

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELVIN RUBILLOS AND MAXWELL RUBILLOS (ACQUITTED), ACCUSED-APPELLANT.

G.R. No. 75777. July 13, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On April 24, 1983, at about 10 o'clock in the evening, Renato Jubiar, Cornelio Garcia, and Atiliano Sagaldea were drinking whiskey and eating green mangoes in front of the store of Rufo Reganon located at Reyna Cemiento Street, Villaba, Leyte when Melvin Rubillos suddenly approached Renato armed with a .22 caliber short firearm. Frightened, Renato ran away. Melvin fired at him hitting him at the left armpit. Renato fell on his belly. He stood up and faced Melvin but Melvin shot him again hitting him on the left forearm. As a result of his fall, Renato suffered bruises. He died on the spot, a few meters away from his house. At the time of the incident, Maxwell Rubillos, brother of Melvin, was at the nearby street corner near the municipal building.

In due course, an information for murder was filed by the Assistant Provincial Fiscal of Leyte in the Regional Trial Court of Ormoc City charging Melvin Rubillos and Maxwell Rubillos of murder attended by the aggravating circumstances of treachery and evident pre-meditation.

After arraignment and trial on the merits, a decision was rendered by the trial court on June 15, 1986 convicting Melvin Rubillos of the crime charged and imposing on him the penalty of reclusion perpetua, and to indemnify the heirs of the victim in the sum of P30,000.00. Maxwell Rubillos was acquitted on the ground of reasonable doubt.

Not satisfied therewith, Melvin Rubillos interposed this appeal alleging that the trial court committed the following assigned errors:

“I

THE TRIAL COURT ERRED IN FINDING MELVIN RUBILLOS TO BE THE AGGRESSOR WHO PROVOKED THE INCIDENT IN QUESTION.

II

THE TRIAL COURT ERRED IN DISREGARDING EVIDENCE CONSISTENT WITH HUMAN NATURE AND EXPERIENCE.

III

THE TRIAL COURT ERRED IN FINDING MELVIN RUBILLOS NOT TO BE IN THE EXERCISE OF HIS LEGITIMATE RIGHT TO SELF-DEFENSE WHEN HE SHOT RENATO JUBIAR." (p. 82, Rollo)

The theory of the appellant is that he acted in lawful self-defense. The evidence adduced by him is to the effect that on or about 7 o'clock on that evening of April 24, 1983, he and Maxwell went to the house of their aunt Mrs.

Esmas. Upon passing Reganon's store, they saw Renato and his companions drinking and that Renato shouted to him "hambogero." They proceeded to Mrs. Esmas' house where they played chess until 10 o'clock that evening. Melvin and Maxwell went home on their respective bicycles. The latter was ahead by about 20 meters. Upon reaching Reganon's store, Renato pulled Melvin who fell down on the ground. When he got up, he saw Renato holding a pistol. They wrestled and grappled for the pistol. A shot was fired and they both fell down. Melvin wrested the pistol from Renato and as he was about to run away, he saw that Renato was going to stab him with a Batangas knife, so he shot him. Thereafter, he threw the gun away and fled.

Melvin also stated that sometime before this incident, while he was walking at about 7 o'clock in the evening of November 12, 1981, Renato collared him, accusing Melvin's mother of being abusive and for maltreating his mother at the health center. Melvin could not stand it any further so he boxed Renato hitting him on the mouth but they were pacified by other persons before Renato was able to retaliate.

The appellant having admitted the killing, the rule is that he must establish the justifying circumstance of self-defense by clear and convincing evidence. The essential elements of self-defense are:

- (1) unlawful aggression;
- (2) reasonable necessity of the means employed to prevent or repel it; and
- (3) lack of sufficient provocation on the part of the person defending himself.[1]

There can be no self-defense until there has been unlawful aggression.[2] It must be demonstrated that he was assaulted or attacked or at least was threatened with an attacking in immediate and imminent manner.[3]

In this case, the appellant has not shown that there was unlawful aggression on the part of the victim. On the contrary, what appears from the evidence of the prosecution is that it was the appellant who was the unlawful aggressor, who with a .22 caliber short firearm fired at and killed the victim.

If indeed appellant acted lawfully and in self-defense, he should have voluntarily surrendered to the authorities immediately thereafter. Instead of throwing the firearm that he allegedly wrested from the victim, he should have kept it and delivered it to the authorities likewise.

Moreover, from the evidence of the appellant, it is he who had a motive to commit the crime. While he and his brother Maxwell were passing by the store early in the evening of April 24, 1983, the victim called him a braggart. The appellant must have resented this, more so considering their recent encounter where they came to blows. Thus, to even the score, the appellant returned armed.

The Court agrees with the assessment made by the court a quo on the credibility of the witnesses in that the evidence of the prosecution is more credible and could stand scrutiny.

The Court, however, is not persuaded that the commission of the offense was attended by the aggravating circumstance of evident premeditation.[4] The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[5] The premeditation must be evident and not merely suspected.[6] The criminal intent must be evidenced by outward acts which must be notorious and manifest.[7] The premeditation cannot be presumed from the mere lapse of time.[8]

In this case, although there was a lapse of about three (3) hours from the time appellant was called "hambogero" by the victim and the time he assaulted the victim, his external acts do not show that he meditated and reflected on his intention to kill the victim. What appears is that reacting with anger on the imputation, he returned gunning for the victim without considering the danger to his safety as the victim had companions in the store with him at the

time. He did not even ask his brother Maxwell to assist him in his design. In fact, Maxwell was travelling much ahead of him not knowing that appellant would shoot the victim. Thus, Maxwell was cleared of the charge by the lower court.

By the same token, the Court does not find that the commission of the offense was attended by the aggravating circumstance of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which could directly and specially insure its execution, without risk to himself arising from the defense which the offended party might make.[9]

In the present case, it has not been shown that the appellant employed means, methods or forms to insure the execution of the offense. While the prosecution tended to establish that the appellant came from the dark when he pursued the victim giving the impression that the appellant was lurking and waiting to ambush the victim, what the records show is that the house of the victim was across the street so that if the appellant wanted to ambush him, it should be in a dark place across the street close to the house of the victim, not at the side of the street along the store just a few meters away, where the victim may not pass on the way home and close to where his companions were in the store who may be able to come to his aid or witness the commission of the offense.

The Court finds and so holds that the offense committed by the appellant is the crime of homicide punishable under Article 249 of the Revised Penal Code. There being no aggravating or mitigating circumstances attending the commission of the offense, he is hereby imposed the indeterminate penalty of imprisonment of eight (8) years and one (1) day of prison mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

WHEREFORE, with the above modification as to the offense committed and the penalty imposed, the decision appealed from is **AFFIRMED** in all other respects with costs against the appellant.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Section 1, par. 1, Article 11, Revised Penal Code.

[2] *People v. Apolonio*, 58 Phil. 586.

[3] *Viada*, 5 Edicion, 173, page 275; *People v. Yuman*, 61 Phil. 786.

[4] Art. 14, par. 13, Revised Penal Code.

[5] *People v. Durante*, 53 Phil. 363.

[6] *People v. Iturriaga*, 86 Phil. 534.

[7] *U.S. v. Banagale*, 24 Phil. 69.

[8] *U.S. v. Ricafort*, 1 Phil. 173.

[9] Art. 14, par. 16, Revised Penal Code.

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