

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO DOLORIDO Y ESTRADA, ACCUSED-APPELLANT.

G.R. No. 191721. January 12, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the November 27, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00575-MIN entitled *People of the Philippines v. Rogelio Dolorido y Estrada*, which affirmed the September 14, 2007 Decision[2] in Criminal Case No. 5027 of the Regional Trial Court (RTC), Branch 27 in Tandag, Surigao del Sur. The RTC found accused-appellant Rogelio Dolorido y Estrada guilty of murder.

The Facts

The charge against Dolorido stemmed from the following Information:

That on the 9[th] day of May 2006 at around 8:30 o'clock in the morning, more or less, at Barangay Cagdapao, Municipality of Tago, Province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully, and feloniously, attack, assault and hack one, DANIEL ESTOSE, causing his instantaneous death, to the damage and prejudice of the heirs of the deceased as follows:

P70,000.00 - as life indemnity
P10,000.00 - as moral damage
P10,000.00 - exemplary damages

CONTRARY TO LAW.[3]

On November 15, 2006, Dolorido was arraigned, and he pleaded "not guilty" to the crime charged.

During the pre-trial conference on January 18, 2007, Dolorido admitted that he killed the deceased-victim Daniel Estose but invoked self-defense. Likewise, the prosecution and the defense stipulated that the Joint Affidavit of Aniolito Avila and Adrian Avila (the Avilas) would constitute as their direct testimony, subject to cross-examination by the defense; and the Counter Affidavit of the Accused and the Affidavit of Mario Jariol would also constitute as their direct testimony, subject to cross examination by the prosecution.

During the trial, the prosecution offered the testimonies of the Avilas and Loreta Estose. On the other hand, the defense presented, as its sole witness, accused-appellant Dolorido.

The Prosecution's Version of Facts

The Avilas were hired laborers of the victim, Estose, tasked to harvest the coconuts in the latter's farm in Cagdapao, Tago, Surigao del Sur.[4]

On May 9, 2006, while the Avilas were walking towards the coconut plantation at around 8:30 in the morning, they saw Dolorido standing near the coconut drier of Estose, appearing very angry. After some time, Dolorido proceeded to Rustica Dolorido's coconut drier located a hundred meters away and hid behind a coconut tree.[5]

Moments later, they saw Estose on his way to his own coconut drier. When Estose passed by Rustica Dolorido's coconut drier, they saw Dolorido suddenly hack Estose twice, resulting in wounds on his arms. When Estose tried to retreat, he fell down and it was then that Dolorido stabbed him on the left portion of his chest, which caused his death. Dolorido suddenly left the place.

Afraid of Dolorido's wrath, the Avilas did not immediately proceed to the scene of the crime. It was only after 20 or so minutes that they felt it was safe to approach Estose. When they were near, they saw Estose was already dead.[6] They then waited for Estose's wife and the police.

Version of the Defense

Dolorido's defense, on the other hand, consisted of the story of self-defense:

On the day of the death of the victim, Dolorido asked Estose why he was gathering Dolorido's harvested coconuts. Estose just replied, "So, what about it?" and tried to unsheathe his bolo from its scabbard.[7] Upon seeing this, Dolorido drew his own bolo and stabbed Estose. When Estose tried to wrestle for the bolo, he sustained some wounds. Afterwards, while Dolorido was pointing the bolo at Estose, the latter suddenly lunged at Dolorido, causing Estose to hit the bolo with his own chest which resulted in his death.[8] He denied the prosecutor's claim that he hid behind a coconut tree and waited for Estose to come. Thereafter, Dolorido, accompanied by one Mario Jariol, voluntarily surrendered to the Tago Police Station.

Rulings of the Trial and Appellate Courts

After trial, the RTC convicted accused Dolorido. The dispositive portion of its September 14, 2007 Decision reads:

WHEREFORE, finding accused Rogelio Dolorido y Estrada GUILTY beyond reasonable doubt of the crime of MURDER qualified by treachery, and appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, the Court hereby sentences him to suffer the penalty of Reclusion Perpetua, to pay the heirs of deceased-victim Daniel Estose y Langres the sum of P50,000.00 as civil indemnity, P50,000 as moral damages and P25,000.00 as temperate damages; and to pay the cost.

x x x x

SO ORDERED.[9]

On November 27, 2009, the CA affirmed in toto the judgment of the RTC.[10]

The Issues

Accused-appellant assigns the following errors:

I.

The court a quo gravely erred in not appreciating self-defense interposed by accused.

II.

The court a quo gravely erred in convicting the accused-appellant of murder despite the failure of the prosecution to prove the elements of treachery.

III.

The court a quo gravely erred in awarding damages despite failure of the prosecution to present evidence to support their claim.

The Court's Ruling

The appeal has no merit.

Self-defense is absent

In his Brief, accused-appellant argues that the trial court failed to consider the circumstance of unlawful aggression on the part of the victim. He contends that he only acted in self-defense, and this is the reason why he voluntarily surrendered to the authorities.

We do not agree.

In order for self-defense to be successfully invoked, the following essential elements must be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[11]

A person who invokes self-defense has the burden of proof of proving all the elements.[12] However, the most important among all the elements is the element of unlawful aggression. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. As this Court said in *People v. Catbagan*,[13] "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."

In this case, we agree with the trial court that the accused-appellant failed to prove the existence of unlawful aggression. But he maintains that Estose provoked him when the latter started to unsheath his bolo from his scabbard. Nevertheless, as aptly found by the trial court, his testimony is too incredible to be believed, viz:

Accused's plea failed to impress the Court. To be sure, his story on how the deceased was killed is too incredible to inspire belief. According to him, it was the deceased who first unsheathed his bolo but did not succeed in his attempt to fully unsheath it because he (Accused) hacked him. Thereafter, the deceased tried to wrest Accused's bolo but was injured instead. If the deceased failed to unsheath his bolo because Accused was able to hack him, how could the deceased then have attempted to dispossess the Accused of the latter's bolo? The truth, of course, is that the Accused waylaid the deceased, as testified to by the prosecution witnesses.[14]

x x x

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[15] In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.[16] It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." [17] It is present "only when the one attacked faces real and immediate threat to one's life." [18] Such is absent in the instant case.

Moreover, against the positive declarations of the prosecution witnesses who testified that accused-appellant hacked Estose twice and subsequently stabbed him without any provocation, accused-appellant's self-serving and uncorroborated assertion deserves scant consideration.

Indeed, it is a well-settled rule that "a plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself." [19] Moreover, "[a]bsent any showing that the prosecution witnesses were moved by improper motive to testify against the appellant, their testimonies are entitled to full faith and credit." [20]

Therefore, absent any unlawful aggression from the victim, accused-appellant cannot successfully invoke the defense of self-defense.

Treachery is evident

In addition, accused-appellant argues that the trial court should not have appreciated treachery as a qualifying circumstance. He argues that it was impossible for the two prosecution witnesses to see the inception and the actual attack of accused-appellant to the victim because both were busy gathering coconuts. Also, they were 50 meters away from where the actual stabbing occurred, in rolling hills with tall and short shrubs between the witnesses and the place where the actual stabbing occurred.

We disagree.

Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[21] The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself." [22]

In the case at bar, it was clearly shown that Estose was deprived of any means to ward off the sudden and unexpected attack by accused-appellant. The evidence showed that accused-appellant hid behind a coconut tree and when Estose passed by the tree, completely unaware of any danger, accused-appellant immediately hacked him with a bolo. Estose could only attempt to parry the blows with his bare hands and as a result, he got wounded. Furthermore, when Estose tried to retreat, stumbling in the process, accused-appellant even took advantage of this and stabbed him resulting in his death. Evidently, the means employed by accused-appellant assured himself of no risk at all arising from the defense which the deceased might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[23] Without a doubt, treachery attended the killing.

Thus, this Court finds no reason to disturb the findings of the trial court when it gave credence to the testimony of the prosecution witnesses. It is well-entrenched in our jurisprudence "x x x that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination." [24] This rule is even more binding and conclusive when affirmed by the appellate court.[25]

In conclusion, all the elements of the crime of murder, as defined in paragraph 1 of Art. 248 of the RPC, were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[26]

Verily, in criminal cases such as the one on hand, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[27] We find that the prosecution has discharged its burden of proving the guilt of accused-appellant for the crime of murder with moral certainty.

Award of Damages

This Court has held in *People v. Beltran, Jr.* that "[w]hen death occurs due to a crime, the following damages may

be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." [28]

Hence, in line with our ruling in *People v. Sanchez*, [29] when the imposable penalty for the crime is reclusion perpetua, the damages to be imposed are: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. These are the amounts proper in this case because of the appreciation of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset it.

As to the award of temperate damages in the amount of PhP 25,000, such is proper "in homicide or murder cases when no evidence of burial and funeral expenses is presented in the trial court." [30] Under Art. 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. [31] Therefore, we sustain the award of the trial court of PhP 25,000 for temperate damages.

Finally, interest at the rate of six (6) percent should likewise be added to the damages awarded. [32]

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 00575-MIN finding accused-appellant Rogelio Dolorido y Estrada guilty of the crime charged is AFFIRMED with MODIFICATION. In addition to the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 25,000 as temperate damages, accused-appellant is likewise sentenced to pay the heirs of the victim the amount of PhP 30,000 as exemplary damages. Interest at the rate of six percent (6%) per annum on the civil indemnity and moral, temperate, and exemplary damages from the finality of this decision until fully paid shall likewise be paid by accused-appellant to the heirs of Daniel Estose.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 3-18. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Ruben C. Ayson and Leoncia R. Dimagiba.

[2] CA rollo, pp. 33-40. Penned by Judge Ermelindo G. Andal.

[3] Records, p. 3.

[4] TSN, February 22, 2007, p. 5.

[5] Records, p. 39.

[6] Id.

[7] Id. at 15.

[8] Id.

[9] CA rollo, p. 40.

[10] Rollo, p. 18.

[11] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 657; *People v. Plazo*, G.R. No. 120547, January 29, 2001, 350 SCRA 433, 442-443.

[12] *People v. Almazan*, G.R. Nos. 138943-44, September 17, 2001, 365 SCRA 373, 382.

- [13] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.
- [14] CA rollo, p. 39.
- [15] *People v. Basadre*, G.R. No. 131851, February 22, 2001, 352 SCRA 573, 583.
- [16] *People v. Catbagan*, *supra* note 13, at 557.
- [17] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 478.
- [18] *Id.*
- [19] *People v. Aburque*, G.R. No. 181085, October 23, 2009, 604 SCRA 384, 394; citing *Del Rosario v. People*, G.R. No. 141749, April 17, 2001, 356 SCRA 627, 634.
- [20] *People v. Aburque*, *id.*
- [21] *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 238.
- [22] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.
- [23] *People v. Honor*, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 558.
- [24] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47, 60. See also *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.
- [25] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230.
- [26] *People v. Sameniano*, G.R. No. 183703, January 20, 2009, 576 SCRA 840, 850.
- [27] RULES OF COURT, Rule 133, Sec. 2.
- [28] G.R. No. 168051, September 27, 2006, 503 SCRA 715, 740.
- [29] G.R. No. 131116, August 27, 1999, 313 SCRA 254, 271-272.
- [30] *People v. Dacillo*, G.R. No. 149368, April 14, 2004, 427 SCRA 528, 538.
- [31] *People v. Surongon*, G.R. No. 173478, July 12, 2007, 527 SCRA 577, 588.
- [32] See *People v. Tabongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

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