

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO JAPAG AND ALVIN LIPORADA, ACCUSED,

G.R. No. 223155. July 23, 2018

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Assailed in this appeal is the May 21, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 01807 which affirmed with modification the October 29, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, finding appellant Danilo Japag guilty beyond reasonable doubt of the crime of murder.

The Antecedent Facts

Appellant, together with his co-accused, Alvin Liporada (Liporada), was charged with the, crime of murder in an Information[3] dated May 11, 2009 which reads:

That on or about the 16[th] day of March, 2009[,] in the Municipality of Tunga, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping one another, with deliberate intent to kill, with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack and stab RODEL PARROCHO y MONTE, with the use of a bladed weapon, which accused Danilo Japag provided himself for the purpose, thereby inflicting upon the victim an incised wound at the back left, medial to the inferior portion of the left scapula, penetrating the thoracic cavity, which was the direct and immediate cause of death of said Rodel Parrocho y Monte.

CONTRARY TO LAW.

During his arraignment on July 7, 2009, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident is as follows:

On March 16, 2009, at around 3:00 p.m., Ramil Parrocho (Ramil), the victim's twin brother, was at a sari-sari store in front of Gregorio Catenza National High School when he saw appellant, Liporada, and Eman Macalalag (Macalalag) blocking the way of the victim who was then about to enter the school gate.[5]

Ramil thereafter saw Liporada punch his brother at the left cheek while being held in place by Macalalag. Suddenly, appellant, who was positioned behind the victim, drew a bladed weapon from his pocket and stabbed the latter at the back. Upon receiving the stabbing blow, the victim fell on the ground. The attack on the victim was so unexpected that Ramil and even the security guards at the school outposts were not able to come to his rescue. Appellant, Liporada and Macalalag immediately fled towards the direction of the highway.[6]

The victim was rushed to the EVRMC Hospital in Tacloban City, but he was pronounced dead on arrival. He died while the ambulance was en route to the hospital from the Municipality of Jaro.[7]

Based on the post-mortem examination conducted on the victim's body by Dr. Crescento A. Uribe (Dr. Uribe), the Municipal Health Officer, the cause of death was Intrathoracic Hemorrhage Secondary to a Penetrating Stab Wound. The victim sustained an incised wound about 2 centimeters in length below the scapular bone of his back. The wound was fatal because it penetrated the victim's thoracic (chest) cavity.[8]

Version of the Defense

Appellant raised the justifying circumstance of self-defense in order to exculpate himself from criminal liability, viz.:

x x x x On the mentioned date[,] at 2:00 o'clock in the afternoon, he was practicing together with his classmates a song for their MSEP subject. Alvin Liporada and Eman Macalalag were also there. While they were practicing, Rodel Parrocho came in and threatened to kill him if he goes outside the school. Later that day, while he was on his way home, Rodel Parrocho attacked him and hit him on his face with a fist blow causing him to fall. When he was about to get up, Rodel Parrocho stabbed him with the use of [a] short bladed weapon locally known as sipol. Fortunately, he was able to parry it and wrestled for the knife. The next thing he knew was Rodel Parrocho fell to the ground with a stab wound. This gave him an opportunity to run home. The following day, March 17, 2009[,] at about 7:00 o'clock in the evening, he went to [the] Tunga Police Station to surrender. His father accompanied him.[9]

Ruling of the Regional Trial Court

In its Decision dated October 29, 2013, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.

The RTC found no merit in appellant's contention that he had acted in self-defense which resulted in the victim's killing. Aside of the absence of proof showing that he had sustained any injury as a result of the supposed hard punch thrown at him by the victim,[10] the RTC also explained that:

Verily, the self-defense invoked by the accused cannot be appreciated, as it is unworthy of belief. The wound sustained by the victim at his back, would belie the claim of the accused that the stabbing was not deliberate. In fact, accused[s] intent to kill the victim was proven through the deadly weapon used by him, his fatal stab thrust, and the location where the fatal blow was directed, which stab wound resulted in the severe blood loss of the victim leading to the latter's immediate death. x x x[11]

Moreover, the RTC ruled that the victim's killing was attended by the qualifying circumstance of treachery, as the suddenness of appellant's attack on the victim from behind rendered the latter defenseless and unable to flee or escape. The RTC held that appellant had consciously adopted the manner by which he mounted the attack on the victim in order to ensure his safety from any retaliatory attack and to deny the victim an opportunity to defend himself or repel the attack.[12]

Accordingly, the RTC sentenced appellant to suffer the penalty of reclusion perpetua. It likewise ordered appellant to pay the heirs of the victim: P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P17,500.00 as actual damages.[13]

The RTC also issued an alias warrant of arrest against Liporada "to be served in his residence or anywhere where he could be found within the territory of the Philippines." [14]

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated May 21, 2015, the CA affirmed the assailed RTC Decision with modification as regards the

imposition of interest at 6% per annum on all damages awarded from date of finality of the judgment until fully paid.[15]

Like the RTC, the CA also rejected appellant's claim of self-defense in the absence of proof of unlawful aggression on the part of the victim.[16] It noted that Ramil's "clear and detailed account of the incident negate[d] any hint that the unlawful aggression originated from the victim,"[17] as did the nature and location of the wound sustained by the latter.[18]

The CA further ruled that the elements of the qualifying circumstance of treachery were present in the case, since "[t]he victim had no chance to avoid the attack when he was boxed by Alvin first and then suddenly stabbed from behind by [appellant], while being held by Eman." [19] It thus concluded that under those dire circumstances, the victim could not have had the chance to defend himself.[20]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether appellant was able to sufficiently prove the justifying circumstance of self-defense;[21]

And second, whether the victim's stabbing was attended by treachery.[22]

The Court's Ruling

The appeal is unmeritorious.

It is settled that when an accused invokes self-defense, the burden of proof is shifted from the prosecution to the defense,[23] and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: first, unlawful aggression on the part of the victim; second, reasonable necessity of the means employed to prevent or repel such aggression; and third, lack of sufficient provocation on the part of the person defending himself.[24]

As the burden of proof is shifted to the defense, the accused must rely on the strength of his evidence and not on the weakness of the prosecution's evidence. After all, by invoking self-defense, the accused, in effect, admits having killed or injured the victim, and he can no longer be exonerated of the crime charged if he fails to prove the requisites of self-defense.[25]

The most important requisite of self-defense is unlawful aggression which is the condition sine qua non for upholding self-defense as a justifying circumstance.[26] In other words, unless it is shown by clear and convincing evidence that the victim had committed unlawful aggression against the accused, "self-defense, whether complete or incomplete, cannot be appreciated, for the two other essential elements [thereof] would have no factual and legal bases without any unlawful aggression to prevent or repel." [27]

Unlawful aggression "contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of [a] weapon." [28]

After a thorough review of the records, we find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.

First, it is undisputed that appellant boarded a motorcycle and fled the situs criminis immediately after stabbing the victim at the back.[29] "Flight is a veritable badge of guilt and negates the plea of self-defense." [30]

Second, the location, nature and seriousness of the wound sustained by the victim is inconsistent with self-defense;^[31] rather, these factors indicate a determined effort to kill.

On this point, Dr. Uribe testified that the stabbing wound sustained by the victim at the back portion of his body can be characterized as fatal, as it penetrated the latter's chest cavity, viz.:

[PROS. CONSTANTINO F. ESBER]

Q:

Going now straight [to] your external findings, will you please explain your finding Number 4[?] [W]hat is meant by that?

A:

'Incised wound about 2 centimeters in length located at the back left, medial to inferior portion of the left scapula, penetrating the thoracic cavity.'

Q:

Since there is no sketch attached to your post mortem report[,] will you indicate using the [interpreter as medium where that wound [was] exactly located?

A:

This is the inferior portion of the scapula, so medial portion, [i]t is located here.

Witness indicated at the left side of the back portion below the scapular bone.

Q:

In your examination[,] [d]octor, were you able to determine the entry?

A:

At the back.

Q:

Considering that it was at the back, was it probable that the assailant was at the back of the victim?

A:

Yes.

Q:

How many incise[d] wound[s] have you found on the said victim?

A:

Only one incised wound.

Q:

Considering that [sic] its location and nature, how would you classify the wound[?] [W]as it fatal?

A:

It was fatal because it penetrated the thoracic cavity.

Q:

What is meant, [d]octor, by thoracic cavity?

A:

Chest cavity.[32] (Emphasis supplied)

And third, both the RTC and the CA found the testimony of Ramil (the victim's twin brother) to be clear and convincing in its vital points, i.e., on his detailed narration of the stabbing incident and his positive identification of appellant as one of his brother's assailants.[33] The pertinent portion of Ramil's testimony is quoted below:

[PROS. CONSTANTINO F. ESBER]

Q:

What did [Danilo Japag, Alvin Liporada, and Eman Macalalag] do next[,] if any[,] aside from being at the gate of the school?

A:

A: I saw them x x x x obstructing the passing on that gate of my brother Rodel and Danilo Japag stabbed Rodel.[34]

x x x x

Q:

Of the three, who boxed [the victim]?

A:

Alvin Liporada.

Q:

And was your brother hit?

A:

Yes[,] sir.

Q:

Where?

A:

On his face[.] ([W]itness indicated the left cheek.)

Q:

How many times did Alvin Liporada [delivered the] boxing blow [on the victim]?

A:

Only once[,] sir[,] and immediately thereafter[,] Danilo Japag delivered [a] stab thrust.[35]

x x x x

Q:

Is Danilo Japag around in the court room today?

A:

Yes[,] sir.

Q:

Will you point him out?

A:

There[,] ([W]itness pointed to a person inside the court room [who], when asked of his name[,]) identified himself as Danilo Japag.)([36]

We, too, see no reason to disbelieve Ramil's testimony, as it was not shown that the lower courts had overlooked, misunderstood or misappreciated facts or circumstances of weight and substance which, if properly considered, would have altered the result of the case.[37]

Simply stated, appellant's self-serving and unsubstantiated allegations that the victim was the unlawful aggressor must necessarily fail when weighed against the positive, straightforward and overwhelming evidence of the prosecution. Where unlawful aggression on the part of the victim is not proven, there can be no self-defense.

We likewise agree with the CA's conclusion that the victim's killing was qualified by treachery.[38]

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."[39]

In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (a) the victim was fatally stabbed[40] by appellant from behind[41] immediately after receiving a punch in the face from Liporada;[42] (b) the victim was held in place by Macalalag when the stabbing blow was delivered by appellant;[43] and (c) the attack was so sudden and unexpected that the victim's brother and even the nearby security guards were unable to prevent it.[44]

The totality of these circumstances clearly shows that the means of execution of the attack gave the victim no opportunity to defend himself or to retaliate, and said means of execution was deliberately adopted by appellant.[45]

In light of these, we find no reason to overturn the factual findings and conclusions of the lower courts as they are supported by the evidence on record and applicable laws. However, we deem it appropriate to increase the amount of exemplary damages from P30,000.00 to P75,000.00 in conformity with prevailing jurisprudence.[46] In addition, and in lieu of actual damages, appellant is ordered to pay temperate damages in the amount of P50,000.00.[47]

WHEREFORE, the appeal is DISMISSED. The May 21, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 01807 is hereby AFFIRMED with MODIFICATION in that the award of exemplary damages is increased to P75,000.00; and in lieu of actual damages, temperate damages in the amount of P50,000.00 is awarded.

SO ORDERED.

Leonardo-De Castro,[*] (Acting Chairperson), Jardeleza, Tijam, and Gesmundo,**] JJ., concur.

[*] Per Special Order No. 2559 dated May 11, 2018.

**] Per Special Order No. 2560 dated May 11, 2018.

[1] Rollo, pp. 4-23; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob.

[2] CA rollo, pp. 24-39; penned by Presiding Judge Emelinda R. Maquilan.

[3] Records, p. 1.

[4] See Order dated July 7, 2009, id. at 15-16; issued by Presiding Judge Crisostomo L. Garrido.

[5] CA rollo, p. 51.

[6] Id.

[7] Id. at 51-52.

[8] Id. at 52. See also POSTMORTEM (EXTERNAL) REPORT dated March 16, 2009, Folder of Exhibits, p. 1.

[9] Id. at 16-17.

[10] Id. at 35.

[11] Id. at 36-37.

[12] Id. at 38.

[13] Id. at 39.

[14] Id.

[15] Rollo, p. 23.

[16] Id. at 18.

[17] Id. at 18-19.

[18] Id. at 19.

[19] Id. at 22.

[20] Id.

[21] Id. at 17-19.

[22] Id. at 19-20.

[23] People v. Rubiso, 447 Phil. 374, 380 (2003).

[24] Id. at 380-381. See also REVISED PENAL CODE, Article 11(l).

[25] See People v. Gumayao, 460 Phil. 735, 746 (2003).

[26] *People v. Panerio*, G.R. No. 205440, January 15, 2018.

[27] *Id.* Italics supplied.

[28] *People v. Rubiso*, *supra* note 23 at 381.

[29] TSN, May 10, 2012, p. 13.

[30] *People v. Gumayao*, *supra* note 25 at 746.

[31] See *People v. Rubiso*, *supra* note 23 at 381-382.

[32] TSN, September 29, 2010, p.4.

[33] CA rollo, pp. 17-18.

[34] TSN, July 1, 2010, p. 5.

[35] *Id.* at 5-6.

[36] *Id.* at 8-[9*]. *unpaginated

[37] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008).

[38] Rollo, p.21.

[39] *People v. Alajay*, 456 Phil. 83, 92 (2003).

[40] TSN, September 29, 2010, p.4.

[41] TSN, July 1, 2010, p. 6.

[42] *Id.* at [13*]. *unpaginated.

[43] *Id.* at 7.

[44] *Id.* at [14-15*]. *unpaginated.

[45] See *People v. Alajay*, *supra* note 39 at 92.

[46] *People v. Jugueta*, 783 Phil. 806, 847-848 (2016).

[47] *Id.* at 846-847.

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