

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL ARBALATE AND RAMIL ARBALATE (AL2), RUPERTO ARBALATE (DET.), ACCUSED-APPELLANTS.

G.R. No. 183457. September 17, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the September 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00162 which upheld the conviction of accused-appellant Ruperto Arbalate for murder adjudged by the Regional Trial Court (RTC), Branch 33 in Calbiga, Samar on September 18, 2003 in Criminal Case No. CC-2003-1403.[2]

The Facts

Ruperto Arbalate and his sons Roel and Ramil Arbalate were charged with murder in an information dated January 27, 2003 which reads:

That on or about the 7[th] day of July, 2002, at around 8:00 P.M., more or less, in Barangay Obayan, Municipality of Pinabacdao, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and abuse of superior strength, thereby qualifying the killing to murder, did, then and there, willfully unlawfully and feloniously attack, assault, chase, strike with a piece of wood, stab and hack several times and behead one Gualberto T. Selemen with the use of bladed weapons which the accused have provided themselves for the purpose, thereby inflicting upon the victim multiple stab and hack wounds which resulted to his instantaneous death.

CONTRARY TO LAW.[3]

Roel and Ramil Arbalate were able to evade arrest and remain at large. Hence, only Ruperto faced trial. During the arraignment, Ruperto pleaded not guilty.

The People's version of the facts[4] is as follows:

On July 7, 2002, around 3:00 p.m., Gualberto Selemen started to drink alcohol known as sioktong with Jose Ragasa and Nilo Abonge at Selemen's home in Purok 4, Obayan, Pinabacdao, Samar. When Abonge left at 6:00 p.m., Selemen and Ragasa invited accused-appellant Ruperto to join their drinking session. Two hours later, when they were already intoxicated, good-natured teasing turned into an altercation. Alarmed, Selemen's common law wife, Jovita Quijano, hurried to the houses of Ruperto and Ragasa to seek help from their wives but Quijano came back with Ruperto's wife only. When the two wives reached Selemen's house, Selemen and Ruperto were already engaged in a fight. They saw Ruperto strike Selemen's hand with a piece of wood. Ruperto's wife immediately intervened and prevailed upon Ruperto to head home. After Ruperto and his wife left, appellant's son, Roel, went to Selemen's house. Quijano met him and advised him to go home.[5]

Shortly thereafter, Ruperto came back with his sons, Roel and Ramil, all armed with bladed instruments or bolos. Selemen was outside his house when the Arbalates arrived. Roel traced Selemen's face with his flashlight and instantaneously hacked him with his bolo, wounding Selemen's right shoulder. Ruperto and Ramil followed by striking Selemen in his stomach with their bolos. Selemen ran to the nearby rice field to escape his assailants but the Arbalates chased him.[6]

Badly injured, Selemen fell to the ground. Ruperto and his sons then took turns in stabbing and hacking Selemen until he was lifeless. Thereafter, Ramil beheaded Selemen. Ruperto carried the victim's head from the rice field and approached Quijano, saying, "I am sorry Obet, I already have the head of your husband." Still carrying the severed head, the Arbalates took the road that leads to their house. Before reaching their home, Ruperto left the severed head on the ground.[7]

In his defense, Ruperto invoked self-defense and presented the following version of the story: On July 7, 2002, he was invited by Selemen to a drinking session at the latter's house. When Ruperto arrived, he heard Selemen and his wife quarreling and saw Selemen jumped towards his wife. When Selemen's wife asked for help, Ruperto told her to run. Selemen then punched him in the face and went inside the house to get a bladed weapon or a sipol. Upon seeing Selemen, Ruperto grabbed the bolo of Nilo Abonge and ran to the rice field. Selemen chased him and they fought. Ruperto alleged that he hacked Selemen in self-defense until the latter could not stand anymore. Ruperto thereafter went home and later surrendered to the police who came to his house. He was brought to the municipal hall where he saw Selemen's head.[8]

The trial court found Ruperto guilty of murder beyond reasonable doubt. The dispositive portion of the judgment reads:

WHEREFORE, Premises Considered, accused RUPERTO ARBALATE is found guilty of the charge of Murder punished under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all its accessory penalties, to indemnify the heirs of the deceased in the amount of Fifty Thousand Pesos (Php50,000.00), to pay the amount of Thirty Thousand Pesos (Php 30,000.00) in exemplary damages and to pay the costs.

Ruperto Arbalate's detention is ordered to the Abuyog, Leyte Penal Farms as soon as possible.

Let the case against co-accused Roel Arbalate and Ramil Arbalate, be sent to the Archives without prejudice. Issue the corresponding alias Order for their arrest accordingly.[9]

In his appellant's brief, Ruperto asserted as follows: The trial court erred in believing the testimony of the prosecution witness, Benedicto Dacca, despite the inconsistencies in his account. Also, the trial court erred in finding that there was abuse of superior strength. The presence of two or more aggressors does not necessarily create such aggravating circumstance; there must be proof of superiority of strength notoriously advantageous for the aggressors. In this case, the attack of the three accused was not clearly shown. Without clear proof of this qualifying circumstance, he must be convicted of homicide only.[10]

The CA's Ruling

The appellate court upheld the trial court's findings of facts and ruled that there was indeed no unlawful aggression on the part of the victim. Thus, Ruperto's claim of self-defense must fail. The CA relied on the testimonies of Jovita Quijano, the victim's common law wife, and Benedicto Dacca, an impartial witness; the victim's death certificate; and the pictures taken of the cadaver which all establish Ruperto's culpability. The CA further held that there was abuse of superior strength in the manner of killing, which cannot be offset by the mitigating circumstance of voluntary surrender to the police. The trial court's judgment was modified to include

the award of moral damages of PhP 50,000. Thus, the dispositive portion reads:

WHEREFORE, the appeal at bench is DENIED. The Decision of the court a quo is AFFIRMED with modification. Accused-appellant is directed to pay the sum of P50,000.00 as moral damages in addition to the civil indemnity of P50,000.00 and exemplary damages of P30,000.00 awarded by the trial court to the victim's heirs.[11]

Assignment of Errors

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT

ASSUMING ARGUENDO THAT APPELLANT IS GUILTY, HE SHOULD BE CONVICTED OF HOMICIDE ONLY AND NOT MURDER

The Court's Ruling

The appeal has no merit.

The appellate and trial courts correctly rejected Ruperto's theory of self-defense. When he admitted authorship of the crime, the burden of proof shifted to him to establish all the elements of self-defense.[12] He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.[13] Thus, he must meet the requisites of self-defense, prescribed by Article 11 of the Revised Penal Code, which are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. There must be an actual, sudden, unexpected attack or imminent danger, which puts the defendant's life in real peril.[14] In the case at bar, there was no unlawful aggression shown by the victim. According to Quijano, an eyewitness, Ruperto and the victim started joking until they fought:

Q: You said that they were joking, now you said they were drinking why? Where were they at that time instead they were joking and now you said they were drinking?

A: They were drinking at our house first, initially they were joking while drinking.

Q: Why did you say that they were joking at each other?

A: Because I can hear them joking and I can hear Jose Ragasa who was joking to my husband and asking if my husband is a jealous person.

Q: So as they were joking, what happened next if any?

A: While they were joking, I called the wives of these persons Ruperto Arbalate and Jose Ragasa, I can hear them, they were badly joking each other.

Q: Were you able to [inform] the wives of the two Jose and Ruperto?

A: Yes, Sir.

Q: So, after that, what happened next if any?

A: The wife of Ruperto accompanied me in going to our house and also the wife of Jose, as we arrived to our house my husband got out from our house and then Ruperto followed.

Q: You said they were badly joking, why for how long they were drinking in your house?

A: This Jose Ragasa who brought the liquor to our house, it was only 3:00 o'clock in the afternoon.

Q: So, as Ruperto and his wife followed, what happened next in your house?

A: My husband was followed by Ruperto Arbalate to the other side of our house and struck him with a piece of wood.

Q: So, what did your husband do when he was [struck] by a piece of wood in his hand?

A: Ruperto Arbalate pushed my husband and he [fell] on his buttocks.

Q: After Ruperto Arbalate fell on his buttocks, what happened next if any?

A: Ruperto Arbalate was [fetched] by his wife and they went home.

Q: So, after that what happened next?

A: The son of Ruperto Arbalate, Roel Arbalate went back.

x x x x

A: As I went home not for long, I met Ruperto and Ramil.

Q: What is Ramil Arbalate to Ruperto Arbalate whom Roel met?

A: Ramil and Roel are the sons of Ruperto Arbalate.

Q: After the three (3) met what happened next if any?

A: They went to our house: Ruperto Arbalate positioned himself at the other side at the back: Roel and Ramil passed by in our house near the stairs and Roel Arbalate position himself at the hilly (tayod) area near our house, while Ruperto and Ramil position themselves near our stairs.

Q: So, if they position themselves Roel at the back of your house and the two (2) Ruperto and Ramil on the front of the door, what happened next if any?

A: My husband jumped by passing through the window and when he reached to the hilly (tayod) area near our house he was met by Roel and hacked him at the right shoulder.

INTERPRETER:

(The witness demonstrated by hacking the shoulder.)

Q: With what he was hacked by Roel?

A: He was hacked by a bolo.

Q: Was he hit?

A: Yes, Sir.

Q: Will you please describe how long was the bolo of Roel?

A: Yes, Sir, I can.

INTERPRETER:

(The witness demonstrated to the Court the bolo used by Roel which was about 18 inches long.)

Q: After this, what happened next if any, what did Ruperto and Ramil do as they were called by Roel?

A: They also met my husband because my husband ran towards our house.

Q: What happened next if any?

A: Since he was also about to run, at first he was already injured he fell down in the rice field.

x x x x

A: As my husband was lying in the field that's the time they hacked and stabbed my husband several times.

INTERPRETER:

(Witness demonstrating that he was hacked many times by pointing the different parts of the body, he was hacked at the left of his stomach, at the back, on his left waist, at the side of his right thigh, at the upper right thigh and pointed on the different parts of her body.)

Q: Why, what was used by Ruperto and Ramil in doing so?

A: They used the same, they were armed with bolos.

Q: When you said "they", who helped each other in stabbing and hacking your husband, you mean the three (3) of them?

A: Yes, Sir, all of them.

Q: So, what happened to your husband?

A: When my husband was already dead, Ramil beheaded my husband.

Q: After that what did they do?

A: Ruperto Arbalate brought the head of my husband to the street.

Q: How did he carry it if you saw?

A: The head of my husband was already carried by Ruperto by his three (3) fingers and he told me: "I am sorry

Obet, I have already the head of your husband."[15]

It is evident that the incident began with mere jokes between Ruperto and the victim while they were intoxicated. When Ruperto struck the victim with a piece of wood, the victim retaliated by pushing Ruperto, further infuriating the latter. From Quijano's testimony, it was Ruperto who struck first, not the victim. Furthermore, after the victim pushed Ruperto, the fight was stopped and Ruperto went home. At this point, there was no threat or aggression to repel anymore, assuming there was one in the first place. The victim's action hardly constitutes unlawful aggression since it was a reaction to Ruperto's assault with a piece of wood. After that push, the victim ceased to attack him. Where the ineptual unlawful aggression of the victim had already ceased, the accused had no more right to kill the victim.[16] To support a claim of self-defense, it is essential that the killing of the victim be simultaneous with the attack on the accused, or at least both acts succeeded each other without appreciable interval of time.[17] This was not met in this case. Based on the testimonial evidence, there was a lapse of time between the altercation with the victim and his murder.

The prosecution's testimonial evidence was not refuted by the defense. Notably, only Ruperto testified on his behalf. He failed to present any corroborating witness despite his assertion that there were other persons around when the incident happened. He did not even present his own wife to refute Quijano's testimony. Also, a defense witness who was subpoenaed, Jose Ragasa, was not presented upon discovery that he was hostile to the cause of the defense.[18] Without any support to his testimony, Ruperto's claims of unlawful aggression and self-defense are self-serving.

In contrast, the prosecution presented Benedicto Dacca in support of Quijano's testimony. Dacca testified as follows:

Q: So, while buying this tobacco in the house of Feliciano, what, if any unusual incident occurred?

A: I was able to see Ruperto Arbalate, Roel Arbalate and Ramil Arbalate carrying bolos.

Q: Do you know these persons that you have mentioned?

A: Yes, Sir.

Q: Why do you know them?

A: Because they are residing in our barangay.

x x x x

Q: At the time when you saw them carrying arms, what direction were they going?

A: They were going to the house of Gualberto T. Selemen.

Q: Did you see them reach the house of Gualberto Selemen since they were going to that direction?

A: Yes, Sir.

x x x x

Q: So, when you saw them reached the house of Gualberto T. Selemen, what else did you see that happened, if any?

x x x x

A: They lighted the face of Gualberto with a flashlight who was already outside of his house.

FISCAL AVILA:

Q: Who was the person who focused a flashlight to the face of Gualberto Selemen?

A: It was Roel.

Q: I am wondering when you said that the flashlight was focused to the face of Gualberto Selemen, if the beam or the ray was on?

A: Yes, Sir, the flashlight was on.

Q: On what part of the house Gualberto Selemen was when Roel focused his flashlight on his face?

A: He was already in the middle of the houses of Feliciano Dacallos and Gualberto Selemen.

Q: After Roel focused his flashlight on the face of Gualberto Selemen, what else transpired. If any?

A: Gualberto Selemen was hacked at his right hand.

Q: By whom?

A: It was Roel who hacked him.

Q: Was Gualberto Selemen hit on the right arm?

A: Yes, sir, he was hit.

Q: After he was hacked by Roel, what happened next, if any?

A: Gualberto Selemen ran towards the lower portion and he was met and stabbed by Ramil and it was also followed by a stabbing blow of Ruperto.

Q: Was Ramil able to hit the stabbing blow on Gualberto?

A: Yes, sir, he hit Gualberto.

Q: On what part of his body?

A: He was hit on the stomach.

(Witness pointing and illustrating that he was hit on his stomach.)

Q: How about Ruperto, was he able to hit Gualberto?

A: Yes, sir, he also hit Gualberto at his stomach.

(Witness also pointing to his stomach)

Q: What were used as weapons by Roel, Ramil and Ruperto?

A: Bolos, sir.

Q: You said Gualberto ran to a lower portion, why could you see him being focused by a beam of a flashlight, is that portion elevated?

A: Yes, sir, it was.

Q: You said Gualberto T. Selemen ran to a lower portion, what did Roel, Ramil and Ruperto do when Gualberto ran to a lower portion after Ramil and Ruperto stabbed him?

A: They chased Gualberto while running to the lower portion.

Q: When they were already, as you said, in the lower portion, were you able to see them in the lower portion?

A: When they were still in the lower portion, I was not able to see them because it was already dark.

Q: Why were you able to see the incident when it was still near the house of Gualberto T. Selemen?

A: Because in that part when they were still in the vicinity of the house, it was well lighted.

x x x x

Q: Thereafter, what else happened, if any?

x x x x

A: After a lapse of about five (5) minutes, I saw Ruperto Arbalate carrying the head of Gualberto T. Selemen.

FISCAL AVILA:

Q: When you saw this Ruperto Arbalate carrying the head of Gualberto T. Selemen, from what direction did he come from?

A: They came from the lower portion which is the rice field.

x x x x

Q: You said, Ruperto Arbalate was carrying the head, how did he carry when you saw him?

A: He was holding the hair.

(Witness demonstrating by holding his chin with his right thumb on the cheek and the remaining four fingers on the lower jaw by his right hand).

Q: To what direction was he going?

A: He was going to the road.

Q: How about Roel and Ramil?

A: They were together and Ruperto even told them by saying: "Boys, here it is, a good pulutan, the head of an Abusayaf." [19]

Ruperto's neighbor, Venancio Ocasla, also testified that on July 7, 2002 around 8:00 p.m., while he was fetching water in front of Ruperto's house, he saw the latter carrying the head of Selemen with his right hand. Ruperto

rested the head on the ground with its right ear as its support. He also saw Ruperto carrying a bolo. He called a barangay tanod to pick up the head but it was a policeman who picked it up when the police arrived.[20] Ocasla's testimony corroborates and follows Dacca's account. Both Ocasla and Dacca were impartial eyewitnesses who lack any motive to testify falsely against Ruperto.

In addition, we find Ruperto's theory of self-defense to be incredulous in light of the physical evidence, i.e., the nature, character, location, and extent of the wounds inflicted on the victim. The death certificate, the due execution of which was admitted by the defense; and the photographs of the victim show that he sustained multiple hacking and stab wounds. The cause of his death was severe hemorrhage secondary to irreversible shock. The wounds as well as the act of beheading the victim clearly belie self-defense.[21] The Arbalates' purpose was to exact vengeance and nothing more. We agree with the trial court's pronouncement that "a fist delivered is not in proportion to the act of finally decapitating the deceased, coupled by the superiority of the aggressors who were all armed and who acted in unison." [22] The court a quo also held that Ruperto's acts of carrying the head of the victim from the rice field to the highway and calling it the "head of an Abu Sayyaf" were acts of scoffing at the corpse of the deceased.

Anent the second assigned error, the appellate and trial courts correctly held that there is no homicide since there was the qualifying circumstance of abuse of superior strength. Abuse of superior strength is present when the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. It is considered whenever there is a notorious inequality of forces between the victim and the aggressors, assessing a superiority of strength notoriously advantageous for the aggressors which is selected or taken advantage of by them in the commission of the crime.[23] Such aggravating circumstance was perpetrated by Ruperto and his two sons in chasing the victim with bolos. The unarmed victim did not stand a chance against these three men.

According to the prosecution witness, Quijano, the Arbalates even positioned themselves strategically outside their house: Ruperto and Ramil stood by the stairs in front of the house while Roel waited at the back. The victim jumped out of the window but he was met by Roel who instantly hacked him. Thereafter, Ruperto and Ramil joined Roel in hacking the victim to death. The concurrence of a common purpose is apparent in cornering the victim in his house, chasing him to the rice field, and hacking him to death. Treachery and conspiracy were, therefore, present.

Although the presence of abuse of superior strength alone qualifies the killing to murder, in the presence of both treachery and abuse of superior strength, the latter is absorbed by treachery.[24] We also find Ruperto's voluntary surrender as a mitigating circumstance, since he gave himself up to the police when the latter arrived at his house.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. (RA) 7659, murder is punishable by reclusion perpetua to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the penalty imposable on accused-appellant, in accordance with Art. 63(3) of the Revised Penal Code, should be the minimum period, which is reclusion perpetua.[25]

As regards damages, we find it proper to award the following: PhP 75,000 as civil indemnity; [26] PhP 75,000 as moral damages; and PhP 30,000 as exemplary damages without proof or pleading. These amounts should be awarded when the accused is adjudged guilty of a crime covered by RA 7659 regardless of aggravating or mitigating circumstances. Thus, where the penalty prescribed by law is death or reclusion perpetua to death, the damages should be in the abovementioned amounts.

WHEREFORE, the appeal is DENIED. The September 17, 2007 CA Decision in CA-G.R. CR-H.C. No. 00162 finding accused-appellant Ruperto Arbalate guilty of murder and sentencing him to suffer the penalty of reclusion

perpetua with all its accessory penalties is AFFIRMED with MODIFICATION that accused-appellant pay the heirs of the deceased PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 30,000 as exemplary damages. Costs against accused-appellant.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 5-24. Penned by Associate Justice Priscilla Baltazar Padilla and concurred by Associate Justices Pampio A. Abarintos and Stephen C. Cruz.

[2] CA rollo, pp. 18-34. The Decision was penned by Judge Carmelita T. Cuares.

[3] Id. at 9.

[4] Id. at 93-125. Appellee's Brief.

[5] Id. at 100-101.

[6] Id. at 101-102.

[7] Id. at 102.

[8] Id. at 61.

[9] Id. at 34.

[10] Id. at 64-65.

[11] Rollo, p. 23.

[12] People v. Astudillo, G.R. No. 141518, April 29, 2003, 401 SCRA 723, 734; citing People v. Obzunar, 333 Phil. 395, 416 (1996).

[13] People v. Albarico, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211.

[14] Manaban v. CA, G.R. No. 150723, July 11, 2006, 494 SCRA 503, 517; People v. Catbagan, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535.

[15] TSN, April 3, 2003.

[16] People v. Caabay, G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486, 512 (citation omitted).

[17] U.S. v. Ferrer, 1 Phil. 56 (1901).

[18] CA rollo, p. 28.

[19] TSN, May 27, 2003, pp. 5-12.

[20] CA rollo, p. 24.

[21] Rollo, p. 20.

[22] CA rollo, p. 82.

[23] People v. Mindac, G.R. No. 83030, December 14, 1992, 216 SCRA 558, 570 (citations omitted).

[24] *People v. Naag*, G.R. No. 123860, January 20, 2000, 322 SCRA 716, 739 (citation omitted).

[25] *Astudillo*, *supra* note 12, at 739; citing *People v. Saure*, G.R. No. 135848, March 12, 2002, 379 SCRA 128.

[26] *People v. Brodett*, G.R. No. 170136, January 18, 2008, 542 SCRA 88, 94; citing *People v. Dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433; *People v. Buban*, G.R. No. 170471, May 11, 2007, 523 SCRA 118; and *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219.

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