

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. GERRY AGRAMON, ACCUSED-APPELLANT.

G.R. No. 212156. June 20, 2018

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CAGUIOA, J:

On appeal is the Decision[1] dated October 30, 2013 of the Court of Appeals (CA), Special Twentieth Division in CA-G.R. CR-HC No. 00982, which affirmed with modification, the Decision[2] dated December 8, 2008 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, in Criminal Case No. 4625.

The Facts

In an Information[3] filed with the RTC, accused-appellant Gerry Agramon (Gerry) was charged with Murder, the accusatory portion of which reads:

That on or about the 24[th] day of December, in the Municipality of San Miguel, 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 stab one PELITA ABOGANDA, with the use of a short bladed weapon (pisao) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

WOUNDS:

- Stab wound anterior chest, 3.0 cm above left nipple, 8.0 cm from midsternal line at the level of the 3rd left intercostal space.

length- 1.7 cm

Depth - 6.0 cm

Directed posteriorly perforating ascending aorta

- Incised wound elbow left lateral aspect

Length-5.0 cm

Depth-3.0 cm

CONCLUSION:

Cause of death was massive hemorrhage (sic) secondary to the stab wound in the chest. Weapon most probably use (sic) was a small sharp bladed pointed instrument.

which wound caused the death of said PELITA ABOGANDA.

CONTRARY TO LAW.

Carigara, Leyte, January 20, 2006.[4]

Upon his arraignment, Gerry pleaded not guilty to the charge.[5]

Thereafter, trial on the merits ensued.[6] The prosecution presented Roger Agramon (Roger), Dr. Federico De

Veyra, Jr. (Dr. Federico), the Municipal Health Officer of San Miguel, Leyte, PO2 Jessefesto Quintana and PO1 Niño Gervacio, as witnesses, who testified to the following facts:

On December 24, 2005, at about 6:00 in the evening, Roger, who just came from the farm, was sitting inside his dwelling with Pelita Aboganda (Pelita), his common-law wife, in Brgy. Kinalumsan, San Miguel, Leyte when his brother, Gerry, who appeared to be drunk, came to their dwelling yelling "I will kill you all." Gerry entered the house armed with an unsheathed bladed weapon and delivered a stab thrust against Roger, who was able to hold the weapon with his hand causing him to sustain four (4) wounds.[7] Pelita, Roger's common law wife, who was then two (2) months pregnant, tried to cover Roger in order not to be hit again.[8] Pelita was stabbed by Gerry on her left breast. When Roger was about to run, Gerry stabbed him and the weapon got stuck at his back.[9] Gerry searched for another weapon inside the house and when the former saw the long bolo, he chased Roger who ran towards the barangay hall.[10]

Upon reaching the barangay hall, Roger sought help from the barangay officials who were then celebrating their Christmas party. Gerry arrived at the barangay hall brandishing his weapon and roaming around the area. The barangay officials were not able to pacify him, so they asked help from the police officials of San Miguel, Leyte. When the police arrived, they arrested Gerry.[11]

Pelita died, while Roger was taken to the Eastern Visayas Regional Medical Center for treatment.[12]

The postmortem report of Dr. Federico showed that Pelita suffered one (1) stab wound in the chest and one (1) incised wound in the elbow; and died due to the massive hemorrhage secondary to the stab wound in the chest.[13]

Gerry, on the other hand, interposed self-defense.[14] He asserted that on December 24, 2005, in the morning, he was all alone at Sitio Bangon, Brgy. Kinalumsan, San Miguel, Leyte, gathering tuba as his primary job. On that day, while he was on his way to work, he was chased by his brother Roger, who was then holding a long bolo. Roger was allegedly mad at him because his three (3) pigs destroyed Roger's plants the previous day. When he saw his brother chasing him, Gerry ran towards the direction of his house and rested there for a while before going back to work.[15]

After work, as Gerry was on his way home at around 6:00 in the evening, Roger accosted him and immediately delivered a hacking blow at him. Gerry was not hit as he was able to jump to a tree. Gerry then stabbed Roger with the scythe he was carrying for work. He tried to stab Roger again, but he was unable to hit him as Roger's wife, Pelita, came to his defense and used her body as a shield to protect Roger. Gerry then stepped back and was not able to go near the victims as his uncle held him and brought him to their residence.[16]

RTC Ruling

In a Decision[17] dated December 8, 2008, the RTC gave full faith and credit to the version of the prosecution and found Gerry guilty beyond reasonable doubt of the crime of Murder. The RTC held that the number and nature of the wounds inflicted upon the victim disproves Gerry's claim of self-defense.[18]

The RTC further ruled that the number and location of the wounds of the victims as compared to the unscathed accused was indicative of the treacherous execution of the crime, with the victims having no opportunity to defend themselves. The RTC also declared that evident premeditation was apparent from the fact that the accused was armed with two (2) scythes at the time of the incident and several hours had already lapsed from morning to 6:00 in the evening for him to reflect on his intentions to commit the crime.[19]

The RTC sentenced Gerry to suffer the maximum penalty of reclusion perpetua and to pay civil indemnity in the

amount of P50,000.00 and moral damages in the amount of P50,000.00 to the heirs of the victim, Pelita.[20]

CA Ruling

In the assailed Decision,[21] the CA denied the appeal and affirmed with modification the ruling of the RTC.

The CA agreed with the RTC that Gerry failed to prove self-defense because the element of unlawful aggression is explicitly wanting.[22] However, as regards the qualifying circumstances of treachery and evident premeditation, the CA found that only evident premeditation was clearly established.[23] The CA held that treachery cannot be appreciated because the attack on Pelita was not sudden and unexpected as Roger and Pelita were aware of the imminent danger to their lives.[24]

The CA found Gerry guilty of Murder and sentenced him to reclusion perpetua, without eligibility for parole. The CA further ordered Gerry to pay the heirs of Pelita the amounts of: (1) P75,000.00 as civil indemnity, (2) P50,000.00 as moral damages, (3) P30,000.00 as exemplary damages and (4) P25,000.00 as temperate damages, plus interest on all damages awarded at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.[25]

Hence, this appeal.[26]

Issue

Whether the CA erred in affirming Gerry's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[27] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[28] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[29]

In the instant case, Gerry was charged with Murder, qualified by treachery and evident premeditation. The RTC found that both qualifying circumstances attended the killing of Pelita; while the CA found that only the qualifying circumstance of evident premeditation was established.

After a careful review and scrutiny of the records, the Court holds that Gerry can only be convicted of Homicide, not Murder.

Treachery and evident premeditation were not established beyond reasonable doubt.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.[30] Thus, for Gerry to be convicted of Murder, the prosecution must not only establish that he killed Pelita; it must also prove, beyond reasonable doubt, that the killing of Pelita was attended by treachery or evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself

arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[31]

The Court agrees with the CA that the prosecution fell short of proving that Gerry consciously and deliberately adopted means which would ensure that Pelita could not defend herself or seek help. As aptly noted by the CA, Pelita was forewarned of the impending danger to her life.

In this case, the fact that accused-appellant came yelling and threatening his brother Roger and his family prior to the attack shows that there was no treachery, and that the latter were aware of the imminent danger to their lives. Certainly, Roger knew that the fight with his brother/accused-appellant, could lead to greater physical harm. The existence of a struggle before the attack on the victim Pelita clearly shows that she was forewarned of the impending attack, and that she was afforded the opportunity to put up a defense.[32]

The prosecution also did not prove that Gerry intentionally sought Pelita for the purpose of killing her. In fact, Roger, on cross-examination, admitted that after Gerry delivered a stab thrust towards him, Pelita used herself as a shield to protect him from being hit again.[33] Indeed, jurisprudence has set that treachery cannot be appreciated simply because the attack was sudden and unexpected. There must be proof that the accused intentionally sought the victim for the purpose of killing him or that accused carefully and deliberately planned the killing in a manner that would ensure his safety and success.[34] Also, the fact that a bladed weapon was used did not per se make the attack treacherous.[35] And even if it was shown that the attack was intended to kill another, as long as the victim's position was merely accidental, *alevosia* will not qualify the offense.[36]

However, with respect to the qualifying circumstance of evident premeditation, the Court cannot agree with the CA. The CA found that evident premeditation attended the killing of Pelita because of the lapse of time from the alleged intercalation between Gerry and Roger in the morning and the time when the criminal act was executed.[37] Time and again, this Court has ruled that mere lapse of time is insufficient to establish evident premeditation.[38] For evident premeditation to be appreciated, it is indispensable to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[39]

In this case, evident premeditation was not established because the prosecution's evidence was limited to what transpired at 6:00 in the evening of December 24, 2005, when Gerry came to his brother's house yelling and threatening to kill them all. The prosecution, however, did not present any proof showing when and how Gerry planned and prepared to kill Pelita. Also, the mere fact that the accused was armed at the beginning of the altercation does not unequivocally establish that he earlier devised a deliberate plot to murder the victim.[40] To qualify an offense, the circumstance must not merely be "premeditation" but must be "evident premeditation." [41] Hence, absent a clear and positive proof of the overt act of planning the crime, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough.[42] Evident premeditation cannot be appreciated to qualify the offense in this case.

The accused failed to prove self-defense.

An accused who pleads self-defense admits to the commission of the crime charged.[43] He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (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.[44] All three, including unlawful aggression, are indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." [45] Without unlawful aggression, the justifying

circumstance of self-defense has no leg to stand on and cannot be appreciated.[46]

In this case, the Court agrees with the CA that Gerry failed to discharge his burden. As aptly noted by the CA, Gerry's claim of self-defense is highly improbable because no unlawful aggression can be attributed to the victim Pelita, nor to her husband, Roger; and that even if Gerry's narration of events is to be believed, it is difficult to imagine why Gerry was unharmed during the incident, while Pelita died and Roger was taken to the hospital for treatment:

In the instant case, the first requisite of self-defense is explicitly wanting. Records show no unlawful aggression on the part of the victim Pelita, nor from his husband, Roger Agramon. The unlawful aggression did not originate from the victim or her husband but from accused-appellant himself. It was accused-appellant who went to the house of the victim yelling and threatening to kill all of Roger's family. He immediately veered inside the house, thrusting his weapons, first upon Roger Agramon, and thereafter to the victim Pelita. Hence, no self-defense can be appreciated to justify accused-appellant's acts.

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The fact that accused-appellant did not sustain any injury or even minor scratches make[s] his invocation of self-defense strikingly suspicious. Also, granting his version of the story was true, it still defies logic why he had to stab Roger twice, and eventually hit the latter's common-law wife, Pelita. If his claim was true, one (1) stab would be enough to defend himself from the alleged and unproven unlawful aggression. He could have just run away after one (1) thrust. In fact, he stabbed Roger once again hitting the latter's wife, the victim in the instant case.[47]

All told, the Court finds the prosecution's evidence sorely lacking to establish self-defense.

Proper penalty and award of damages.

With the removal of the qualifying circumstances of treachery and evident premeditation, the crime committed is Homicide and not Murder. Under Article 249 of the Revised Penal Code, Homicide is punishable by reclusion temporal; and considering that there are no aggravating nor mitigating circumstances in this case, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor with a range of six (6) years and one (1) day to twelve (12) years.[48] Thus, the accused-appellant shall suffer the indeterminate penalty 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.

Finally, in line with prevailing jurisprudence,[49] the Court modifies the award of civil indemnity, moral damages, and temperate damages to P50,000.00 each. Also, considering that no aggravating circumstance was proven in this case, the award of exemplary damages is hereby deleted.[50]

WHEREFORE, in view of the foregoing, the Court DECLARES accused-appellant Gerry Agramon GUILTY of HOMICIDE, for which he is sentenced to suffer the indeterminate penalty 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. He is further ordered to pay the heirs of Pelita Aboganda the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson),[*] Peralta, Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

[1] CA rollo, pp. 72-93. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando and Gabriel T. Ingles concurring.

[2] Id. at 27-38. Penned by Presiding Judge Crisostomo L. Garrido.

[3] Records, pp. 1-2.

[4] Id. at 1.

[5] CA rollo, p. 74.

[6] Id.

[7] Id. at 75.

[8] Id. at 28.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id. at 76.

[14] Id. at 77.

[15] Id. at 77-78.

[16] Id. at 78.

[17] Id. at 27-38.

[18] Id. at 34.

[119] Id. at 78-79.

[20] Id. at 38.

[21] Id. at 72-93.

[22] Id. at 82.

[23] Id. at 88-89.

[24] Id. at 87.

[25] Id. at 92.

[26] Id. at 94-95.

- [27] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, p. 14.
- [28] *Id.* at 14-15.
- [29] *Ramos v. People*, G.R. Nos. 218466 & 221425, January 23, 2017, 815 SCRA 226, 233.
- [30] *People v. Biso*, 448 Phil. 591, 601-602 (2003).
- [31] *People v. Duran, Jr.*, supra note 27, at 11, citing *People v. Dulin*, 762 Phil. 24, 40 (2015).
- [32] CA rollo, pp. 87-88.
- [33] *Id.* at 85.
- [34] *People v. Duran, Jr.*, supra note 27, at 13.
- [35] *People v. Ayupan*, 427 Phil. 200, 220 (2002).
- [36] See *Cirera v. People*, 739 Phil. 25, 45 (2014).
- [37] CA rollo, p. 89.
- [38] *People v. Nell*, 341 Phil. 20, 33-34 (1997).
- [39] See *People v. Biso*, supra note 30, at 602.
- [40] *Dorado v. People*, 796 Phil. 233, 255 (2016).
- [41] *People v. Ordon*a, G.R. No. 227863, September 20, 2017, p. 7, citing *People v. Abadies*, 436 Phil. 98, 106 (2002).
- [42] *People v. Almendras*, 423 Phil. 1035, 1044-1045 (2001).
- [43] *People v. Duran, Jr.*, supra note 27, at 5.
- [44] *Guevarra v. People*, 726 Phil. 183, 194 (2014).
- [45] *People v. Dolorido*, 654 Phil. 467, 475 (2011).
- [46] *Nacnac v. People*, 685 Phil. 223, 229 (2012).
- [47] CA rollo, pp. 82-86.
- [48] *People v. Santillan*, G.R. No. 227878, August 9, 2017; *People v. Macaspac*, G.R. No. 198954, February 22, 2017, 818 SCRA 417; *People v. Duran, Jr.*, supra note 27.
- [49] *People v. Jugueta*, 783 Phil. 806 (2016).
- [50] *Id.*

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