

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOMAR DOCA Y VILLALUNA, ACCUSED-APPELLANT.

G.R. No. 233479. October 16, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated March 28, 2017[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 08266 affirming the trial court's verdict of conviction for murder against appellant.

The Proceedings Before the Trial Court

The Charge

Under Information dated July 3, 2007, appellant Jomar Doca y Villaluna was charged with murder for the killing of Roger C. Celestino, viz:

That on or about July 1, 2007 in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused JOMAR DOCA Y VILLALUNA armed with a Rambo knife, with intent to kill, with evident premeditation and with treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab ROGER C. CELESTINO, a minor 17 years of age thereby, inflicting upon him stab wound which caused his death.

CONTRARY TO LAW.[2]

The case was raffled to the Regional Trial Court - Branch 4, Tuguegarao City, Cagayan. On arraignment, appellant pleaded "not guilty". Trial on the merits ensued.

During the trial, Rogelio Castro, Benjamin Cabisora, Dr. Rebecca Battung, SPO3 Bienimax Constantino and PO3 Roque Binayug testified for the prosecution. The testimony of Roger's father Pablo Celestino was dispensed with after the prosecution and the defense stipulated that Roger's death resulted in actual damages of P30,000.00. Meanwhile, appellant testified as lone witness for the defense.[3]

The Prosecution's Version

Eyewitness Rogelio Castro testified that on July 1, 2007, around 4 o'clock in the afternoon, he and Roger, along with two (2) others, were walking home from the house of Willie Cabisora in Villa Salud, Barangay Gadu, Solana, Cagayan when they saw appellant standing inside a waiting shed, drunk and angry. Appellant was looking for Roger, shirtless, revealing a Rambo knife strapped around his waist. Roger was walking about fifty (50) meters ahead of them and arrived at the waiting shed first. As Roger was passing by appellant, the latter suddenly stabbed him in his left breast with the Rambo knife. As Roger fell on the ground, appellant immediately fled. He and his companions wanted to carry Roger into his house but the latter had already passed away.[4]

Benjamin Cabisora testified that he is Roger's relative and appellant's friend. On July 1, 2007, around 4:30 in the afternoon, he was seated in a waiting shed in front of the house of one Georgie Juan. Beside him stood appellant who appeared to be waiting for someone. He then saw Roger and his friends leave the house of Willie Cabisora. When Roger reached the waiting shed, he suddenly fell on the ground.[5]

Dr. Rebecca Battung testified that Roger died of shock due to loss of more than 1.5 liters of blood. The shock, in turn, was caused by severe hemorrhage from the stab wound in his chest

PO3 Roque Binayng and SPO3 Bienimax Constantino testified that on July 1, 2007, they received a report at the police station regarding a stabbing incident in Villa Salud. They proceeded to the area and saw Roger's lifeless body inside a waiting shed. The investigating team recovered a Rambo knife beside the body of the victim. According to witnesses, it was the same Rambo knife used in the killing.[6]

The Defense's Version

Appellant invoked self-defense. He testified that on July 1, 2007, around 4:30 in the afternoon, he went to the house of his friend Georgie Juan. When he found out that Juan was not home, he decided to wait for him in a nearby waiting shed. There, he found prosecution witness Benjamin Cabisora. Roger arrived a few minutes later. Without warning, Roger boxed him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (balisong), he grappled with Roger for the weapon. He was able to take hold of the fan knife and use it to stab Roger. He immediately fled because he feared for his life. The following day, he surrendered to then Barangay Captain Edgar Palattao of Barangay Andarayan who took him to the police authorities.[7]

The Trial Court's Ruling

By Judgment dated February 4, 2016,[8] the trial court found appellant guilty of murder, viz:

WHEREFORE, accused JOMAR DOCA y Villaluna is hereby found GUILTY beyond reasonable doubt for Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659.

The accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the private complainant the amount of SEVENTY-FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages, THIRTY THOUSAND PESOS (P30,000.00) as exemplary damages, and THIRTY THOUSAND PESOS (P30,000.00) as actual damages.

Records shows that the accused was under the custody of the Cagayan Provincial Jail, since July 3, 2007. The preventive imprisonment of the accused during the pendency of this case shall be credited in full in his favor if he abided with the disciplinary rules upon convicted prisoners.

SO ORDERED.[9]

The trial court held that appellant admitted to killing Roger when he invoked self-defense. But to justify the killing, the burden was on appellant to prove that Roger provoked him into committing the act. Appellant failed to discharge this burden.[10]

Although the trial court did not find sufficient evidence to establish that the killing was premeditated, it nevertheless appreciated treachery to have qualified the killing to murder. Meanwhile, voluntary surrender was not appreciated in appellant's favor because it was not shown that he acknowledged his guilt or wished to save the authorities the trouble of searching for and capturing him when he surrendered to Brgy. Captain Palattao.[11]

The Proceedings before the Court of Appeals

Appellant faulted the trial court for relying on Rogelio's alleged uncorroborated testimony. Benjamin merely testified that he saw Roger fall to the ground without mentioning appellant's participation in Roger's death.[12]

Too, the trial court erred in ruling that he employed treachery in killing Roger. The allegations of the witnesses that he was drunk, angry, and specifically looking for Roger should have cautioned Roger and his group from approaching him.[13]

Appellant maintained that he acted in self-defense.[14] At any rate, his voluntary surrender to Brgy. Captain Palattao should be considered as a mitigating circumstance.[15]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Reynaldo L. Saldares and State Solicitor Jocelyn P. Castillo--Sarmiento defended the verdict of conviction. It riposted that the prosecution witnesses were able to identify appellant as the person who killed Roger. Treachery attended the killing since Roger was unarmed and had no means to defend himself. More, Roger was only seventeen (17) years old when the crime was committed; he was definitely weaker compared to appellant, a mature male. As for appellant's claim of self-defense, it may not prosper in the absence of proof that unlawful aggression emanated from Roger.[16]

The Court of Appeals' Ruling

Under Decision dated March 28, 2017,[17] the Court of Appeals affirmed with modification on the monetary awards, viz:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated February 4, 2016 is AFFIRMED with MODIFICATION in that the award of Thirty Thousand Pesos (P30,000.00) as actual damages is deleted. In lieu thereof, temperate damages in the amount of Fifty Thousand Pesos (P50,000.00) is awarded. Accused-appellant Jomar Doca y Villaluna is further ordered to pay Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and Seventy-Five Thousand Pesos (P75,000.00) as exemplary damages. All damages awarded shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[18]

The Court of Appeals did not entertain appellant's theory of self-defense because his only proof thereof was his self-serving testimony. The testimonies of the prosecution witnesses also showed that Roger did not attack appellant in any way.[19]

The Court of Appeals appreciated the presence of treachery and qualified the killing to murder. It ruled that appellant's attack was so sudden and unexpected that Roger was completely deprived of a real chance to defend himself.[20]

Although the trial court erred when it failed to appreciate the mitigating circumstance of voluntary surrender, the Court of Appeals, nevertheless, affirmed the imposition of reclusion perpetua on appellant.[21]

As for the monetary awards, the Court of Appeals affirmed the award of P75,000.00 as civil indemnity, increased moral and exemplary damages from P50,000.00 and P30,000.00, respectively, to P75,000.00 each, deleted the award of actual damages of P30,000.00, and granted temperate damages of P50,000.00. It also imposed six percent (6%) interest per annum on the monetary awards from finality of the decision until fully paid.[22]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays for his acquittal. In compliance with Resolution dated December 13, 2017,[23] both appellant and the OSG manifested that, in lieu of supplemental briefs, they

were adopting their respective briefs before the Court of Appeals.[24]

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder?

Ruling

Murder is defined and penalized under Article 248 of the Revised Penal Code, viz:

Article 248. Murder. - Any 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 any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

xxxx

2. With evident premeditation;

xxxx

It requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.[25]

Appellant failed to establish that he acted in self-defense

Appellant admits the first two (2) elements but justifies the killing as an act of self-defense. According to appellant, he was waiting for his friend Georgie Juan in a nearby waiting shed when Roger arrived. Without warning, Roger boxed him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (balisong), he grappled with Roger for the weapon. He was able to take hold of the fan knife and used it to stab Roger. Thus, he was merely protecting himself from Roger's assaults.

We are not convinced.

When an accused invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea through credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he harmed or killed the victim.[26] For self-defense to be appreciated, appellant must prove 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. Unlawful aggression is the indispensable element of self-defense. If no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.[27]

As aptly noted by the courts below, appellant relied solely on his self-serving testimony that he acted in self-defense. He did not present any evidence to corroborate his claim. Neither did he offer any explanation why Roger allegedly attacked him. Surely, appellant's lone testimony cannot be considered as clear and convincing proof that he acted in self-defense.[28]

More, if at all there was unlawful aggression, it emanated not from the victim but from appellant, thus:[29]

Q: Why were you not able to reach home?

A: Because Roger Celestino got into trouble, sir.

Q: With whom?

A: Jomar Doca, sir.

Q: How did it happen?

A: Jomar suddenly stabbed Roger Celestino, sir.

xxxx

Q: How did Jomar Doca suddenly stabbed (sic) Roger Celestino?

A: Roger Celestino passed by in front of Jomar Doca.

Q: And while Roger was passing by, what did Jomar Doca do?

A: Jomar Doca stabbed Roger Celestino, sir.

Q: How many times did Jomar Doca stabbed (sic) Roger Celestino?

A: Once, sir.

xxxx

Q: And what did Jomar Doca use in stabbing Roger Celestino?

A: Rambo knife, sir.

Q: And what happened to Roger Celstino when he was stabbed by Jomar Doca?

A: Roger Celestino fell down, sir.

Both the trial court and the Court of Appeals gave full credence to Rogelio's candid and unwavering eyewitness account of the incident. He was physically present at the locus criminis when it took place. He positively testified that appellant stabbed the victim while the latter was simply passing him by on his way home. His credible testimony was, thus, sufficient to support a verdict of conviction against appellant.

In this jurisdiction, the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand.[30] Hence, the trial court's factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.[31]

Appellant, nevertheless, assails Rogelio's testimony for allegedly being uncorroborated. This argument, however,

is misleading. For prosecution witness Benjamin testified that he saw Roger walking towards the waiting shed where appellant was waiting. When Roger passed by appellant, he suddenly fell on the ground.

The fact that Benjamin did not testify to having seen appellant deliver the killing blow is not fatal to the prosecution's case. His testimony that Roger suddenly fell on the ground is consistent with the prosecution's theory that there was no unlawful aggression which emanated from the victim; there was nothing for appellant to repel or defend himself from. In the absence of unlawful aggression attributable to Roger, appellant's claim of self-defense is unavailing.

Neither evident premeditation nor treachery attended the killing

The Information alleged that evident premeditation and treachery attended the killing. As consistently held by the courts below, the prosecution failed to prove that the killing was premeditated but treachery nevertheless qualified the killing to murder.

We disagree.

There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make.[32] The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape.[33]

Here, Rogelio and Roger were walking home when they saw appellant standing inside a waiting shed, drunk, angry and specifically looking for Roger. Appellant was shirtless, revealing a Rambo knife strapped around his waist. Given these circumstances, Roger cannot be characterized as an unsuspecting victim. He and his friends should have been alerted of an impending danger against his person coming from appellant. Yet he ignored the telltale signs of danger and proceeded to walk towards the waiting shed where appellant lie in wait, and where he eventually met his demise.

In another vein, the attack on Roger, though sudden, was not treacherous. For there was no showing that appellant consciously launched the sudden attack to facilitate the killing without risk to himself. Our ruling in *People v. Pilpa*[34] is apposite:

xxx [M]ere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a view to accomplishing the act without risk to the aggressor.

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a barangay tanod, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. xxx[35]

Similarly, in *People v. Albino*,[36] therein appellant's group and some locals were drawn into an altercation when

the victim approached to pacify them. Then, appellant suddenly shot the victim in the chest. The Court ruled that the sudden attack was not sufficient to qualify the killing to murder. For at that moment, appellant was enraged and did not have time to reflect on his actions. There was also no showing that he consciously launched the sudden attack to facilitate the killing without risk to himself. Appellant therein was thus convicted only of homicide.

All told, in the absence of evident premeditation and treachery, appellant may be convicted only of homicide for the killing of Roger C. Celestino.

Appellant's voluntary surrender mitigates
his criminal liability

Appellant further claims that the mitigating circumstance of voluntary surrender should be appreciated in his favor. Voluntary surrender requires the following: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[37]

This Court finds, as the Court of Appeals did, that voluntary surrender should be credited in favor of appellant. The facts clearly show that appellant was not arrested; he surrendered to Brgy. Captain Palattao who brought him to the police station; and he surrendered voluntarily.

Although the Court of Appeals appreciated the mitigating circumstance of voluntary surrender, it nonetheless held that it could not modify appellant's indivisible penalty of reclusion perpetua. But since this Court downgraded appellant's crime to homicide, appellant may now benefit from the attendant mitigating circumstance.

Penalty

Article 249 of the Revised Penal Code provides, thus:

Article 249. Homicide. - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Applying the Indeterminate Sentence Law[38] and considering the mitigating circumstance of voluntary surrender, appellant should be sentenced to eight (8) years of prision mayor as minimum to twelve (12) years and six (6) months of reclusion temporal as maximum.

In accordance with prevailing jurisprudence, the awards of P75,000.00 civil indemnity and P75,000.00 moral damages should be decreased to P50,000.00 each; and the award of P75,000.00 as exemplary damages should be deleted.[39] In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information.[40] Meanwhile, the award of temperate damages of P50,000.00 is retained.[41]

A six percent (6%) interest per annum on these amounts should be paid from finality of this decision until fully paid.

ACCORDINGLY, the appeal is PARTLY GRANTED. Appellant JOMAR DOCA y VILLALUNA is found guilty of HOMICIDE. He is sentenced to the indeterminate penalty of eight (8) years of prision mayor as minimum to twelve (12) years and six (6) months of reclusion temporal as maximum.

He is further required to pay P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Reyes, J., Jr., and Zalameda, JJ., concur.

[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Henri Jean Paul B. Inting (now a member of this Court); Rollo, p. 2.

[2] Rollo, p. 3.

[3] Id. at 3-5.

[4] CA rollo, pp. 45-46.

[5] Id. at 46.

[6] Id. at 46-47.

[7] Id. at 48-49.

[8] Penned by Lyliha A. Abella-Aquino; CA rollo, p. 81.

[9] CA rollo, p. 98.

[10] Id. at 52-53.

[11] Id. at 52.

[12] Id. at 120.

[13] Id. at 126-127.

[14] Id. at 128-131.

[15] Id. at 131-132.

[16] Id. at 163-175.

[17] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and now Supreme Court Associate Justice Henri Jean Paul B. Inting; Rollo, p. 2.

[18] Rollo, pp. 14-15.

[19] Id. at 10-12.

[20] Id. at 12-13.

[21] Id. at 13.

[22] Id. at 14.

[23] Id. at 22.

[24] Id. at 33 and 38.

[25] See *People v. Villanueva*, 807 Phil. 245, 252 (2017).

[26] *Velasquez v. People*, 807 Phil. 438, 450 (2017).

[27] *People v. Fontanilla*, 680 Phil. 155, 165 (2012).

[28] *People v. Tanduyan*, 306 Phil. 444, 449 (1994).

[29] Rollo, p. 11.

[30] See *People v. Ocdol*, 741 Phil. 701, 710-711 (2014).

[31] See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

[32] See *People v. Watamama*, 734 Phil. 673, 682 (2014).

[33] *Id.*

[34] G.R. No. 225336, September 05, 2018.

[35] *Id.*

[36] G.R. No. 229928, July 22, 2019.

[37] *People v. Manzano*, G.R. No. 217974, March 5, 2018.

[38] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

[39] See *People v. Jugueta*, 783 Phil. 806, 845 (2016).

[40] *Id.*

[41] See *People v. Macaspac*, 806 Phil. 285, 289-290 (2017).

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