PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LINO L. DUAVIS, APPELLANT.

G.R. No. 190861. December 07, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

For resolution of this Court is the appeal of appellant Lino Duavis, assailing the Decision[1] dated May 29, 2009 of the Court of Appeals (CA), affirming with modification, the Decision[2] dated April 23, 2004 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, finding him guilty beyond reasonable doubt of the crime of homicide.

The following are the antecedent facts as shown in the records.

Around 5:30 in the afternoon of May 2, 2003, Dante Largado, Sr. was walking towards the direction of his house at Barangay Balire, Tunga, Leyte. Appellant was running behind Largado, Sr. carrying a long bolo about twenty-four (24) inches in length. Thereafter, appellant hacked Largado, Sr., hitting him on the face, leaving a wound so severe that he immediately fell to the ground and caused his instantaneous death.

Dante Largado, Jr., who was only a few meters from the place of the incident, shouted to appellant "Why did you do that to my father?" Appellant replied, "You have no business on this, son of a bitch." Dante Largado, Jr. then shouted for help, but nobody responded. Alex Davocol, a neighbor of Largado, Sr., saw the incident and called the police station.

Thereafter, an Information[3] was filed against appellant for the crime of murder. The charge reads as follows:

> That on or about the 2[nd] day of May, 2003, in the Municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and hack one DANTE LARGADO, Sr. with the use of long bolo (sundang), which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:
>
> Incised wound 13.0 cm. in length x 3 cm. in width x 3.8 cm. in depth at the (L) side of the [face] extending from the angle of the mouth to the (L) ear involving the ear, skin, subcutaneous tissues, parotid gland, nerves, blood vessels and with fracture of the facial bones.

which wounds caused the death of said Dante Largado, Sr.

CONTRARY TO LAW.[4]

Upon arraignment, on August 4, 2003, appellant, with the assistance of his lawyer, pleaded not guilty. Thereafter, the trial on the merits ensued.

The prosecution, to prove the earlier mentioned facts, presented the testimonies of Dante Largado, Jr., Alex Davocol and Dr. Catalina Vivero Ronda. The defense, on the other hand, presented the testimony of appellant

which can be summarized as follows:

Around 3 o'clock in the afternoon of May 2, 2003, appellant was in his yard, performing his work as a barber, together with Ompong Ronquillo, Aton Daong and Romeo Drillos. After an hour, appellant was able to finish his work and decided to have a drink with his friends.

Dante Largado, Sr. soon arrived and drank tuba with them. A few moments later, Daong and Drillos left. Largado, Sr. then got angry at appellant, because the latter told the former that they will have to stop drinking, and Largado, Sr. did not want to stop. Largado, Sr. then accused appellant of being too choosy of his drinking companions. Appellant explained to Largado, Sr. that it is not true. Appellant further told Largado, Sr. that they have to stop drinking because the former was going to gather more tuba. Largado, Sr. then broke a glass on the table and pushed it towards appellant who was thrown outside the yard. Appellant told Largado, Sr. that he would not fight him, but the latter answered back and told appellant, “Putang ina, papatayin kita pag nahawakan kita.”

Appellant then picked up a club and hurled the same at Largado, Sr. He also kicked Largado, Sr. on the chest, afterwhich, Largado, Sr. ran towards the extension of appellant's house, picked a bolo and hacked appellant with it. Appellant was able to evade the onslaught. They then wrestled for the possession of the bolo and the same got thrown away. Largado, Sr. was able to get hold of a club and he swung it at appellant, who evaded the blow. Thereafter, appellant ran towards his house, fetched his family and brought them to his father's house. Appellant returned to his house, got his scythe and barok and proceeded to gather tuba at the coconut plantation of Romeo Drillos. After gathering tuba, he went home and stayed at the extension of his house. Appellant was surprised when he saw Largado, Sr. hiding behind the trunk of a coconut tree preparing to attack him with a scythe. Appellant was able to evade him because of the noise created by Largado, Sr. when he stepped on a strew of coconut leaves lying on the ground. Appellant ran towards the direction of his house and Largado, Sr. followed him. Largado, Sr. was able to overtake him, and since he had no more place to escape, appellant hacked Largado, Sr. with his scythe, causing the latter's death.

Afterwards, appellant went back to the house of his father and informed the latter of what happened and that he wanted to surrender. When he went out of his father's house, the policemen were already there and he was arrested.

However, the trial court found in favor of the prosecution. The dispositive portion of its decision states that:

> WHEREFORE, premises considered, pursuant to Article 248 of the Revised Penal Code, as amended, and the amendatory provision of Sec. 11, R.A. No. 7659 (The Death Penalty Law), the Court found accused LINO DUAVIS y LABARDA, GUILTY, beyond reasonable doubt of the crime of MURDER, charged under the Information, and sentenced to suffer the maximum penalty of DEATH, and ordered to pay civil indemnity to the heirs of Dante Largado, Sr., the sum of Seventy- Five Thousand (P75,000.00) Pesos and moral damages in the amount of Fifty Thousand (P50,000.00) Pesos; and
>
> Pay the Cost.
>
> SO ORDERED.[5]

The case was appealed to this Court. However, on July 26, 2005,[6] in conformity with the Decision promulgated on July 7, 2004 in G.R. Nos. 147678-87 entitled The People of the Philippines v. Efren Mateo y Garcia, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, as well as the Court’s En Banc Resolution dated September 19, 1995, in “Internal Rules of the Supreme Court” in cases similarly involving the

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death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VII of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the cases to the CA for appropriate action and disposition.

On May 29, 2009, the CA, finding that the trial court erred in appreciating the qualifying circumstance of evident premeditation, ruled that appellant is guilty of the crime of homicide instead of murder. The dispositive portion of the decision reads as follows:

> WHEREFORE, in view of all the foregoing, the April 23, 2004 Decision of the Regional Trial Court, Branch 13, Carigara, Leyte, is hereby AFFIRMED WITH MODIFICATION. Accordingly, appellant Duavis is found guilty beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer an indeterminate penalty of imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum.
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> The award of Seventy-Five Thousand (P75,000.00) Pesos as civil indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages to the heirs of Dante Largado, Sr. is also affirmed.
>
> SO ORDERED.[7]

This Court accepted the appeal of the appellant on February 17, 2010.[8]

Appellant filed a Manifestation and Motion[9] on April 20, 2010 stating that he will adopt his earlier Supplemental Brief.

The Office of the Solicitor General (OSG), on May 4, 2010, filed its Manifestation and Motion[10] stating that it will no longer file a Supplemental Brief and will merely adopt the Appellee's Brief[11] it previously filed.

In his Brief,[12] appellant assigned the following errors:

> I.
>
> THAT THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.
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> II.
>
> THAT THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
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> III.
> ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT DID NOT ACT IN LEGITIMATE SELF-DEFENSE IN HACKING THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER.[13]

Appellant insists that all the elements or requisites of self-defense are present in this case. According to him, there was unlawful aggression on the part of the victim when he hid behind the trunk of a coconut tree and then hacked the appellant which the latter was able to evade. He also opines that the means employed by him in repelling or preventing the victim's aggression was reasonable, considering that when he ran away, the victim still chased him and overtook him. Finally, he states that there was lack of sufficient provocation on his part, as it was the victim who provoked him when he tried to hack and chase the victim.

In short, appellant argues that the trial court and the CA erred in not appreciating the justifying circumstance of

self-defense and, instead, relied on the testimonies of the witnesses for the prosecution. However, this Court finds the said argument without any merit.

It is a hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to prove the elements of that claim,[14] i.e., (1) unlawful aggression on the part of the victim, (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.[15] But absent the essential element of unlawful aggression, there is no self-defense.[16]

In the present case, the appellant failed to prove the presence of unlawful aggression on the part of the victim. As correctly observed and ruled by the trial court:

> From the testimonies of the two prosecution witnesses, Dante Largado, Jr. and Alex Davocol, the unarmed victim was being chased by the accused, armed with a long bolo, and upon catching up [with] the victim, the accused hacked the victim, hitting him on the left side of his face and ear, cutting major blood vessels, which caused the death of the victim instantaneously.
>
> Even assuming arguendo that there was provocation on the part of the unarmed victim who immediately thereafter ran away, such provocation is not sufficient to be repelled with the use of a long bolo. The defense of self-defense by the accused cannot be appreciated by the Court, for not having been substantiated by clear and convincing evidence that the killing of Dante Largado, Sr. was justified, hence, must fail.[17] (Emphasis supplied.)

Clearly, the element of unlawful aggression on the part of the victim is wanting. It must be remembered that the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution for, even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.[18]

Moreover, the question of whether appellant acted in self-defense is essentially a question of fact.[19] Thus, in the absence of proof that the CA and the trial court failed to appreciate facts or circumstances that would have merited appellant's acquittal, this Court has no reason whatsoever to disturb the ruling of the CA and the trial court.

As to appellant's contention that the trial court was wrong in appreciating the testimonies of the prosecution's witnesses over his claim of self-defense, this Court has consistently reiterated that basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, the Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. The reason therefore is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.[20]

Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[21] Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[22] Based on the findings of the trial court and the CA, the testimonies of the witnesses for the prosecution are more credible in itself than the self-serving defense of appellant.

In finding that appellant is guilty of homicide, instead of murder, the CA ruled that there was an absence of the qualifying circumstances of evident premeditation and treachery. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[23] For it to be appreciated, the

following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[24] On the other hand, to appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted.[25] The CA, therefore, did not err when it ruled that the killing of the victim was neither attended by evident premeditation nor treachery, thus:

> The element of evident premeditation is manifested by the careful planning and preparation undertaken by the offender prior to the commission of the crime. A perusal of the evidence on record shows that the altercation between appellant Duavis and Dante Largado, Sr. took place at around 3:00 o'clock in the afternoon of May 2, 2003, and the hacking incident took place at around 5:30 in the afternoon of the same day. To the mind of the Court, the lapse of time between the decision and the execution is not sufficient to allow appellant to fully reflect upon the consequences of his act and to effectively and efficiently prepare and plan his actions prior to the commission of the crime. Although it may be argued that there was some kind of premeditation on the part of appellant Duavis, it was not proved to be evident.
>
> This Court further finds that the qualifying circumstance of treachery is not present in the instant case because evidence on record show that appellant Duavis chased Dante Largado, Sr. before the latter was hacked; hence, it cannot be concluded that appellant Duavis employed means of execution which gives Dante Largado, Sr. no opportunity to retaliate or escape. Moreover, the location of the hack wound on the left side of the face of the victim will also show that a frontal attack was made.
>
> Thus, in the absence of any circumstance which would qualify the killing of Dante Largado, Sr., appellant Duavis can only be convicted of Homicide, not murder.[26] (Emphasis supplied.)

Hence, the CA modified the penalty imposed by the trial court. In the dispositive portion of the CA's decision, it imposed the penalty of “imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum.” This is a wrong application of the Indeterminate Sentence Law; although the CA claims to have applied the Indeterminate Sentence Law in arriving at the penalty imposed, the wordings used (i.e., anywhere within the range of) and the actual penalty imposed are confusing, if not misleading. If not corrected, the prison official tasked to determine if the convicted accused has already served the minimum sentence will now be given the discretion to fix the minimum of the sentence, which duty can only be exercised by the court.

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of reclusion temporal in its medium period.

There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.[27]

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than reclusion temporal, which is prision mayor (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of

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eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum, should be imposed.

WHEREFORE, the Decision dated May 29, 2009 of the Court of Appeals, affirming with modification, the Decision dated April 23, 2004 of the Regional Trial Court, Branch 13, Carigara, Leyte, finding appellant Lino Duavis guilty beyond reasonable doubt of the crime of homicide is hereby AFFIRMED with the MODIFICATION that the penalty imposed, after applying the Indeterminate Sentence Law is imprisonment of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum.

SO ORDERED.

Abad, Mendoza, Sereno,[**] and Perlas-Bernabe, JJ., concur.

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[*] Per Special Order No. 1166 dated November 28, 2011.

[**] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1167 dated November 28, 2011.

[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Florito S. Macalino and Rodil V. Zalameda, concurring; rollo pp. 4-16.

[2] Penned by Presiding Judge Crisostomo L. Garrido; CA rollo, pp. 11-22.

[3] Records, p. 1.

[4] Id.

[5] Id. at 62.

[6] CA rollo, p. 101.

[7] Rollo, p. 15.

[8] Id. at 22.

[9] Id. at 24-27.

[10] Id. at 28-31.

[11] CA rollo, pp. 65-90.

[12] Id. at 32-60.

[13] Id. at 39, 44.

[14] Jacobo v. CA, G.R. No. 107699, March 21, 1997, 270 SCRA 270, 285, citing People v. Rivero, G.R. No. 112721, March 15, 1995, 242 SCRA 354, 358; People v. Nemeria, G.R. No. 96288, March 20, 1995, 242 SCRA 448, 453; and People v. Nuestro, G.R. No. 111288, January 18, 1995, 240 SCRA 221, 227.

[15] Id., citing People v. Camahalan, G.R. No. 114032, February 22, 1995, 241 SCRA 558, 569; People v. Morin, G.R. No. 101794, February 24, 1995, 241 SCRA 709, 715; People v. Rivero, supra; and People v. Silvestre, G.R. No. 109142, May 29, 1995, 244 SCRA 479, 490-491.

[16] Id., citing People v. So, G.R. No. 104644, August 28, 1995, 247 SCRA 708, 719; and People v. Galit, G.R.

No. 97432, March 1, 1994, 230 SCRA 486, 496.

[17] CA rollo, p. 21.

[18] See People v. Maceda, G.R. No. 91108, May 27, 1991, 197 SCRA 499, 502; People v. Albarico, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211; and People v. Molina, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 64.

[19] Jacobo v. CA, supra note 14, at 287; citing People v. Sazon, G.R. No. 89684, September 18, 1990, 189 SCRA 700, 711.

[20] Tindoy v. People, G.R. No. 157106, September 3, 2008, 564 SCRA 39, 47, citing People v. Laceste, G.R. No. 127127, July 30, 1998, 293 SCRA 397.

[21] People v. Orias, G.R. 186539, June 29, 2010, 622 SCRA 417, 427, citing People v. Zinampan, G.R. No. 126781, September 13, 2000, 340 SCRA 189, 199.

[22] Id.

[23] People v. Ventura, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 400; citing People v. Durante, 53 Phil. 363, 369 (1929); People v. Escabarte, No. L-42964, March 14, 1988, 158 SCRA 602, 612; People v. Escarlos, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482; People v. Sayaboc, G.R. No. 147201, January 15, 2004, 419 SCRA 659, 673.

[24] Id., citing People v. Requipo, G.R. No. 90766, August 13, 1990, 188 SCRA 571, 577; People v. Valdez, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 626; People v. Kinok, G.R. No. 104629, November 13, 2001, 368 SCRA 510, 521; People v. Manlansing, G.R. Nos. 131736-37, March 11, 2002, 378 SCRA 685, 701.

[25] People v. Ave, G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 246; People v. Delmo, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 435.

[26] Rollo, pp. 13-14.

[27] REVISED PENAL CODE, Art. 64, par. 1.

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