

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO GONZALES, APPELLANT.

G.R. No. 195534. June 13, 2012

Ponente: BRION, J.

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BRION, J.:

We review the judgment of conviction for murder of Eduardo Gonzales (appellant) in the decision dated July 28, 2010 of the Court of Appeals[1] (CA) in CA-G.R. CR-H.C. No. 03840. The CA affirmed the decision[2] dated January 5, 2009 of the Regional Trial Court (RTC), Branch 57, San Carlos City, Pangasinan, in Criminal Case No. 2814 whose decretal portion reads:

WHEREFORE, in light of all the foregoing, this Court finds accused EDUARDO GONZALES, having failed to prove by clear and convincing evidence that his act was justified, GUILTY of the crime of Murder and hereby sentences him to suffer the penalty of reclusion perpetua. Accused Eduardo Gonzales is directed to pay the heirs of the victim Eligio Donato the sum of P20,000.00 as actual damages; P50,000.00 as civil indemnity and P50,000.00 as moral damages.[3] (*italics ours*)

The Facts

The appellant and his brother, co-accused Edmundo Gonzales,[4] were charged with murder under a criminal information which alleged conspiracy, evident premeditation and treachery in the killing of Eligio Donato (victim).

The records[5] show that the victim went to the house of the appellant at the invitation of Edmundo. When the victim arrived, he was met by the appellant who was armed with a .22 caliber firearm. The appellant and Edmundo immediately fired at the victim six (6) times, hitting him three (3) times - in the arm, in his left thigh and in his left chest.[6] The victim expired before he could receive medical treatment.

The appellant denied the charge and claimed that he had acted in self-defense. He narrated that he was at his house watching television when the victim suddenly arrived, armed with a short firearm. The victim shouted invectives at the appellant and threatened to kill him. When efforts by the appellant to pacify the victim proved to be futile, the appellant retrieved his own firearm inside his house. A struggle for the possession of the appellant's firearm then ensued between the appellant and the victim which caused the appellant's gun to discharge three times; thus, hitting the victim.

The RTC found the prosecution's version more consistent with the physical findings that the victim was not shot at close range, in the absence of powder burns on his skin.[7] The RTC rejected the appellant's self-defense theory in the absence of evidence of unlawful aggression. The RTC ruled that the appellant was guilty of murder, qualified by treachery and evident premeditation, given the manner and the means employed in attacking the unsuspecting victim, leaving him no time or opportunity to resist.[8]

In due course, the appellant appealed his judgment of conviction with the CA, contending that the RTC

committed reversible errors in the appreciation of the evidence, namely: (1) in giving weight and credence to the highly inconsistent and questionable testimony of the prosecution eyewitness; (2) in disregarding the justifying circumstance of self-defense; and (3) in finding that the qualifying circumstances of treachery and evident premeditation attended the killing.

The CA rejected the appellant's arguments and affirmed the RTC's decision holding that the prosecution eyewitness' account of the shooting was straightforward, categorical and without any established ill-motive. The CA also held that the eyewitness testimony was compatible with the physical evidence showing that the appellant, not the victim, started the attack. The CA agreed with the RTC that the killing was qualified by treachery since the attack was executed in a manner that rendered the victim defenseless and unable to retaliate.[9] The CA did not rule on whether evident premeditation was present in the victim's killing.

The Issue

On the basis of the same arguments raised before the CA, the appellant questions the sufficiency of the evidence proving his guilt beyond reasonable doubt.

The Court's Ruling

We find no reversible error in the CA's decision and affirm the appellant's conviction for murder.

The Claim of Self-Defense

Self-defense as a justifying circumstance under Article 11 of the Revised Penal Code, as amended, implies the admission by the accused that he committed the acts which would have been criminal in character had it not been for the presence of circumstances whose legal consequences negate the commission of a crime. By invoking self-defense in this case, the appellant admitted that he shot the victim. With this admission, the burden of evidence shifted to the appellant to prove that he acted in accordance with the law. The appellant, in this regard, must satisfactorily prove the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, as amended, to relieve him of any criminal liability:

First, unlawful aggression;

Second, reasonable necessity of the means employed to prevent or repel it;

Third, lack of sufficient provocation on the part of the person defending.

We find that the appellant failed to discharge this burden.

(a) Unlawful aggression

The existence of unlawful aggression is the basic requirement in a plea of self-defense.[10] In other words, no self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel.[11] In *People v. Dolorido*, [12] we held that unlawful aggression "presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action. It is present 'only when the one attacked faces real and immediate threat to one's life.'" The unlawful aggression may constitute an actual physical assault, or at least a threat to inflict real imminent injury upon the accused.[13] In case of a "threat, it must be offensive and strong, positively showing the x x x intent to cause injury." [14]

In this case, the requisite of unlawful aggression on the part of the victim is patently absent. The records fail to disclose any circumstance showing that the appellant's life was in danger when he met the victim. What the evidence shows is that the victim was unarmed when he went to the house of the appellant. Likewise, there was also no evidence proving the gravity of the utterances and the actuations allegedly made by the victim that would have indicated his wrongful intent to injure the appellant.

We note that the appellant's claim of self-defense was even disproved by the narration of his own witness, Teofilo Posadas, who came into the scene to witness the ongoing attack by the appellant on the victim. As Posadas testified:

Q

Mr. Witness, how did you know Mr. Witness that it was Eligio Donato shouting at Eduardo Gonzales "Anggapo lay Balam" [You have no more bullet]?

A

When Eduardo fired his gun in the air twice, ma'am.

Q

Which came first Mr. Witness, Eduardo Gonzales firing his gun in the air twice or Eligio Donato shouting at Eduardo Gonzales "Anggapo lay Balam"?

A

The firing in the air, ma'am.

x x x x

Q

By the way Mr. Witness, you mentioned a while ago that Eduardo Gonzales fired his gun in the air twice, did you notice what kind of gun did (sic) Eduardo Gonzales used [in] firing two gunshot or two shots in the air?

A

[.]22 caliber long barrel, ma'am.

Q

And how did you know that Eduardo Gonzales fired a [.]22 caliber gun or a long barrel gun?

A

I saw that gun before while he was using it in targeting fish and birds, ma'am.

Q

So Mr. Witness did Eligio Donato and Eduardo Gonzales get near each other?

A

Yes, ma'am.

Q

What did they do when they got close [to] each other, Mr. Witness?

A

They scuffled over the possession of the gun, ma'am.

x x x x

Q

When they were scuffling over the possession of the gun, what happened Mr. Witness?

A

The gun fired, ma'am.

x x x x

Q

How many gun burst did you hear Mr. Witness?

A

Two (2) or more, ma'am.

Q

After you heard two (2) or more gun burst Mr. Witness, what happened to Eligio [Donato], if any?

A

He fell down, ma'am.[15]

The testimony of Posadas reveals that: first, the appellant who was armed met the victim; second, while at a distance, the appellant fired twice at the victim's direction; and third, the appellant fired at the victim when the latter tried to take away his firearm.

Posadas' testimony, taken together with the testimony of prosecution eyewitness Eduardo Rodriguez,[16] provides a clear picture on how the unlawful aggression was initiated by the appellant, not by the victim. The unlawful aggression started when the appellant immediately fired at the victim as the latter alighted from a tricycle and continued when the appellant fired at the victim six (6) times. The assault ended when the appellant fired at the victim when the latter tried to take away his firearm.

More importantly, Posadas' testimony was even corroborated by the physical evidence that should clearly defeat the claim of unlawful aggression on the part of the victim, in that: first, it was only the victim who was wounded in the assault; and second, the physical evidence showed that the victim had three (3) gunshot wounds thereby indicating that he had already been shot by the appellant when he tried to gain possession of the appellant's firearm.

(b) Reasonable necessity of the means employed to prevent or repel the victim's attack

The second requisite of self-defense could not have been present in the absence of any unlawful aggression on the part of the victim. However, even granting that it was the unarmed victim who first acted as the aggressor, we find that the means employed by the appellant in repelling the attack - the use of a firearm, the number of times he fired at the victim and the number of gunshot wounds sustained by the victim - were not reasonably necessary. On the contrary, we find that the number of gunshot wounds reveals a clear intent to kill, not merely to repel the attack of the unarmed victim.

(c) Lack of sufficient provocation on the part of the appellant

The records disclose that the struggle between the victim and the appellant occurred after the appellant fired at the victim. In other words, the third requisite was not established given the sufficient provocation by the appellant in placing the victim's life in actual danger. Thus, any aggression made by the victim cannot be considered unlawful

as it was made as an act of self-preservation to defend his life.

In addition to the above considerations, the appellant's claim of self-defense was also belied by his own conduct after the shooting. The records show that the appellant went into hiding after he was criminally charged.[17] He also stayed in hiding for four (4) years and could have continued doing so had it not been for his arrest.[18] Self-defense loses its credibility given the appellant's flight from the crime scene and his failure to inform the authorities about the incident.[19]

Credible Eyewitness Testimony

As the appellant failed to prove that he had acted in self-defense, he effectively admitted to the unlawful shooting and the unlawful killing of the victim. Accordingly, we no longer need to examine the issue relating to the credibility of the prosecution witness' testimony. We reiterate, however, that the findings of the trial court on matters relating to the credibility of the witnesses and their testimonies will not be disturbed on appeal unless some weight and serious facts or circumstances have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[20] Under the circumstances, we find no compelling reason to deviate from this rule.

The Nature of the Killing

Article 248 of the Revised Penal Code, as amended, provides that [a]ny person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with x x x treachery. Both the RTC and the CA ruled that the crime committed was murder, taking into account the presence of the qualifying circumstance of treachery. The CA held:

As established on record and as found by the trial court, the victim lost that opportunity to defend himself because of x x x appellant's unexpected attack. [The victim], who was then unarmed, was alighting a tricycle when x x x appellant suddenly shot him. Such swiftness of the attack even made it physically impossible for [the victim] to run for his safety. Clearly, the killing of [the victim] was attended by treachery which qualifies the crime to murder.[21] (emphases supplied)

We agree with the CA's findings. There is treachery (alevosia) when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[22] The two elements that must be proven to establish treachery are: "(a) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (b) the means, method and manner of execution were deliberately and consciously adopted by the offender." [23] The two elements are present in this case.

The first element was established by the prosecution eyewitness' testimony showing the sudden attack by the appellant on the unsuspecting victim who had just alighted from a tricycle. The victim was then unarmed and had no opportunity to defend himself.

The second element was established by the prosecution eyewitness' testimony showing that the appellant deliberately and consciously adopted a pre-conceived plan on how to kill the victim. The evidence showed that the unsuspecting victim was first lured in going to the house of the appellant by Edmundo. The appellant who was armed waited for the arrival of the victim. Afterwards, the appellant immediately fired at the victim.

The Penalty and the Civil Liability

The CA correctly imposed the penalty of reclusion perpetua there being no mitigating or aggravating

circumstances established.[24] We find that the prosecution failed to establish that the aggravating circumstance of evident premeditation was present in the case. The prosecution failed to prove the concurrence of the following requisites to establish evident premeditation: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. The prosecution failed to prove how and when the plan to kill the victim was planned and determined.[25]

With respect to damages, the CA correctly awarded the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, they being consistent with prevailing jurisprudence.[26] In *People of the Philippines v. David Maningding*,[27] we ruled that when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the proper amounts should be P 50,000.00 as civil indemnity and P 50,000.00 as moral damages.

However, we modify the CA's decision on the other awards of damages.

In accordance with current jurisprudence, we delete the award of P20,000 as actual damages and, in its stead, award P30,000.00 as temperate damages.[28] We also award the heirs of the victim compensatory damages for the loss of the victim's earning capacity, there being testimonial and documentary evidence on record to support the award.[29] The wife of the victim testified that the victim was 36 years old and was a soldier receiving a monthly salary of more than P9,000.00. The victim's pay slip was also presented, showing his earnings of P9,576.00 a month.[30] The award of compensatory damages for loss of earning capacity is computed using the following formula:

Net earning capacity (x) = life expectancy x gross annual income -

living expenses (50% of gross annual income) [31]

Under this formula, we award to the heirs of the victim the amount of P1,685,184.48 as compensatory damages for the victim's loss of earning capacity, calculated as follows:

$$x = \frac{2(80-36)}{3} \times [P\ 114,912.00 - 57,456.00]$$

$$3$$

$$= 29.33 \times P\ 57,456.00$$

$$= P\ 1,685,184.48$$

Finally, we also award P30,000.00 as exemplary damages, in accordance with prevailing jurisprudence, since the killing was attended by treachery.[32]

WHEREFORE, premises considered, we DISMISS the appeal and AFFIRM with MODIFICATION the decision dated July 28, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03840. Appellant Eduardo Gonzales is found guilty of murder, penalized under Article 248 of the Revised Penal Code, as amended. He is hereby ordered to pay the heirs of Eligio Donato the following sums:

- 1) P50,000.00 as civil indemnity;
- 2) P1,685,184.48 as compensatory damages for loss of earning capacity;
- 3) P30,000.00 as temperate damages in lieu of actual damages;
- 4) P50,000.00 as moral damages; and
- 5) P30,000.00 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Rollo, pp. 2-21; penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan.

[2] CA rollo, pp. 7-13.

[3] Id. at 13.

[4] Still at large.

[5] CA rollo, pp. 8-10.

[6] The records show that one bullet hit the left inguinal area (between the penis and the left thigh), exiting the right buttock; another bullet hit the right arm antero medial (surface of the arm facing the front); and the third bullet hit the left chest mid-clavicular line which was declared to be the most fatal. Id. at 9.

[7] Id. at 12.

[8] Id. at 13.

[9] Rollo, p. 19.

[10] *People v. Bausang*, G.R. No. 64965, July 18, 1991, 199 SCRA 355, 361.

[11] *Ibid.*

[12] G.R. No. 191721, January 12, 2011, 639 SCRA 496, 504.

[13] *Ibid.*, citing *People v. Basadre*, G.R. No. 131851, February 22, 2001, 352 SCRA 573, 583.

[14] *Ibid.*, citing *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 557.

[15] TSN, September 22, 2008, pp. 8, 10-12.

[16] TSN, February 17, 2003 and June 30, 2003.

[17] CA rollo, p. 10.

[18] *Ibid.*

[19] *People v. De Jesus*, G.R. No. 186528, January 26, 2011, 640 SCRA 660, 675.

[20] *People v. Antonio*, 390 Phil. 989, 1010-1011 (2000), citing *People v. Pili*, G.R. No. 124739, April 15, 1998, 289 SCRA 118.

[21] Rollo, p. 20.

[22] REVISED PENAL CODE, Article 14, par. 16, as amended.

[23] *People v. Malabago*, 333 Phil. 20, 34 (1996).

[24] REVISED PENAL CODE, Article 63, as amended.

[25] *People of the Philippines v. Michael Bokingco, etc., et al.*, G.R. No. 187536, August 10, 2011.

[26] *People v. Pelis*, G.R. No. 189328, February 21, 2011, 643 SCRA 598, 600-601.

[27] G.R. No. 195665, September 14, 2011, citing *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797; *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187; and *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[28] *The People of the Philippines v. Edwin Villamor alias "Tata,"* G.R. No. 187497, October 12, 2011.

[29] *People v. Antonio*, supra note 20, at 1022-1023.

[30] Official Statement of Earnings and Deductions, dated February 1998, issued by the Finance Center, Philippine Army; records, p. 112.

[31] *People v. Antonio*, supra note 20, at 1023.

[32] *People v. Pelis*, supra note 26.

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