

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY GONZALES Y COS AND RENE GONZALES Y COS, ACCUSED,

G.R. No. 218946. September 05, 2018

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CAGUIOA, J:

Before this Court is an appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated December 11, 2014 of the Court of Appeals (CA), Second Division in CA-G.R. CR.-H.C. No. 06452, which affirmed the Decision[3] dated September 5, 2013 of the Regional Trial Court of Masbate City, Branch 46 (RTC), in Crim. Case No. 11906, finding herein accused-appellant Ricky Gonzales (Ricky) guilty of the crime of murder under Article 248 of the Revised Penal Code.

The Facts

Ricky and his brother and co-accused Rene Gonzales (Rene) were charged with the crime of murder in an Information dated March 17, 2005. The accusatory portion of which, reads:

That on or about 1:00 o'clock in the morning of January 23, 2005, at Sitio Sabang, Brgy. Bantigue, Masbate City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one BOBBY SOLOMON, by then and there stabbing him with the use of a knife, hitting him on the chest and on the stomach, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death.

Contrary to Law.[4]

Ricky pleaded not guilty, while Rene remains at large.

Version of the Prosecution

The prosecution presented four witnesses, namely: eyewitness Leo Garcia (Leo); Dr. Renato Quinto (Dr. Quinto); PO3 Dandy Ferriol (PO3 Ferriol); and Bobby Solomon's (Bobby) widow, Mary Jane Solomon (Mary Jane).[5]

Prosecution eyewitness Leo testified that in the morning of January 23, 2005, he was sleeping at his house.[6] At around 1:00 a.m., he was awakened by the cry of his child whose sleep was disturbed by the commotion outside.[7] Leo got up to investigate and, at the same time, to buy cigarettes.[8] Leo then discovered that the commotion came from the house of his neighbor, Bobby.[9] Bobby and his nephew, Rene, were outside Bobby's house and were taunting each other.[10] This confrontation led to Rene punching Bobby who failed to retaliate.[11]

Ricky then emerged from the plaza, which was five meters away from Leo's house, and without warning stabbed Bobby three times with a knife which was approximately nine inches long.[12] Bobby was hit at his left forearm, middle of his chest, and at his stomach.[13] When people started arriving to help the victim, Rene and Ricky escaped together.[14]

Dr. Quinto was the doctor who admitted the victim at the Masbate Provincial Hospital on January 23, 2005 at 2:30 in the morning.[15] He testified that the victim suffered four injuries on his body, the most fatal of which was the one he sustained at the upper left quadrant that caused perforations of his large and small intestines, as well as his blood vessels.[16] Bobby died while in surgery.[17]

PO3 Ferriol testified that he was the investigator in relation to the stabbing of the victim. He personally interviewed Leo and Mary Jane on January 24, 2005 or the day after the stabbing incident.[18] He also testified that Barangay Kagawad Dario Gomez (Dario) went to the Masbate City Police Station and turned over the custody of Ricky.[19] He was thereby informed by Dario that Ricky voluntarily surrendered to him.[20]

Mary Jane testified that Ricky and Rene are the nephews of Bobby.[21] She also mentioned that she had to spend P15,000.00 for her deceased husband's hospital bills and undetermined amount for hospital expenses.[22] Unfortunately, she was unable to present any receipt in support thereof.[23]

Version of the Defense

Ricky admitted that he stabbed and killed the victim, but only because it was necessary to defend himself.[24] At around 11:00 p.m. of January 22, 2005, Ricky arrived at a benefit dance in the plaza.[25] He got tired of dancing at around 1:00 a.m. of January 23, 2005, and decided to leave.[26] As he passed by the house of Bobby, Ricky observed that Bobby was staring at him in a bad way.[27] Ricky claimed that he saw Bobby was about to strike him with a knife, but he was fortunate enough to stab him first.[28] When someone fired a warning shot to stop them, he ran away but later voluntarily surrendered himself to their barangay captain upon knowing that Bobby died.[29]

Ruling of the RTC

The RTC found Ricky guilty beyond reasonable doubt of murder. It held that since there was treachery in Ricky's sudden and unexpected attack, the killing was qualified to murder. The dispositive portion of the RTC Decision reads:

Wherefore, premises considered, this court finds accused RICKY GONZALES Y COS GUILTY beyond reasonable doubt of the crime of MURDER. Considering the attendant circumstance of voluntary surrender pursuant to Article 63 of the Revised Penal Code, accused is hereby sentenced to an imprisonment of reclusion perpetua. His period of detention is credited in his favor. He is also ordered to pay the heirs of Bobby Solomon the amount of Fifty Thousand pesos (P15,000.00) (sic) as moral damage[s] and Twenty Five Thousand pesos (P25,000.00) as nominal damage[s].

It appears that the accused Rene Gonzales y Cos remains-at-large despite considerable lapse of time. The case against him is hereby ordered archived pending his arrest.

SO ORDERED.[30]

Ruling of the CA

The CA dismissed the appeal. The CA held that there is no question that Ricky killed the victim. It also found that the RTC was correct in ruling that Ricky miserably failed to prove the justifying circumstance of self-defense.[31]

Further, it ruled that there was indeed treachery as Bobby was completely deprived of a real chance to defend himself.[32] He was just boxed by Rene when Ricky suddenly arrived and stabbed him.[33] The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated September 5, 2013 of the Regional Trial Court, Branch 46, Masbate City is AFFIRMED WITH MODIFICATION in that the award

of nominal damages is DELETED. Consequently, accused-appellant Ricky Gonzales is ORDERED to pay the heirs of victim Bobby Solomon the following: (a) Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity; (b) Seventy-Five Thousand Pesos (P75,000.00) as moral damages; (c) Twenty-Five Thousand Pesos (P25,000.00) as temperate damages; and (d) interest on all award of damages at the rate of six percent (6%) per annum reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.[34]

The Court's Ruling

The appeal is partly meritorious.

The elements of self-defense were not established.

In the case at bar, the accused has already admitted that he stabbed and killed the victim, but he advances that his actions were necessary to defend himself. A plea of self-defense admits the commission of the act charged as a crime; accordingly, the onus probandi falls on the accused to prove that such killing was justified — failure to discharge which renders the act punishable.[35]

Thus, to exonerate himself, the accused must establish: (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part.[36] Of the three, unlawful aggression is the foremost requirement; absent such element, self-defense, whether complete or incomplete, cannot be appreciated.[37]

The records of the case indubitably show that Ricky failed to establish that there was unlawful aggression on the part of Bobby. The Court agrees with the CA that Ricky's claim was self-serving, without any corroborating evidence.[38] He did not even give any explanation on why Bobby allegedly attacked him with a knife.[39] The Court, in *Toledo v. People*,^[40] held that the plea of self-defense cannot be justifiably entertained where it is uncorroborated by any separate competent evidence and is in itself extremely doubtful.

In fact, the evidence is more in accord with the prosecution's version of the events. Leo, the prosecution eyewitness, positively stated that Ricky was not coming to his brother's aid at the time of the stabbing, as the victim did not retaliate after receiving a blow from Rene. Leo's testimony is as follows:

Q:

And what happened after your child woke up?

A:

I heard a commotion outside our house.

Q:

Can you tell us what was the commotion about?

A:

Caused by teasing each other and after my child woke up I also woke up.

Q:

And after you woke up what happened next?

A:

When I woke up, I went outside our house to buy a cigarette.

x x x x

Q:

Mr. Witness, after [you] woke up and went outside x x x the house to buy a [cigarette], can you tell us what is the incident that happened?

A:

I saw Bobby Solomon was boxed by Rene.

x x x x

Q:

And after this Rene Gonzales boxed Bobby Solomon, what happened next?

A:

I saw Ricky Gonzales get out o[f] the plaza and [stab] Bobby Solomon.

x x x x

Q:

For how many times did Ricky Gonzales [stab] Bobby Solomon?

A:

3 times.

Q:

And can you tell this Court [where] was Bobby Solomon [stabbed by] Ricky Gonzales?

A:

Witness pointed to his left forearm, at the middle of his chest and at the stomach.

Q:

What was the weapon used by Bobby Solomon or Ricky Gonzales rather in stabbing Bobby Solomon?

A:

Knife which is about 9 inches long.

x x x x

Q:

And after Ricky stabbed [Bobby 3 times], what happened next?

A:

They helped and brought Bobby to the hospital.

Q:

What about Ricky and Rene?

A:

Returned to their house.

x x x x

Q:

And because Rene boxed Bobby and Bobby was hit, Bobby retaliated immediately, right?

A:

No Sir.

Q:

And how can you be sure x x x that Bobby did not retaliate when he was boxed by Rene?

A:

Because I saw it.

x x x x

Q:

And is it possible also that Ricky merely acted [in] defense of his brother?

A:

No sir.[41]

All told, the Court finds the evidence sorely lacking in establishing self-defense on the part of Ricky.

The prosecution failed
to prove treachery.

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.[42] 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.[43] 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.[44]

The RTC erred when it ruled that treachery was present as said finding is not supported by the evidence. It did not even fully discuss its appreciation of the circumstance of treachery and merely held as follows:

Was there a treachery in the killing of Bobby Solomon? This court rules in the affirmative. The stabbing of the victim by the accused was so sudden that the victim had no opportunity to defend himself. After being boxed by his brother/co-accused Rene Gonzales, accused Ricky Gonzales came to the aid of his brother. However, his act does not constitute defense of a relative since the means he employed to defend his brother [is] above and over that should be employed. It was his brother who boxed the victim. His brother had the upperhand in the fight. Why should he used (sic) a knife to help his brother is appalling and does not constitute a defense but rather it shows a resolute mind to kill immediately the victim.[45] (Emphasis ours)

Accordingly, the prosecution was unable to prove that Ricky intentionally sought the victim for the purpose of killing him. Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself.[46] There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.[47]

Indeed, it does not always follow that if the attack was sudden and unexpected, it should necessarily be deemed as an attack attended with treachery.[48] In fact, the wounds of the victim show that the attack was frontal, which indicates that the deceased was not totally without opportunity to defend himself.[49] Moreover, the stabbing, based on the evidence, appears to be the result of a rash and impetuous impulse of the moment arising from the commotion between Bobby and Rene which Ricky witnessed, rather than from a deliberated act of the will. As far as the prosecution's evidence is concerned, it was only able to establish the following: (a) a commotion was caused when Rene and Bobby were taunting each other; (b) Rene punched Bobby and (c) Ricky went out of the plaza and stabbed Bobby. Considering the foregoing, it was not proven that Ricky deliberately and consciously employed means, methods, or forms in the execution of the criminal act to ensure that Bobby could not defend himself. Thus, it is not possible to appreciate treachery against Ricky.

Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witness and the manner in which they testified.[50] However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances which if considered, would have altered the result.[51] 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.[52]

Therefore, with the removal of the qualifying circumstance of treachery, the crime is homicide and not murder. Under Article 249 of the Revised Penal Code, any person found guilty of homicide shall be meted the penalty of reclusion temporal, a penalty which contains three periods.[53] Given that Ricky voluntarily surrendered himself, Article 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period.[54] Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be reclusion temporal in its minimum period, while the minimum penalty shall be prision mayor in any of its periods.[55] Thus, he is to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.[56]

Finally, in view of the Court's ruling in *People v. Jugueta*,[51] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of P50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant Ricky Gonzales y Cos **GUILTY** of **HOMICIDE**, with the mitigating circumstance of voluntary surrender, for which he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. He is further ordered to pay the heirs of Bobby Solomon 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), Perlas-Bernabe, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Additional member per S.O. No. 2587 dated August 28, 2018.

[1] Rollo, pp. 18-20.

[2] Id. at 2-17. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Remedios A. Salazar-Fernando and Danton Q. Bueser.

[3] CA rollo, pp. 42-46. Penned by Judge Maximino R. Ables.

[4] Rollo, p. 3.

[5] Id. at 4.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 4-5.

[17] Id. at 5.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id. at 5-6.

[26] Id. at 6.

[27] Id.

[28] Id.

[29] Id.

[30] CA rollo, p. 46.

[31] Rollo, p. 10.

[32] Id. at 13.

[33] Id.

[34] Id. at 16.

[35] *People v. Raytos*, G.R. No. 225623, June 7, 2017. p. 6, citing *People v. Escarlos*, 457 Phil. 580, 594-595 (2003).

[36] Id.

[37] Id, citing *People v. Dulin*, G.R. No. 171284, June 29, 2015, 760 SCRA 413, 425.

[38] Rollo, p. 10.

[39] Id.

[40] 482 Phil. 292, 309 (2004).

[41] Rollo, pp. 11-12.

[42] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, p. 11.

[43] Id., citing *People v. Dulin*, 762 Phil. 24. 40 (2015).

[44] Id., citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[45] CA rollo, p. 46.

[46] *People v. Tugbo, Jr.*, 273 Phil. 346, 351 (1991) citing *People v. Vicente*, 225 Phil. 306 (1986); *People v. Salcedo*, 254 Phil. 74 (1989); *People v. Raquipo*, 266 Phil. 619 (1990).

[47] Id., citing REVISED PENAL CODE, Art. 14, par. 16.

[48] Id., citing *People v. Sabanal*, 254 Phil. 433 (1989).

[49] See id.

[50] *People v. Duran, Jr.*, supra note 42 at 14.

[51] Id., citing *People v. Gaspar*, 376 Phil. 762, 785 (1999).

[52] Id., citing *Luz v. People*, 683 Phil. 399, 406 (2012).

[53] *People v. Endaya, Jr.*, G.R. No. 225745, February 28, 2018, p. 9.

[54] Id.

[55] Id.

[56] Id. at 10.

[57] *People v. Jugueta*, 783 Phil. 806 (2016).

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