

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNIE INCIONG Y ORENSE, ACCUSED-APPELLANT.

G.R. No. 213383. June 22, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an appeal[1] filed by accused-appellant Ernie Inciong y Orense (accused-appellant) from the Decision[2] dated December 5, 2013 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05549 affirming his conviction for the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended.

The Facts

At around 11:30 in the morning of July 18, 2008, accused-appellant was having a drinking spree with a certain Bico[3] and Eman in a restaurant or carinderia located at Banay-Banay II, San Jose, Batangas opposite the building of Metro Batangas Concrete Mix Corporation.[4] Sometime thereafter, victim Jumar Lumbera (Lumbera) crossed the street going to the carinderia and, as he reached the other side, he encountered accused-appellant who suddenly poked him with an iron pipe, which turned out to be a homemade firearm or sumpak. Then, accused-appellant fired the sumpak, hitting Lumbera in the stomach, causing him to slowly fall down to the ground. Apparently not satisfied, accused-appellant approached the fallen Lumbera and hit the latter's head twice with the sumpak. Thereafter, accused-appellant hastily left.[5]

Unfortunately, while Lumbera was immediately brought to the hospital for medical treatment, he died as a result of the gunshot wound in his abdomen, as well as traumatic head injuries.[6]

Prosecution witness Elena Villa de Leon (de Leon) witnessed the incident as she happened to be near Lumbera while crossing the street headed towards the side of the carinderia. Upon reaching the side of the road, they met accused-appellant, whom she duly identified in open court as the person who poked and shot Lumbera with an iron pipe.[7]

Finally, Thelma Mendoza Lumbera, the victim's widow, testified that she spent P11,500.00 for hospital bills, P2,033.00 for the wake, P1,500.00 for the flowers, P28,000.00 for funeral expenses, and P3,500.00 for autopsy services.[8]

Consequently, accused-appellant was charged with Murder in an Information[9] dated September 8, 2008, the accusatory portion of which reads:

That on or about the 18[th] day of July, 2008, at about 11:30 o'clock in the morning, at Barangay Banay-Banay 2[nd], Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm (sumpak), with intent to kill, with the qualifying circumstances of treachery, evident premeditation and cruelty and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault, and shoot with the said firearm

one Jumar Lumbera y Ramos, suddenly and without warning and thereafter hit him twice on his head, thereby inflicting upon the latter gunshot wound, abdomen and traumatic head injury which directly caused his death.

Contrary to law.

For his part, accused-appellant admitted having shot Lumbera but claimed self-defense, explaining that he shot the latter because he lost his mind due to anger, "Nagdilim na po ang aking paningin at doon ko po ipinutok." [10] He averred that on the date and time in question, he was at the tricycle terminal near the Metro Batangas Concrete Mix Corporation where Lumbera worked when the latter suddenly approached, boxed, and threatened to kill him. He was about to retaliate but someone pacified him. Thereafter, Lumbera went inside his office. Then, someone shouted that Lumbera was making his way back and when accused-appellant looked behind him, he saw Lumbera pointing a sumpak at him. They struggled for the possession of the weapon and it was when accused-appellant finally took hold of it that he fired at Lumbera. When accused-appellant saw that Lumbera had fallen to the ground, he immediately left the place and went into hiding until he was finally arrested in Tanay, Rizal. [11]

The RTC Ruling

In a Decision [12] dated February 27, 2012, the Regional Trial Court of Pallocan West, Batangas City, Branch 3 (RTC) found accused-appellant guilty beyond reasonable doubt of the crime of Murder and sentenced him to suffer the penalty of reclusion perpetua, as well as to pay the heirs of Lumbera the following amounts: (1) P50,000.00 as civil indemnity; (2) P44,500.00 as actual damages; (3) P50,000.00 as moral damages; and (4) P30,000.00 as exemplary damages. [13]

In convicting accused-appellant, the RTC found that he failed to satisfy the first and most important element of self-defense, i.e., unlawful aggression. Taking into consideration the version of the facts as narrated by accused-appellant that it was Lumbera who first boxed him and subsequently, pointed a sumpak at him and that they grappled for the possession thereof, the RTC opined that it was not sufficient to establish unlawful aggression. Moreover, the manner of shooting Lumbera and the injuries on his head showed a determined effort to kill which, thus, belies self-defense. [14]

Likewise, the RTC held that treachery attended the killing, as Lumbera was not given the time to flee or to prepare a defense or at the least, offer any resistance against the sudden attack. Parenthetically, the RTC ruled that even if the attack had been frontally made, it did not preclude the attendance of treachery, the attack being no less unexpected and sudden. [15]

The CA Ruling

In a Decision [16] dated December 5, 2013, the CA affirmed the conviction of accused-appellant upon a finding that he failed to establish the elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. [17] The CA held that no unlawful aggression emanated from Lumbera as in fact, it was accused-appellant who was the aggressor, having shot Lumbera without any warning. Moreover, when Lumbera had already fallen to the ground, accused-appellant even hit his head twice. Corollarily, the number, location, and severity of the wounds inflicted upon Lumbera effectively negated accused-appellant's claim of self-defense, which, by and large, was also uncorroborated and unsubstantiated. [18]

Neither did the CA give credence to accused-appellant's insistence that the mitigating circumstance of passion or obfuscation was present in the killing of Lumbera. To reiterate, records show that Lumbera did not do anything that would have reasonably incited accused-appellant to attack him. Nor could accused-appellant properly claim that he lost his mind due to anger as would have pushed him to shoot Lumbera. [19]

Finally, the CA upheld the amounts of damages awarded by the RTC.[20]

The Issue Before the Court

The issue to be resolved in this case is whether or not the CA erred in upholding accused-appellant's conviction for the crime of Murder.

The Court's Ruling

The appeal is bereft of merit.

In order for self-defense to be appreciated, accused-appellant must be able to prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[21] An accused who invokes self-defense has the burden to prove all the aforesaid elements, the most important of which is unlawful aggression. Being the basic requirement in a plea of self-defense,[22] unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[23] No self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel.[24]

In this case, the requisite unlawful aggression from the victim, Lumbera, is patently absent. The evidence failed to establish that accused-appellant's life was in danger when he encountered Lumbera. Instead, and as aptly pointed out by the CA, it was accused-appellant who was the aggressor, having fired the sumpak at Lumbera when they crossed paths by the side of the road, and when the latter had fallen to the ground, hit his head twice with the said weapon. The entire incident was witnessed by de Leon, whose testimony was correctly given probative weight and value by the RTC and the CA, being a disinterested witness and bereft of ill motive to testify falsely against accused-appellant.[25] Accused-appellant, having failed to discharge the burden of proving unlawful aggression, the Court therefore affirms the finding of the RTC and the CA that he did not act in self-defense.

Similarly, treachery as a qualifying circumstance was correctly appreciated. Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[26] In this case, a credible eyewitness account established that accused-appellant, upon meeting Lumbera by the roadside, suddenly fired a sumpak against the latter, leaving him unable to defend himself or evade the attack. The assault on Lumbera ensured that accused-appellant would be able to consummate the crime without risk to his own person, hence, the qualifying circumstance of treachery. Finally, with regard to the use of an unlicensed firearm, a circumstance alleged in the information, the Court shall no longer delve upon its significance in this case, the same not having been appreciated by the courts a quo.

On this score, this Court has stated that, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, it generally defers to the trial court's evaluation of the credibility of witnesses especially if such findings are affirmed by the CA. This must be so since the trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their deportment and manner of testifying under grueling examination.[27]

In view of the foregoing, the RTC and the CA correctly sentenced accused-appellant to reclusion perpetua. However, pursuant to Section 3[28] of Republic Act No. 9346,[29] accused-appellant shall not be eligible for parole.[30]

Also, the Court finds it necessary to modify the amounts of civil indemnity and moral damages awarded in order

to conform with prevailing jurisprudence.[31] Hence, there being no aggravating or mitigating circumstances in this case, accused-appellant is ordered to pay the amount of P75,000.00 as civil indemnity and P75,000.00 as moral damages to the heirs of Lumbera. Likewise, the total amount of actual damages awarded, as evidenced by the receipts on record,[32] should be P44,345.50 instead of P44,500.00. Meanwhile, the award of P30,000.00 as exemplary damages is affirmed. In addition, the Court imposes, on all monetary awards for damages, interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.[33]

WHEREFORE, the appeal is DISMISSED. The Decision dated December 5, 2013 of the Court of Appeals in CA-G.R. CR.-H.C. No. 05549 finding accused-appellant Ernie Inciong y Orense (accused-appellant) GUILTY beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby AFFIRMED with MODIFICATION sentencing accused-appellant to suffer the penalty of reclusion perpetua, without eligibility for parole, and ordering him to pay the heirs of Jumar Lumbera the following amounts: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; (c) P44,345.50 as actual damages; and (d) P30,000.00 as exemplary damages. All damages awarded in this case shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.

Sereno, C. J. (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

[1] See Notice of Appeal dated December 23, 2013; rollo, pp. 19-20.

[2] Id. at 2-18. Penned by Associate Justice Michael P. Elbinias with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela concurring.

[3] "Bino" in some parts of the records.

[4] See id. at 3. See also CA rollo, p. 41.

[5] See rollo, pp. 3-4. See also TSN, April 25, 2011, pp. 12-15.

[6] See rollo, p. 4. See also Certificate of Death, records, p. 113, including dorsal portion; Autopsy Report, records, p. 116; and Certificate of Post-Mortem Examination, records, p. 117.

[7] See CA rollo, pp. 45-46. See also TSN, August 25, 2011, pp. 12-17.

[8] See TSN, March 9, 2010, pp. 5-14.

[9] Records, p. 1.

[10] See rollo, p. 5. See also TSN, August 15, 2011, p. 7.

[11] See CA rollo, p. 48. See also TSN, August 15, 2011, pp. 4-9.

[12] CA rollo, pp. 40-57. Penned by Judge Ruben A. Galvez.

[13] Id. at 56-57.

[14] See id. at 52-55.

[15] See id. at 55-56.

[16] Rollo, p. 2-18.

[17] See *id.* at 11, citing *People v. De Jesus*, 655 Phil. 657, 673 (2011).

[18] See *id.* at 11-13.

[19] See *id.* at 13-14.

[20] See *id.* at 17.

[21] *People v. Gonzales*, G.R. No. 195534, June 13, 2012, 672 SCRA 590, 595.

[22] See *id.*

[23] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 202.

[24] See *Guevarra v. People*, G.R. No. 170462, February 5, 2014, 715 SCRA 384, 396-397.

[25] See *People v. Balinas, Jr.*, 588 Phil. 604, 610-611 (2008).

[26] *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 571-572.

[27] *People v. Malicdem*, *supra* note 23, at 201.

[28] Sec. 3 of Republic Act No. 9346 provides:

SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[29] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES" (approved on June 24, 2006).

[30] See *People v. Argula*, G.R. No. 213216, April 22, 2015.

[31] See *People v. De Los Santos*, G.R. No. 207818, July 23, 2014, 731 SCRA 52, 65.

[32] Records show that the receipt for the flowers was issued to Metro Batangas Concrete Mix Corporation and not to Thelma M. Lumbera and that, for the wake expenses, two (2) of the receipts presented have the same Official Receipt Number. (See records, pp. 119-124.)

[33] See *People v. Matibag*, G.R. No. 206381, March 25, 2015, citing *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 161.

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