turned for the worst, the doctor noting that Tomelden appeared to be semi-conscious, sleepy, uncooperative, and not responding to any stimulant. Tomelden died at 9:00 p.m. of that day due, per Dr. Arellano, to "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The defense presented petitioner who denied having any intention to kill, asserting that hypertension, for which Tomelden was receiving treatment, was the cause of the latter's death.

The Ruling of the RTC

On April 30, 2001, the RTC rendered judgment finding petitioner guilty as charged. The fallo of the RTC's decision reads:

WHEREFORE, the prosecution having established beyond reasonable doubt the guilt of the accused of the crime of HOMICIDE as defined and penalized under Art. 249 of the Revised Penal Code, this Court in the absence of any modifying circumstances, hereby sentences said accused to suffer the indeterminate prison term of eight (8) years and one (1) day of Prison Mayor as minimum to seventeen (17) years and four (4) months of Reclusion Temporal as maximum and to indemnify the legal heirs of the victim in the amount of PHP50,000.00, plus cost of the suit.

The period of preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.[4]

Therefrom, petitioner appealed to the CA, his recourse docketed as CA-G.R. CR No. 25371.

The Ruling of the CA

On January 25, 2008, the CA rendered a decision, affirming the conviction of petitioner, but awarding moral damages to the heirs of Tomelden, disposing as follows:

WHEREFORE, in the light of the foregoing, the appeal of the accused-appellant is DISMISSED. The decision appealed from is AFFIRMED with MODIFICATION that an award of P50,000.00 moral damages is GRANTED.

Remand of the records should immediately follow finality for the consequent execution of the decision.[5]

The appellate court held that the commission by petitioner of the crime of homicide, as defined and penalized under Article 249[6] of the Revised Penal Code (RPC), had been proved beyond moral certainty of doubt, pointing to the lucky punch as the proximate cause of Tomelden's hospitalization and ultimately his death. And like the RTC, the CA found no qualifying circumstance to increase or lower the penalty.

Following the denial of petitioner's motion for reconsideration, per the CA Resolution[7] of April 24, 2008, he interposed this petition.

The Issues

On essentially the same issues raised before the CA, petitioner now urges the Court to set aside the appealed decision, or at least modify it, maintaining that the appellate court:

I. x x x erred in affirming the decision of the [RTC] finding [him] guilty beyond reasonable doubt of the crime charged.

II. x x x erred in not appreciating the mitigating circumstances of sufficient provocation on the part of the victim and lack of intent to commit so grave a wrong in favor of the petitioner.[8]

The Court's Ruling

The petition is partly meritorious.

Homicide Duly Proved

It is petitioner's threshold posture that the fistic injury Tomelden sustained was not "the main underlying cause of his death." [9] In this regard, petitioner draws attention to the fact that the fist fight in question happened on September 28, 1993. Tomelden, however, died only on October 10, 1993 or 12 days thereafter and that, during the intervening days, particularly September 29, 1993, the deceased regularly reported for work. Moreover, petitioner avers that days prior to the fateful incident of September 28, 1993, Tomelden failed to come to work as he was suffering from malignant hypertension and that this circumstance greatly engenders doubt as to the proximate cause of the victim's death. Petitioner, thus, contends that he could only be adjudged guilty of physical injuries.[10]

We are not persuaded.

The prosecution witness, Salazar, testified about petitioner's lucky punch hitting Tomelden right smack on the face. And even if Tomelden's head did not hit the ground as his co-workers averred that actuality, that punch gave him a bleeding nose and rendered him unconscious right after the September 28, 1993 fight. From then on,

Tomelden was in and out of the hospital complaining of headache, among other pains, until his demise on October 10, 1993, or 12 days after the blow that made Tomelden unconscious.

Significantly, Dr. Arellano testified conducting an autopsy on the body of Tomelden and stressed that the "softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear" of the victim could have been caused by a fist blow. She also opined that the fist blow which landed on Tomelden's head could have shaken his brain which caused the cerebral concussion; and that the cause of the victim's death was "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The combined effects of the testimonies of Salazar and Dr. Arellano, buttressed by that of Rosario who related about her husband's post September 28, 1993 severe head pain, clearly establish beyond cavil the cause of Tomelden's death and who was liable for it.

The CA observed aptly:

It was through the direct accounts of the prosecution witnesses of the events that transpired during the fisticuff incident x x x more specifically the landing of the "lucky punch" on the face of [Tomelden], taken together with the result of the medical examinations and autopsy report which described the death of the victim as "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident" that we are convinced that the "lucky punch" was the proximate cause of [Tomelden's] death. The prosecution had satisfactorily proven that it was only after the incident that transpired on September 28, 1993 that the victim was hospitalized on several occasions until he expired, twelve days later x x x. It is moreover of no consequence whether the victim was able to report for work during the intervening days x x x.

We find no reason to depart from the doctrinal rule that great weight is accorded the factual findings of the trial court, particularly with respect to the ascertainment of the credibility of witnesses. There was absence of any ill motive on the part of x x x Salazar who in fact testified that he was a friend of both [petitioner] and [Tomelden]; more so on the part of the attending physicians.[11] x x x

Petitioner's suggestion that Tomelden succumbed to heart ailment and/or that his death was the result of his malignant hypertension is untenable, given that the post-mortem report yields no positive indication that he died from such malady.

Mitigating Circumstances Present

Petitioner next contends that the mitigating circumstances of no intention to commit so grave a wrong and sufficient provocation on the part of the victim ought to be appreciated in petitioner's favor.

On this score, we agree with petitioner.

Paragraphs 3 and 4 of Art. 13, RPC provide as follows:

Art. 13. Mitigating circumstances.--The following are mitigating circumstances:

x x x x

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone;[12] it is not enough that the provocative act be unreasonable or annoying;[13] the provocation must be

sufficient to excite one to commit the wrongful act[14] and should immediately precede the act.[15] This third requisite of self-defense is present: (1) when no provocation at all was given to the aggressor; (2) when, even if provocation was given, it was not sufficient; (3) when even if the provocation was sufficient, it was not given by the person defending himself; or (4) when even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression.[16]

In the instant case, Tomelden's insulting remarks directed at petitioner and uttered immediately before the fist fight constituted sufficient provocation. This is not to mention other irritating statements made by the deceased while they were having beer in Bugallon. Petitioner was the one provoked and challenged to a fist fight.

Petitioner's un rebutted testimony on the events immediately preceding the fisticuff and earlier dovetails with the testimony of Salazar.

In gist, petitioner testified being, in the afternoon of September 28, 1993, in the nearby town of Bugallon for a picnic. He was with Tomelden and several others, including Dominador Navarro, Chairperson of LIWAD. At a restaurant in Bugallon, the group ordered goat's meat and drank beer. When it was time to depart, Navarro asked petitioner to inform Tomelden, then seated in another table, to prepare to leave.

When so informed, Tomelden insulted petitioner, telling the latter he had no business stopping him from further drinking as he was paying for his share of the bill. Chastised, petitioner returned to his table to report to Navarro. At that time, petitioner saw that Tomelden had already consumed 17 bottles of beer. In all, the group stayed at the picnic place for three and a half hours before returning to the LIWAD.

Upon reaching the LIWAD compound, Tomelden allegedly slapped and hurled insults at him, calling him "sipsip" just to maintain his employment as Navarro's tricycle driver. Tomelden allegedly then delivered several fist and kick blows at petitioner, a couple of which hit him despite his evasive actions. Petitioner maintained that he only boxed the victim in retaliation, landing that lucky punch in the course of parrying the latter's blows.

The following testimony of Salazar attests to the provocative acts of Tomelden and to his being the aggressor:

PROSECUTOR CHIONG

Q

After you heard from the accused those remarks, what if any did the victim replied if any?

WITNESS

A

They exchanged angry words, sir.

Q

What were these words?

A

Rodel Urbano said, "When you're already drunk, you keep on insulting me."

Q

And what was the reply if any?

A

`Akina tua lanti".

PROS. CHIONG

Q

Who said that?

WITNESS

A

It was Brigido Tomelden, sir.

Q

And what transpired next?

A

After that they exchange words, sir. " If you like we will have a fist fight" he said.

Q

Who said that?

A

Brigido Tomelden said.

Q

At that time, were you already inside the compound of the LIWAD?

A

Yes, sir.

Q

After the victim allegedly told the accused, "If you want a fist fight," what transpired next?

A

Rodel Urbano said, "if it is a fist fight we fight." [17]

Q

And when you were already in the compound of LIWAD Office, Brigido Tomelden was challenging the accused for a fist fight?

A

Yes, sir.

Q

And the accused refused to accept the challenge?

A

Yes because Mr. Brigido Tomelden is very much bigger than Mr. Rodel Urbano. He is stouter than the

accused.

Q

But finally the fist fight took place?

A

Yes, sir.[18]

PROS. CHIONG

Q

When the victim and this accused had this fight, fist fight, they exchanged blows, but there was this lucky punch that hit the victim because the victim fall down, is that correct?

A

When I stop pacifying them x x x, I saw Biring the late Brigido Tomelden, he was much aggressive than the accused, sir.

Q

You mean that although it was the victim who was more aggressive than the accused here, he also [threw] punches but sometime some of his punches most of which did not hit the victim?

A

He tried to parry the blows of the late Brigido Tomelden, sir.

Q

Because he tried to parry the blow of the Brigido Tomelden, when the accused throw punches, the punch was directed to the victim but most of them did not hit the victim, is that what you saw?

A

Yes, sir.[19] (Emphasis added.)

It is abundantly clear from the above transcript that the provocation came from Tomelden. In fact, petitioner, being very much smaller in height and heft, had the good sense of trying to avoid a fight. But as events turned out, a fisticuff still ensued, suddenly ending when petitioner's lucky punch found its mark. In *People v. Macaso*, [20] a case where the accused police officer shot and killed a motorist for repeatedly taunting him with defiant words, the Court appreciated the mitigating circumstance of sufficient provocation or threat on the part of the offended party immediately preceding the shooting. The Court had the same attitude in *Navarro v. Court of Appeals*, [21] a case also involving a policeman who killed a man after the latter challenged him to a fight. Hence, there is no rhyme or reason why the same mitigating circumstance should not be considered in favor of petitioner.

Moreover, the mitigating circumstance that petitioner had no intention to commit so grave a wrong as that committed should also be appreciated in his favor. While intent to kill may be presumed from the fact of the death of the victim, this mitigating factor may still be considered when attendant facts and circumstances so warrant, as in the instant case. Consider: Petitioner tried to avoid the fight, being very much smaller than Tomelden. He tried to parry the blows of Tomelden, albeit he was able, during the scuffle, to connect a lucky punch that ended the fight. And lest it be overlooked, petitioner helped carry his unconscious co-worker to the office of the LIWAD's general manager. Surely, such gesture cannot reasonably be expected from, and would be unbecoming of, one

intending to commit so grave a wrong as killing the victim. A bare-knuckle fight as a means to parry the challenge issued by Tomelden was commensurate to the potential violence petitioner was facing. It was just unfortunate that Tomelden died from that lucky punch, an eventuality that could have possibly been averted had he had the financial means to get the proper medical attention. Thus, it is clear that the mitigating circumstance of "no intention to commit so grave a wrong as that committed" must also be appreciated in favor of petitioner while finding him guilty of homicide. That petitioner landed a lucky punch at Tomelden's face while their co-workers were trying to separate them is a compelling indicium that he never intended so grave a wrong as to kill the victim.

Withal, with no aggravating circumstance and two mitigating circumstances appreciable in favor of petitioner, we apply par. 5 of Art. 64, RPC, which pertinently provides:

Art. 64. Rules for the application of penalties which contain three periods.--In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

x x x x

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

The prescribed penalty for homicide under Art. 249 of the RPC is reclusion temporal or from 12 years and one day to 20 years. With the appreciation of two mitigating circumstances of no intention to commit so grave a wrong as that committed and of sufficient provocation from the victim, and the application of par. 5 of Art. 64, RPC, the imposable penalty would, thus, be the next lower penalty prescribed for homicide and this should be prision mayor or from six years and one day to 12 years. Consequently, with the application of the Indeterminate Sentence Law, petitioner ought to be incarcerated from prision correccional as minimum and prision mayor as maximum. In view of the circumstances of the case, considering that the petitioner never meant or intended to kill the victim, a prison term of eight (8) years and one (1) day of prision mayor as maximum period is proper while the period of two (2) years and four (4) months of prision correccional as minimum period is reasonable.

We find no reason to modify the award of civil indemnity and moral damages.

WHEREFORE, the CA Decision dated January 25, 2008 in CA-G.R. CR No. 25371 is, in the light of the presence and the appreciation of two mitigating circumstances in favor of petitioner, hereby MODIFIED by decreasing the term of imprisonment. As thus modified, petitioner Rodel Urbano is hereby sentenced to serve an indeterminate prison term of from two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with whatever imprisonment he has already served fully credited in the service of this sentence. The rest of the judgment is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chirperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 86-101. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate

Justices Bienvenido L. Reyes and Monina Arevalo Zenarosa.

[2] Id. at 51-60. Penned by Judge Dionisio C. Sison.

[3] Id. at 89.

[4] Supra note 2, at 59-60.

[5] Supra note 1, at 100.

[6] Art. 249. Homicide.--Any person who, not falling within the provisions of Art. 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[7] Rollo, p. 110.

[8] Id. at 17.

[9] Id. at 18.

[10] Id. at 19.

[11] Supra note 1, at 96-97.

[12] Navarro v. Court of Appeals, G.R. No. 121087, August 26, 1999, 313 SCRA 153, 166; citing Pepito v. CA, G.R. No. 119942, July 8, 1999, 310 SCRA 128.

[13] Cano v. People, G.R. No. 155258, October 7, 2003, 413 SCRA 92, 105; citing 1 Aquino, Revised Penal Code 116 (1997).

[14] Navarro, supra; citing People v. Nabora, 73 Phil. 434 (1941).

[15] Id.; citing People v. Paga, No. L-32040, October 25, 1977, 79 SCRA 570.

[16] Cano, supra note 13; citing 1 L.B. Reyes, The Revised Penal Code 179-180 (14th revised ed., 1998).

[17] TSN, November 25, 1998, pp. 6-7.

[18] TSN, December 1, 1998, p. 4.

[19] TSN, January 31, 2000, pp. 21-22.

[20] No. L-30489, June 30, 1975, 64 SCRA 659.

[21] Supra note 12.

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