

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENANCIO MORTERA Y BELARMINO, APPELLANT.

G.R. No. 188104. April 23, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the January 23, 2009 Decision[1] of the Court of Appeals which affirmed with modification the Decision[2] of the Regional Trial Court, Branch 16, Zamboanga City (RTC), in Criminal Case No. 19311, which found accused Benancio[3] Belarmino guilty beyond reasonable doubt of the crime of murder for the killing of one Robelyn Rojas.

The accusatory portion of the Amended Information[4] charging the accused with murder reads:

That on or about August 25, 2002, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above named accused, armed with a knife, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously, assault, attack and stab from behind with the use of said weapon that he was then armed with, at the person of ROBelyn ROJAS y MALLARI, employing means, manner and form which tended directly and specially to insure its execution without any danger to the person of the accused, and as a result of which attack, the said Robelyn Rojas y Mallari sustained stabbed wound on the fatal part of the latter's body which directly caused his death to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW.

Upon arraignment on February 6, 2004, the accused pleaded "Not Guilty." [5]

At the trial, the prosecution presented the following witnesses: (1) Ramil Gregorio, an eyewitness; (2) Jovel Veñales, another eyewitness; (3) Dr. Jamella Marbella, examining physician; (4) Leticia Rojas, mother of Robelyn; and (5) PO1 Yaser Hakim.

The prosecution's version of the incident, as found by the trial court and adopted by the Office of the Solicitor General, appears in the Appellee's Brief[6] as follows:

Robelyn Mallari Rojas, 23 years old, single, was stabbed and killed on August 25, 2002 at Cabato Lane, Gov. Camins, Zamboanga City. Post mortem examination conducted by Dr. Jamella Marbella, Medical Officer V of Zamboanga City Health Office showed that Robelyn Rojas sustained the following injuries:

1. Penetrating wound, clean edges, 2-5 cm width 1.5 cm. gaping located at 5 cm. from spine below the left sub-scapular region. 19 cm. deep upward towards axilla, and 11 cm. deep downward towards left flank region.
2. Linear abrasion 5.5 cm. in length at the left lateral aspect of left arm (Ex. "B").

The cause of his death was cardio pulmonary arrest probably secondary to hemorrhagic shock secondary to stab wound, penetrating left back (Exh. "A-1").

Prosecution witness Ramil Gregorio y Toribio, 24 years old, single, testified that on August 25, 2002, at about 3:00 o'clock in the afternoon, he together with Jovel Veñales, Archie Saavedra, John Carpio, Plong Siano and Alberto Rojas were drinking tuba at Cabato Lane, near Acapulco Drive, Governor Camins, Zamboanga City. Four of them were sitting on a chair leaning on a concrete wall while two of their companions sat on the ground. They have just started drinking when Benancio Mortera, Jr. arrived. He wanted to hit Alberto Rojas with a Nescafe glass. Alberto Rojas ran away. Mortera said, "Sayang." He listened while the group of Ramil Gregorio were (sic) singing accompanied by a guitar. Jomer Diaz, brother-in-law of Alberto Diaz, arrived. He bought something from a store five meters away from the place where Gregorio and his companions were drinking. Mortera said, "Here comes another Rojas." Gregorio and his companions told Jomer Diaz to run away. Mortera hurled a stone at Diaz but the latter was not hit. Mortera left but he said that he will return. After a few minutes, Mortera came back. When Jomer Diaz ran, Robelyn Rojas, brother of Alberto Rojas went to Jomer. Mortera met Robelyn at a distance of about seven meters from the place where Ramil Gregorio and his companions were drinking. Mortera and Robelyn discussed with each other. After their discussion, Mortera and Robelyn shook hands. Robelyn turned his face and walked three steps. Mortera suddenly stabbed Robelyn Rojas at the back with a knife about 9 inches long. Robelyn was hit at the back. After stabbing Robelyn, Mortera ran away. Robelyn Rojas tried to chase Mortera but he was not able to catch up with the latter. Robelyn fell down mortally wounded. He was brought to the hospital by his brother Ricky but he was [pronounced] dead on arrival at the hospital (Exh. "A").

Jovel Veñales y Bandian, 23 years old, who was drinking together with Ramil Gregorio, Archie Saavedra, John Carpio, Plong Siano and Alberto Rojas, in the afternoon of August 25, 2002 corroborated Ramil Gregorio's testimony.

Mrs. Leticia Rojas y Mallari, 48 years old, married, is the mother of Robelyn Rojas y Mallari. She testified that Robelyn is one of her eight children. xxx She was at work at Zamboanga Puericulture Lying-in Maternity Hospital as laundry woman when her daughter Marilyn called her by telephone informing her that Robelyn was stabbed. She went to Western Mindanao Medical Center where she saw Robelyn already dead with stab wound at the back. At past 6:00 o'clock in the evening, Robelyn's body was brought to Remedios Funeral Parlor. Mrs. Rojas testified that she spent a total of Php38,653.00 in connection with her son's death (Exh. "J"; "J-1", "J-1-A" to "J-1-V").

Although the accused pleaded not guilty when arraigned,[7] during the trial, he admitted having stabbed the victim whom he referred to as Tonying, but claimed self-defense.[8] By his account, after leaving his uncle's house at Gov. Camins, he passed by a corner and saw a group of people drinking. They were Ramil Gregorio, Jonel Veñales and Tonying. Upon seeing him, Tonying ran away and called his brother, Alberto Rojas. When the accused was about to reach the main road, Alberto Rojas, Tonying and a certain "Duk" (brother-in-law of Tonying) accosted him and asked him for liquor money. When he refused, the three men got angry. After telling them that he had to go, Tonying hit him with a spray gun (for painting), causing him to fall down. While he was in a supine position, Tonying attempted to hit him again. It was at that point that he was able to get hold of his knife and thrust it forward and hit someone. He did not know who got stabbed. He then immediately fled to Ayala and later to Lintangan, Zamboanga del Norte.[9]

The defense witness, Roden Macasantos, claimed that he was drinking with the group of Alberto Rojas when he saw the accused having an argument with Jomer Diaz. After they had pacified the two, he saw Diaz run away. Later, he returned with Robelyn Rojas. Robelyn also argued with the accused, and they were likewise pacified by the others in the group. The dispute apparently settled, the group left Robelyn and the accused alone. After about five minutes, they heard women shouting. When they went to find out what it was all about, they saw Robelyn wounded. He, however, did not see the person who stabbed him.[10]

On January 23, 2007, the RTC rendered judgment finding the accused guilty of murder. The trial court disposed of the case as follows:

WHEREFORE, the Court finds the accused BENANCIO MORTERA, JR. Y BELARMINO GUILTY BEYOND REASONABLE DOUBT of the crime of murder, as principal, for the unjustified killing of Robelyn Rojas y Mallari and SENTENCES said accused to suffer the penalty of RECLUSION PERPETUA and its accessory penalties, to pay the heirs of the victim Php50, 000.00 as indemnity for his death; Php50,000.00 as moral damages; Php30,000.00 as exemplary damages; Php38,653.00 as actual damages; and to pay the costs.

SO ORDERED.

In rejecting the claim of self-defense, the trial court stated that it was not worthy of belief as it was belied by the credible testimonies of the prosecution witnesses.[11]

The accused appealed to the Court of Appeals raising the issues of denial of due process of law and his right to an impartial trial. He claimed that the trial court judge, Judge Jesus Carbon, was hostile towards him and prejudged his guilt as could be inferred from his "prosecutor-like" conduct. The accused likewise reiterated his claim of self-defense.

In its decision, the Court of Appeals affirmed the decision of the RTC with modification as to the civil liability of the accused. The CA ruled that the trial judge did not transgress the standard of "cold neutrality" required of a magistrate and added that the questions he propounded were "substantially clarificatory." The claim of self-defense was rejected for failure to prove the element of unlawful aggression by clear and convincing evidence. With respect to his civil liability, temperate damages in the amount of P25,000.00 was awarded, in lieu of the actual damages awarded by the trial court, for failure of Leticia Rojas to substantiate her claim with official receipts. The amount of exemplary damages was likewise reduced to P25,000.00. Specifically, the dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, in view of the foregoing, the Decision dated January 16, 2007 in Criminal Case No. 19311 finding accused-appellant guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua and its accessory penalties is hereby AFFIRMED WITH MODIFICATION that accused-appellant is ORDERED to pay the heirs of victim Robelyn Rojas the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages in lieu of actual damages, and P25,000 as exemplary damages; and costs.

SO ORDERED.

Still not satisfied, the accused now comes before this Court.[12] In seeking his acquittal, he has assigned three errors for the court's resolution, to wit: (i) there was a denial of his right to due process and of his right to have an impartial trial; (ii) there was no appreciation of the justifying circumstance of self defense; and (iii) assuming that not all the requirements of self-defense were present, there was no appreciation of the special mitigating circumstance of incomplete self-defense.

After an assiduous assessment of the records, the Court finds no reason to reverse the judgment of conviction or even appreciate the special mitigating circumstance of incomplete self-defense. We, thus, affirm.

For a better grasp of the assertion of the defense that he was denied his right to due process of law and his right to an impartial trial, we quote at length the transcript of stenographic notes. Thus:

DIRECT EXAMINATION ON THE WITNESS VENANCIO MORTERA, JR.

COURT:

Q:

During the arraignment you said you did not kill this Robelyn Rojas. Did you say that?

A:

Yes, Your Honor.

COURT:

And, it's here where the accused interposed a negative defense because, you said you have nothing to do with the death of Robelyn Rojas.

WITNESS:

As far as I could remember Your Honor, he hit me then I fell down then he still approached me so what I did, I was able to thrust my knife.

COURT:

Q:

You were suggesting that you might have killed him in self-defense?

A:

Yes, Your Honor.

Q:

As if there is something wrong to your story last February 6, 2004, you invoked a negative defense?

A:

Not intentional.

Q:

So, you are changing your story now? ... From a negative defense you are now asserting affirmative defense?

A:

He hit me first then I fell down just the same he continued approaching me so I was able to do it?

COURT:

In effect, while you were in the middle of the river you are changing boat and when you change boat in the middle of the river, sometimes you get drowned. Because you told even your own lawyer Atty. Mendoza, said that you interpose a negative defense that is why we did not have reverse trial. You were not even telling the truth to Atty. Mendoza. Because had you told him the truth, it could have been...

Q:

Why did Atty. Mendoza, invoke negative defense?

A:

Yes, Your Honor.

ATTY. MENDOZA:

Yes, Your Honor, I insisted that, in fact, he told me that he don't [sic] know that person by that name...

COURT:

Well, if he had nothing to do with the death of said person, negative defense. So, if you are not telling the truth to your lawyer, how would I know now that you are telling the truth?... Anyway if you killed a person you will have to pay for it Mr. Mortera, do you agree also?

WITNESS:

Yes, Your Honor.

COURT:

So, cross-examination.

PROSECUTOR LEDESMA: CROSS EXAMINATION ON THE WITNESS VENANCIO MORTERA, Jr.

Prosecutor Ledesma:

xxx

Q:

And you said earlier that it was this Tingay [deceased] who attacked you with this spray gun then you fell down?

A:

Yes. Then he still approached me and at the same time asked money and I asked "for what?" ... Then he said, for their vices.

Q:

You were having this conversation while you were down?

A:

Not yet.

Q:

He was holding the spray gun on his hand, correct?

A:

Yes.

Q:

Then you said while you were down you were able to thrust your knife upward, correct?

A:

Well, after hitting me, when I was already down he was still approaching me and wanted to hit me again.

Q:

Yes, approaching you and in the process of hitting you, that was the time that you thrust [sic] the knife, correct?

A:

Yes.

Q:

And it was you, who advanced personally that you were able to hit him, correct?

A:

Yes.

COURT:

Q:

You felt the blade of the knife slicing a person?

A:

Yes, Your Honor.

Q:

As if the knife hit a pig you were used to selling?

A:

That knife is stainless used in cutting rope.

Q:

It's a long white knife?

A:

Not so long Your Honor

Q:

But, enough to kill a person?

A:

Somewhat like that Your Honor.

Q:

But, not enough to kill a pig?

A:

No, Your Honor. That is only used in cutting rope.

Q:

Where is that evil knife?

A:

Well, it is in the place at Bagsakan where we are having a place.

COURT:

You tell them to throw it away or bury that knife because that is a bad knife. So long as that knife is there the one in possession of that will always have bad luck. It is cursed. Eventually, Tingay is already dead.

Q:

Did your uncle also tell you that Tingay, sustained a single wound at his back?

A:

Yes.

COURT:

Q:

So, when you stabbed him he was trying to hit you with a very small spray gun. How was it that he was hit at the back?

A:

Well, when he was in the act of hitting me again, I thrust [sic] the knife to... shall we say towards him Your Honor.

Q:

That is why, it is impossible because if he was trying to hit you with a spray gun, you thrust [sic] the knife towards him, how was it that he was hit at the back?

A:

He was hit Your Honor, when he was in the act of hitting me again.

COURT:

Proceed, Atty. Ledesma.

xxx

COURT:

Robelyn Rojas, was 23 years old when you killed him.

WITNESS:

I do not know the age.

COURT:

Of course, you do not know. The life span of a Filipino now is about 70 years old, Fiscal? .. Because we expect that long. So, if you did not kill him he will still have 47 years to live.

PROSECUTOR LEDESMA:

I believed [sic] 80 years Your Honor.

COURT:

80 for purposes of compensation.

PROSECUTOR LEDESMA:

Yes.

COURT:

He has 57 years more to live. That is the trouble of killing people because you are depriving the person of his right to live and even if what you are saying is true, you could not have been killed with that small spray gun... You have no right to stab him. Besides, that is not what your witness said even your own witness here is not supporting your story. Who is that witness?

WITNESS:

Denden Macasantos...

COURT:

Yes, Denden Macasantos. He did not declare what you are saying now. You are just making a story.

Q:

So, even the story of your witness who I think was telling the truth, don't [sic] support your story Mr. Mortera... Your story now is different... Did you hear Denden?

A:

Yes.

Q:

They did not tell the same story as you are saying now about the spray gun being used to hit you?

A:

I do not know with them Your Honor, but in my case I was really hit with that spray gun.

Q:

Were you injured?

A:

No.

Q:

That's the whole trouble. Why will you have injury when you were not hit?

A:

I was hit Your Honor.

Q:

You were hit?

A:

Yes, I fell down and he continued approaching me.

COURT:

You did more than what Robelyn, did to you. You killed him. Proceed.

PROSECUTOR LEDESMA:

Q:

You did not report to the police that incident involving Tingay and his group, correct?

A:

Yes, I did not.

Q:

Instead, you immediately left for Ayala?

A:

Well, after the incident I ran away towards Ayala.

COURT:

Q:

By your running away because you were afraid, you were committing something wrong?

A:

That is why, I ran away I have done something I was able to kill somebody.

Q:

Why did you run to Ayala then run to Lintangan then return to Acapulco Drive, knowing that you have a Warrant of Arrest, you went back to Lintangan? ... Because you felt guilty?

A:

Yes, Your Honor.

Q:

Robelyn, has seven brothers and sisters? ... So, maybe you should have some vacation in Jail you are supposed to serve?

A:

Yes. (Italics supplied)

Citing the foregoing as basis, the accused argues that Judge Jesus Carbon, Jr. displayed his hostility towards him and condemned him even before the defense could rest its presentation of evidence. By saying that he was "just making a story," the judge already concluded his guilt during trial.

The Court is not unaware of the case of *Tabuena v. Sandiganbayan*,^[13] where it was written:

The Court has acknowledged the right of a trial judge to question witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides. But not only should his examination be limited to asking clarificatory questions, the right should be sparingly and judiciously used; for the rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of trial... hardly in fact can one avoid the impression that the Sandiganbayan had

allied itself with, or to be more precise, had taken the cudgels for the prosecution in proving the case against Tabuena and Peralta.... The "cold neutrality of an impartial judge" requirement of due process was certainly denied Tabuena and Peralta when the court, with its overzealousness, assumed the dual role of magistrate and advocate... A substantial portion of the TSN was incorporated in the majority opinion not to focus on "numbers" alone, but more importantly to show that the court questions were in the interest of the prosecution and which thus depart from the common standard of fairness and impartiality. (emphasis added)

The situation in the case at bench is, however, different.

As correctly pointed out by the Court of Appeals, although the trial judge might have made improper remarks and comments, it did not amount to a denial of his right to due process or his right to an impartial trial. Upon perusal of the transcript as a whole, it cannot be said that the remarks were reflective of his partiality. They were not out of context. Not only did the accused mislead the court by initially invoking a negative defense only to claim otherwise during trial, he was also not candid to his own lawyer, who was kept in the dark as to his intended defense.

The accused having admitted the killing, a reverse order of trial could have proceeded.[14] As it turned out, the prosecution undertook to discharge the burden of proving his guilt, when the burden of proof to establish that the killing was justified should have been his.[15]

Most probably, the trial judge was peeved at the strategy he adopted. The trial judge cannot be faulted for having made those remarks, notwithstanding the sarcastic tone impressed upon it. The sarcasm alone cannot lead us to conclude that the trial judge "had taken the cudgels for the prosecution.

The invocation of *Opida*[16] fails to persuade us either. The facts therein are not at all fours with the case at bench. In *Opida*, we did not fail to notice the "malicious," "sadistic" and "adversarial" manner of questioning by the trial judge of the accused therein, including their defense witness. In *Opida*, the accused never admitted the commission of the crime, and so the burden of proof remained with the prosecution.

In his second assigned error, the accused invokes self-defense. By asserting it, however, it became incumbent upon him to prove by clear and convincing evidence that he indeed had acted in defense of himself. The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.[17]

The issue of whether or not the accused acted in self-defense is undoubtedly a question of fact, and it is well entrenched in jurisprudence that findings of fact of the trial court command great weight and respect unless patent inconsistencies are ignored or where the conclusions reached are clearly unsupported by evidence.[18] In the present case, we find no cogent reason to disturb the decision of the trial court, as modified by the CA. In debunking his claim, we quote with approval the ruling of the CA.

In the instant case, accused-appellant claims that there was unlawful aggression on the part Robelyn Rojas when the latter allegedly hit him with a spray gun. However, except this self-serving statement, no other evidence was presented to prove that indeed he was hit by Robelyn. Accused-appellant failed to show where he was hit and what injuries he sustained, if any. Moreover, his own defense witness Roden Macasantos did not see him being hit by a spray gun. On the contrary, the prosecution has clearly shown that before Robelyn was stabbed, the two even discussed with each other and accused-appellant even shook hands with him. Moreover, if indeed it was true that Robelyn was carrying a spray gun and tried to hit him, accused-appellant, while he was in a supine position, could have easily just flaunted his knife to scare his alleged attackers away. On the other hand, even if we assume to be true that he was in a supine position when he thrust the knife at his attacker, it is however impossible that the back of Robelyn would be hit, unless the latter could also fell (sic) on his back, which is again far from reality. In a myriad of cases, it has been ruled that the location, number or

seriousness of the stab or hack wounds inflicted on the victim are important indicia which may disprove accused's plea of self defense. In the instant case, it is clear that the victim was stabbed at the back negating any indication that accused-appellant acted in self defense.

Finding the primordial requisite of unlawful aggression wanting, the Court cannot appreciate the mitigating circumstance of incomplete self-defense.

As regards damages, we affirm the modification made by the Court of Appeals. Considering that only P14,653.50 of the P38,653.00 actual damages awarded by the trial court is supported by receipts, the award of P25,000.00 as temperate damages is proper.[19] We, however, reinstate the amount of exemplary damages to P30,000.00 to be in accord with current jurisprudence.[20]

WHEREFORE, the January 23, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00518-MIN is AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Justice Rodrigo F. Lim Jr. and concurred in by Justices Michael P. Elbinias and Ruben C. Ayson, CA rollo, pp.126-146.

[2] Penned by Judge Jesus C. Carbon, Jr.

[3] Appellant's Brief, CA rollo, p. 1, supra note 1.

[4] Records, p. 1.

[5] Id. at 19.

[6] CA rollo, pp. 55-57.

[7] Records, p. 20.

[8] TSN, February 17, 2005, p. 14.

[9] Id. at 4-9.

[10] TSN, November 25, 2004, pp. 2-10.

[11] Records, pp. 107-108.

[12] Both the accused and the OSG manifested that they were dispensing with the filing of supplemental briefs and submitting the case for decision based on the briefs they had filed with the CA.

[13] G.R. Nos. 103501-03, G.R. No. 103507, February 17, 1997, 268 SCRA 332.

[14] Rule 119, Section 11. The trial shall proceed in the following order:

x x x x

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

[15] People v. Unarce, G.R. No. 120549, April 4, 1997, 270 SCRA 756.

[16] G.R. No. L-46272, June 13, 1986, 142 SCRA 295.

[17] Novicio v. People, G.R. No. 163331, August 29, 2008, 563 SCRA 680.

[18] People v. Barriga, G.R. No. 178545 September 29, 2008, 567 SCRA 65.

[19] People v. Se, G.R. No. 152966, March 17, 2004, 425 SCRA 725.

[20] People v. Elmer Peralta y Hidalgo, G.R. No. 187531, October 16, 2009; and People v. Antonio Dalisay y Destresa, G.R. No. 188100, November 25, 2009.

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