

NOLI ESLABON, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE INTERMEDIATE APPELLATE COURT,[] RESPONDENTS.*G.R. No. 66202. February 24, 1984*

Ponente: TEEHANKEE, J.

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Petitioner-accused was charged with murder for having stabbed to death on August 28, 1976 the deceased Elias Harder with treachery as the alleged qualifying circumstance. After trial, the trial court in its decision of March 27, 1981 found that petitioner acted in incomplete defense of a relative on the ground that he failed to discharge the burden of proving the element of reasonable necessity of the means employed to repel the unlawful aggression of the deceased against the petitioner's first cousin, Francisco Gabutin, a barangay captain of their barangay, and sentenced him to suffer imprisonment of not less than 2 years and 1 month of prision correccional and not more than 6 years and 6 months of prision mayor, to indemnify the heirs of the deceased in the sum of P12,000.00, to pay the costs and to suffer all the accessory penalties provided for by law. On appeal, the Intermediate Appellate Court in its decision of June 17, 1983 found no reversible error and affirmed the appealed judgment.

Hence, the present petition for review on certiorari of respondent appellate court's decision. After receiving the required comment of the Solicitor General on behalf of respondent People, the Court has found the petition to be meritorious and, therefore, dispensing with briefs and memoranda, resolved to proceed to render this judgment.

The facts as discussed in respondent appellate court's decision are as follows:

"From the testimony of [lone eyewitness[1]] Rolando Mucho, the theory of the prosecution is as follows:

"Noli Eslabon is the first cousin of Barangay Captain Francisco Gabutin of Barangay San Roque, Buenavista, sub-province of Guimaras. On the evening of August 28, 1976, a public dance was held in said barangay. Fronting the dance hall was a rolling store run by Elias Harder. To maintain peace and order, three police officers were assigned in said public dance. At about 11:30 p.m. when the dance ended, the barangay captain's wife, Dominica Gabutin, told Elias Harder, who was then standing near his rolling store, to go home. Harder complained that the others should also be told to go home but he grudgingly followed Dominica's suggestion. On his way home, Harder discovered that a box of his wares for sale was missing so he and his companions Romeo Mucho and Rolando Mucho returned to the place where his rolling store was and inquired from Francisco Gabutin about his missing box. An argument ensued between Harder and Francisco. Angered by the loss of his box of wares for following the order of Dominica Gabutin, Harder during the argument thrust his scythe with a blunt end at Francisco and it (went) stuck below Francisco's right armpit. While Harder and Francisco were grappling in a standing position, Noli Eslabon approached them and stabbed Harder twice and Harder dropped to the ground and lost consciousness. Immediately thereafter, Romeo Mucho raised Harder and loaded him into a Ford Fiera. Harder and Francisco were taken to the Holy Clinic and Hospital in Iloilo City where Francisco was confined for a day and was treated by Dr. Catalino Nava for a 'stab wound right postero-anterior axillary line about 2-1/2 inches long and one centimeter depth' (Exh. 2); and that barring any complications, said wound would heal from 15 to 21 days.

"On the other hand, Harder was found to have sustained the following injuries:

'HEAD AND NECK

1) Abrasion, vertical, 2 in numbers, 3.7 cm. long, and 2 cm. long, right forehead.

THORAX:

1) Stab wound, slightly diagonal, sharp on the infero-lateral end, 1.8 x 0.4 cm. long, 1.0 cm. medial and level from the left nipple, 11 cm. from the anterior median line, and 45.75 inches from the left heel, level of the 3rd intercostal space, penetrating, perforating thru and thru the mid-portion of the right ventricle 1.2 cm. long; about 400 cc of blood was extracted from the pericardial sac. The direction of the wound is from left antero-anteriorly medially and slightly downward.

ABDOMEN:

No pertinent findings.

EXTREMITIES:

1) Stab wound, gaping, sharp on the lateral end, 2.5 x 0.9 cm. in dia., antero-lateral aspect, lower 3rd, left arm, directed downward, muscle deep.

2) Stab wound, gaping, sharp on the lateral end, 1.2 cm. long, lower 3rd, medial aspect, left arm, directed downward, muscle deep.

3) Confluent abrasion, 2.5 x 1.2 cm. in dia., posterior middle 3rd, left forearm.' (Exh. 'A', p. 1, Folio of Exhibits; pp. 2-4, tsn., Feb. 23, 1978)'

He died due to 'shock cardiac tamponade, due to stab wound (Exh. A).'

"On the other hand, appellant Eslabon claimed that on the evening of August 28, 1976, Dominica and Francisco Gabutin attended the dance at the auditorium of Bo. San Roque, Francisco as barangay captain and Dominica, because she was in charge of collecting the tickets at the gate; that the dance ended at about 11:30 p.m. whereupon Dominica approached Sgt. Rodillo Galve, Chief of Police, telling him that they were going ahead; that on her way, Dominica passed by the rolling store of Elias Harder and told him that they were going home as it was late; that she then continued on her way to catch up with her husband Francisco who was already ahead; that as she walked hurriedly, Dominica heard someone running after her and as she turned around, she saw Elias Harder who then slapped her; that Dominica asked Elias why he had done so and the latter answered that he resented her remarks that he should go home; that Dominica replied that her remarks were a courtesy to him but before she could finish her statement, Harder ran after Francisco who was some 15 arms length ahead; that as Harder approached Francisco, the latter asked Harder what had happened regarding his (Harder's) comadre but the latter answered, 'Ano haw?' meaning, 'What is it to you?', that at the same time, Harder struck Francisco with a scythe hitting the latter in the body; that at this point, Francisco shouted for help whereupon Harder pulled Francisco with a scythe which got stuck in Francisco's right armpit; that to protect himself, Francisco embraced Harder and then Francisco fell to the ground with Harder on top of him and continuing to slash him; that at this juncture, appellant Noli Eslabon, a cousin of Francisco Gabutin, came to Francisco's rescue and stabbed Harder at the left arm which was holding the scythe; that as the stab was made sideways, Eslabon's knife penetrated the whole left arm of Harder and reached his chest; that despite the stab wound, Harder did not release his hold on Francisco so Eslabon struck Harder with his hand; that at this point, Pat. Davies arrived and pulled Francisco from the clutches of Harder; that the two, Francisco and Harder, were taken to the hospital for treatment; and that Francisco was treated only for one day in the hospital and was released but Harder died in said hospital."

The trial court and respondent appellate court found present the elements for the petitioner's actions in defense of his first cousin Francisco in that there was unlawful aggression on the part of the deceased nor was there sufficient provocation on the part of Francisco who was the subject of the aggression and much less was there any provocation on the part of petitioner, but ruled against the reasonable necessity of the means employed by petitioner to repel the unlawful aggression on the part of the deceased.

Respondent court upheld petitioner's submittal that notwithstanding that Francisco was treated for only one day in the hospital, he in fact suffered less serious physical injuries that would take some 15 to 21 days to heal, barring any complications, as follows:

"Appellant insists that the court a quo erred in concluding that the injury sustained by Francisco Gabutin was only slight and in finding that Dr. Catalino Nava did not testify that said injury would heal in 15 to 21 days. A careful review of the record sustains the appellant's claim. The medical certificate issued by Dr. Nava on November 2, 1976 (Exh. 2) clearly shows that the stab wound suffered by Francisco Gabutin would heal from 15 to 21 days barring any complications. Dr. Nava indeed testified to and confirmed the correctness of the recitals of Exhibit 2. Under Article 265 of the Revised Penal Code, where the injuries sustained by the offended party would incapacitate him from labor or require medical attendance for ten days or more, the crime would be less serious and not slight physical injuries. This fact, notwithstanding, Francisco Gabutin did not suffer any fatal wounds that would have required the ap-pellant's act of stabbing Elias Harder."

Respondent court rejected petitioner's claim of having delivered only one thrust at the deceased while conceding that "two of Harder's stab wounds on the left chest and left forearm could have been caused by one knife thrust according to Dr. Jose Rafio," but "the third stab wound on the left arm must have been caused by another knife thrust."

But it ruled against the reasonable necessity of the means employed by the petitioner, as follows:

"x x x Appellant's act of stabbing Elias Harder twice was clearly unnecessary. The scythe used against Gabutin had a blunt end and was merely stuck below Gabutin's right armpit. Under such circumstance, the wounding of Francisco was not sufficient to imperil his life. Appellant himself admitted that he did not intend to seriously injure Harder but merely wanted to release Harder's hold on Francisco because the scythe stuck on the latter's armpit. Appellant likewise claimed that the deceased Harder could not have possibly inflicted another injury on Gabutin because the curve of the scythe's blade rendered it difficult for such weapon to be dislodged. Moreover, three police officers had previously been assigned in the area to maintain peace and order and, according to Dominica Gabutin, when the dance ended at about 11:30 p.m., said police officers were still around and, according to witness Rolando Mucho, they were only a short distance from the scene of the incident. If the appellant's purpose was merely to release Francisco Gabutin from the hold of Elias Harder, appellant should have sought the aid of one of the police officers and should not have taken the law into his hands by repeatedly stabbing the deceased. Indeed, defense witness Francisco Gabutin testified that he and the deceased were still grappling when Pat. Davies separated them by firing his gun into the air and holding him at the back of his collar."

The Court is not convinced and grants the petitioner the benefit of the doubt on the ground of established jurisprudence that the gauge of rational necessity of the means employed to repel the aggression as against one's self or in defense of a relative is to be found in the situa-tion as it appears to the person repelling the aggression. It has been held time and again that the reasonableness of the means adopted is not one of mathematical calculation or 'material commensurability between the means of attack and defense' but the imminent danger against the subject of the attack as perceived by the defender and the instinct more than reason that moves the defender to repel the attack. It has further been stressed in such cases that to the imminent threat of the moment, one could not be hoped to exercise such calm judgment as may be expected of another not laboring under any urgency and who

has sufficient time to appraise the urgency of the situation.[2]

Tested by these standards, petitioner's acts justified the knife thrust(s) that he delivered at the deceased in order to stop the latter's attack against Francisco who had already suffered a substantially serious wound with the scythe imbedded in his right armpit which the deceased did not let go. Since there is evidence that the deceased aggressor was bigger than Francisco, he could have inflicted with a little more effort a much more serious, if not fatal, wound on Francisco.[3] The stab wounds inflicted by petitioner on the deceased were all directed at the left forearm of the deceased, sustaining petitioner's statement that he did not intend to seriously injure. Harder but merely wanted to release the latter's hold on Francisco because the scythe was stuck under the latter's armpit. In view of the fact that Francisco and Harder were grappling, it is entirely credible that the same knife thrust at Harder's left arm caused the wound on Harder's left chest as testified by the attending doctor, which wound unfortunately proved fatal. Under the emergency situation confronting the petitioner, who feared for the life of Francisco, it would have been rash and unnatural on his part, as rationalized by respondent court, if he were yet to look for a police officer instead of rushing to the defense of Francisco who was under serious attack and in grave danger.

ACCORDINGLY, the Court sets aside the appealed judgment of respondent appellate court and instead renders judgment acquitting the petitioner-accused.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

[*] Second Criminal Cases Division composed of Nocon, Sison, J.A., ponente, and Alfonso, Jr., JJ.

[1] Trial court's decision. Rollo, p. 31.

[2] See *Lacson vs. Court of Appeals*, 94 SCRA 561; *Castañares vs. Court of Appeals*, 92 SCRA 567; and *People Boholet Caballero*, 61 SCRA 180.

[3] Record, p. 33.

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