

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ARMANDO BAGABAY Y MACARAEG, ACCUSED-APPELLANT.

G.R. No. 236297. October 17, 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 July 28, 2017 (Decision) of the Court of Appeals, Eleventh Division (CA), in CA-G.R. CR-HC No. 07665, which affirmed the Decision[3] dated January 22, 2015 of the Regional Trial Court, Branch 31, Guimba, Nueva Ecija (RTC), in Criminal Case No. 2819-G, finding herein accused-appellant Armando Bagabay y Macaraeg (Armando) guilty of the crime of Murder under Article 248 of the Revised Penal Code.

The Facts

Armando was charged with the crime of Murder under the following Amended Information:[4]

That on or about the 7[th] day of September 2010, at Barangay San Antonio, in the Municipality/City of CUYAPO, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill, while armed with a stainless knife, with treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab one Alfredo M. Guevarra, Jr. with the said knife inflicting upon him multiple stab wounds on different parts of his body which caused his death, to the damage and prejudice of the latter's family and heirs.

SO ORDERED.[5]

Upon arraignment, Armando pleaded not guilty.[6]

Version of the Prosecution

The prosecution offered the testimonies of Dr. Nemesio Belmonte, Analiza Guevarra, Romeo Sapin, PO2 Joey Soleman Martinez and eyewitnesses Angelica Guevarra, Virginia Pangalilingan, and Carlo Antonio Pacamana.[7] They testified as follows:

In the morning of September 7, 2010, at around 7:00 o'clock, victim Alfredo M. Guevarra, Jr. (Guevarra) unloaded his passengers in front of Dr. Ramon De Santos National High School. While Guevarra was giving his passengers their change, Armando alighted from his tricycle armed with a kitchen knife. Without warning, Armando grabbed Guevarra's shoulder and stabbed the latter twice in rapid successive motions near the heart. Guevarra got off his tricycle and tried to run away, but Armando pursued him. When Guevarra collapsed on the road, Armando took this as an opportunity to stab the former one more time. Armando left thereafter. Guevarra was taken by bystanders to the Guimba District Hospital where he was pronounced dead on arrival.[8]

Version of the Defense

Armando, on his part, asserted self-defense. He claimed that on the said date, he was plying the tricycle owned by his daughter when he saw Guevarra on the other side of the road pointing and cursing at him. He approached

Guevarra and asked the latter why he was uttering such words so early in the morning. Guevarra replied, "[I]f you want, I will cut your throat." Without warning, Guevarra pulled out a knife and pointed it at him. When Guevarra tried to stab him, he held Guevarra's hand and twisted it causing Guevarra to stab himself. Guevarra tried to stab him again, but he quickly thwarted it off and caused Guevarra to stab himself a second time. After stabbing himself twice, Guevarra alighted from his tricycle and tried to run, but fell face down on the ground.[9]

Armando further narrated that prior to that encounter, he already had a rift with Guevarra. He was elected the President of Butao Guimba Cuyapo Tricycle Operators and Drivers Association (Association). The members of the Association were required to pay a membership fee of P1,000.00. Guevarra was only able to pay half of the said amount and as a consequence, was not allowed to queue along the line of tricycles waiting for passengers.[10]

Ruling of the RTC

In its assailed Decision[11] dated January 22, 2015, the RTC found Armando guilty of Murder, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ARMANDO BAGABAY Y MACARAEG GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentencing the accused the penalty of reclusion perpetua without eligibility for parole. The accused is hereby ordered to pay the heirs of the victim ALFREDO GUEVARRA JR., represented by Analiza Guevarra, the following amounts: P41,110.00 as actual damages; P75,000.00 as civil indemnity for the death of Alfredo Guevarra Jr., P350,000.00 as temperate damages in lieu of the loss of earning capacity and unsupported expenses during wake and interment; P50,000.00 as moral damages and P30,000.00 as exemplary damages.

All the amounts of damages awarded shall earn interest at the legal rate of 6% per annum commencing from the date of finality of judgment until fully paid.

Costs of suit to be paid by the accused.

SO ORDERED.[12]

The RTC ruled that Armando failed to prove that he acted in self-defense. Other than his bare assertions, he did not present any witness to corroborate his claim. His only witness, Rolando Jacobo, who was around 12 to 15 meters away, testified that he saw Armando and Guevarra grappling for a knife while both were standing near the tricycle of Guevarra. This is diametrically opposed to the testimony of Armando that Guevarra was sitting astride his motorcycle when they were grappling for the knife.[13]

The RTC also declared that treachery attended the commission of the crime. It considered the fact that Guevarra was stabbed from behind. Further, it ruled that the suddenness and unexpectedness of the attack were deliberately employed so that the victim would be deprived of any means to resist it.[14]

Aggrieved, Armando appealed to the CA.

Ruling of the CA

In the assailed Decision[15] dated July 28, 2017, the CA affirmed the conviction by the RTC in toto:

WHEREFORE, the appeal is hereby DENIED. The Decision of the Regional Trial Court, Branch 31, Guimba Nueva Ecija in Criminal Case No. 2819-G is AFFIRMED in toto.

SO ORDERED.[16] (Emphasis in the original)

The CA agreed with the RTC that Armando failed to prove self-defense because all the essential elements of

self-defense are absent. It likewise sustained the finding of the RTC that treachery attended the killing of the victim.

Hence, this appeal.

Issues

Whether the CA erred in affirming Armando'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.[17] 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.[18] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[19]

After a careful review and scrutiny of the records, the Court affirms the conviction of Armando, but only for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not proven in the killing of Guevarra.

The accused failed to prove
self-defense

In questioning his conviction, Armando argues that he should not be criminally liable for the death of the victim because he only acted in self-defense. He posits that unlawful aggression was present when Guevarra allegedly pointed and cursed at him then drew out a knife.[20]

This argument deserves scant consideration.

An accused who pleads self-defense admits to the commission of the crime charged.[21] 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.[22] Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." [23] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[24]

The Court agrees with the CA that Armando failed to discharge his burden. All the requisites of self-defense are wanting in this case.

First, there is no unlawful aggression on the part of the victim. For unlawful aggression to be present, there must be real danger to life or personal safety.[25] Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.[26] None of the elements of unlawful aggression was proven by the defense. Guevarra's act of pointing or cursing at Armando, not followed by other acts, is insufficient to constitute unlawful aggression. Thus, the CA is correct in ruling that

there was no evidence proving the gravity of the utterances and the actuations allegedly made by Guevarra that would have indicated his wrongful intent to harm Armando.[27]

Second, in the absence of unlawful aggression on the part of the victim, the second requisite of self-defense could not have been present. Records show that Guevarra was unarmed and it was Armando who approached the former armed with a knife. Assuming that Guevarra had indeed shouted and cursed at him and drew out a knife, it was still not reasonably necessary for Armando to stab the victim. Furthermore, Armando stabbed the victim three times, the last wound inflicted when Guevarra was already on the ground asking for help. Thus, the CA was correct in ruling that the means employed by Armando in repelling the attack was unreasonable.[28]

Lastly, the third requisite requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault.[29] In this case, records show that it was actually Armando who sought out and approached the victim with a knife. It was Armando who initiated the assault.[30]

Hence, the Court finds that Armando failed to prove that he acted in self-defense.

Treachery was not proved by clear
and convincing evidence

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Armando liable for murder instead of homicide. The CA held:

We find that the appellant's attack on the victim was treacherously carried out. The victim was giving out the change of his passengers, seated astride his tricycle, when the appellant appeared out of nowhere, held the victim by the shoulder and stabbed him twice on the chest. The position of the victim put him on a disadvantage as he cannot move freely and defend himself. The suddenness of the attack ensured that the victim cannot put up an adequate defense to protect himself. The deliberateness of the act is apparent in that the appellant knew how to kill the victim and came armed with a deadly weapon.[31]

Treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[32] Thus, for Armando to be convicted of murder, the prosecution must not only establish that he killed Guevarra. It must also be proven, by clear and convincing evidence, that the killing of Guevarra was attended by 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.[33] To appreciate treachery as a qualifying circumstance, 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.[34] 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.[35]

In order to appreciate treachery, both elements must be present.[36] It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation." [37] There must also be a showing 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.

In this case, although the attack was sudden and unexpected, the prosecution did not prove that Armando deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to himself arising from the defense that the victim might offer. As testified to by the witnesses of

the prosecution, the incident happened in broad daylight outside Dr. Ramon De Santos National High School, a public place where there were plenty of other people present who could have offered their help. If Armando wanted to make certain that no risk would come to him, he could have chosen another time and place to stab the victim. In a similar case, the Court held that when aid was easily available to the victim, such as when the attendant circumstances showed that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.[38] Thus, the Court can reasonably conclude that Armando acted impetuously in suddenly stabbing the victim.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any mitigating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant should be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of reclusion temporal in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than reclusion temporal, which is prision mayor (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence 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, should be as it is hereby imposed.[39]

Finally, in view of the Court's ruling in *People v. Jugueta*,^[40] 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 Armando Bagabay y Macaraeg 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 Alfredo Guevarra, Jr. 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.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

[1] See Notice of Appeal dated August 11, 2017; rollo, pp. 10-12.

[2] Id. at 2-3. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Normandie B Pizarro and Marie Christine Azcarraga-Jacob concurring.

[3] CA rollo, pp. 63-77. Penned by Presiding Judge Brigando P. Saldivar.

- [4] Rollo, p. 3.
- [5] Id.
- [6] Id.
- [7] Id.
- [8] Id. at 3-4.
- [9] Id. at 4.
- [10] Id.
- [11] Supra note 3.
- [12] Rollo, p. 2.
- [13] CA rollo, p. 74.
- [14] Id.
- [15] Supra note 2.
- [16] Id. at 8.
- [17] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.
- [18] Id.
- [19] *Ramos v. People*, 803 Phil. 775, 783 (2017).
- [20] Rollo, p. 5.
- [21] *People v. Duran, Jr.*, supra note 17 at 196.
- [22] *Guevarra v. People*, 726 Phil. 183, 194 (2014).
- [23] *People v. Dolorido*, 654 Phil. 467, 475 (2011).
- [24] *Nacnac v. People*, 685 Phil. 223, 229 (2012).
- [25] *People v. Satonero*, 617 Phil. 983, 993 (2009).
- [26] *People v. Nugas*, 677 Phil. 168, 177 (2011).
- [27] Rollo, p. 5.
- [28] Id. at 7.
- [29] *Velasquez v. People*, 807 Phil. 438, 451 (2017).
- [30] Rollo, p. 5.
- [31] Id. at 7.
- [32] *People v. Mahilum*, 438 Phil. 641, 648 (2002).
- [33] *People v. Duran, Jr.*, supra note 17 at 205-206.
- [34] Id., citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

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

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

[37] *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

[38] *People v. Caliao*, G.R. No. 226392, July 23, 2018, p. 7.

[39] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[40] 783 Phil. 806 (2016).

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