

PROCERFINA OLBINAR, PETITIONER, VS. COURT OF APPEALS AND FERNANDO JIMENEZ, RESPONDENTS.

G.R. No. 76235. January 21, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

In the Municipal Circuit Court of Babak-Samal, Davao Province, Procerfina Olbinar was indicted, arraigned and tried for the felony of serious physical injuries committed with the use of a bolo against the person of Fernando Jimenez on or about June 8, 1980 in Barangay Caliclic, Babak, Davao.[1] The prosecution presented its proofs in due course, tending to show that in the evening of June 8, 1980 -

1)

a certain Romeo Cahilog was boxing Emiliano Olbinar, Procerfina's husband;

2)

Fernando Jimenez was trying to break up the assault by pulling Romeo Cahilog from behind;

3)

at this point Procerfina came and with a bolo hacked Fernando Jimenez "in the right ear;" a second blow also aimed at Fernando was parried by the latter with his left hand;

4)

Fernando cried out that he had been hacked after which he lost consciousness;

5)

Fernando sustained a wound in the left ear and a broken left forearm.

Procerfina sought, in her turn, to establish by her own evidence that she had acted in legitimate defense of her husband and should therefore be exculpated. According to her -

1)

from the kitchen of her home, she heard her husband shouting for help;

2)

she ran to the scene and saw Fernando Jimenez and Romeo Cahilog mauling her husband who, bloodied, was down on the ground;

3)

she tried to stop the assailants; but not succeeding, she had swiftly run back to her home, taken a bolo and returned to the scene;

4)

Fernando Jimenez intercepted her and tried to grab the bolo from her;

5)

to avoid being disarmed, she wildly brandished the bolo and in the process hit Jimenez, and thus succeeded in stopping the attack on her husband.

The trial court concluded from the evidence that she could be credited only with the special mitigating circumstance of incomplete defense of relative pursuant to paragraph 2, Article 11 in relation to paragraph 1, Article 13, of the Revised Penal Code.

ART. 11. Justifying circumstances.--The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein."

"ART. 13. Mitigating circumstances.--The following are mitigating circumstances:

1. Those mentioned in the preceding chapter (i.e., justifying and exempting circumstances), when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant."

In a decision rendered on June 29, 1982,[2] the Court thus found Procerfina guilty beyond reasonable doubt of the felony charged, and appreciating in her favor said special mitigating circumstance (incomplete defense of spouse), "and another ordinary mitigating circumstance of having acted upon an impulse so powerful (as) to have produced passion and obfuscation," sentenced her "to suffer imprisonment of 21 days of arresto menor; to pay the costs of P10.00 and in concept of recovery of civil liability, to pay to Fernando Jimenez the amount of P3,622.50 to cover

hospital bills partly paid and payable to San Pedro Hospital; and the amount of P618.30 to cover cost of medicine purchased from different boticas or pharmacies."

On appeal perfected by Procerfina, the Court of Appeals affirmed the judgment of the Municipal Circuit Court,[3] in a decision promulgated on August 19, 1986.[4] From this adverse decision, Procerfina has come to this Court pleading for reversal thereof and her absolution of the crime. Her plea will be heeded; her prayer, granted.

The Trial Court conceded that there was unlawful aggression by Fernando Jimenez and one Romeo Cahilog against Procerfina's husband, Emiliano. The Court declared itself "aware of Criminal Case No.877" also pending before it "where Fernando Jimenez *** (and) Romeo Cahilog were charged with Physical Injuries in the same incident, ** (and in which case) Fernando Jimenez ** with his co-accused entered a plea of guilty and were appropriately sentenced in accordance with the law applicable." The criminal complaint which initiated said Criminal Case No. 877, dated June 18, 1980,[5] alleged that -

" ** on or about 7:20 o'clock in the evening of June 8, 1980, at Barangay Caliclic, Babak, Davao ** (both said) accused did then and there wilfully, unlawfully and criminally, confederating and helping one another, attack, assault, box and kick Emiliano Olbinar hitting (him) in the face and in different parts of the body while the latter was sitting on the bench near the store of Procerfina Olbinar, his wife, causing him physical injuries which would require medical attendance with healing period for TEN (10) days barring complications **."

Nevertheless the Court held that the means employed by Procerfina to prevent or repel the aggression against her husband were not reasonably necessary. It considered as "worthy with truth ** the prosecution's side of the story that accused hacked Fernando Jimenez twice, directed on the head with the use of a bolo at the height of anger after seeing her husband mauled, an act or means employed by her beyond the realm of reasonable necessity to repel the aggression under paragraph 2, Article 11 of the Revised Penal Code."

The same conclusion was arrived at by the Court of Appeals. It noted that complainant, Fernando Jimenez, did "not appear to be armed," nor did it appear "that the life of her husband was under serious threat. Yet, appellant used a bolo to hack the complainant at his ear. Another blow wounded the parrying arm of the complainant and broke his elbow." [6]

The Court of Appeals also ruled that Fernando's "version that he was hacked at his head while breaking up the fight between appellant's husband and Cahilog" was more credible.[7] The ruling is obviously erroneous being contrary to the undisputed fact expressly and solemnly admitted by Fernando Jimenez -- when he and his co-accused, Romeo Cahilog, entered a plea of guilty when arraigned in Criminal Case No. 877, supra -- that at the time they were attacking, boxing and kicking Emiliano Olbinar, hitting (him) in the face and in different parts of the body, cooperating with and helping each other. This belies Fernando's protestations that the fight transpired only between Romeo Cahilog and Procerfina's husband, and he (Fernando) was merely trying to break up the fight and pacify the protagonists.

It being incontrovertible that both Romeo Cahilog and Fernando Jimenez attacked Emiliano and beat him up so severely as to cause his incapacity for labor and require that he undergo medical treatment for ten days or so, it is not improbable, as Procerfina testified, that he had fallen to the ground and his face had been bloodied, because of the assault. Procerfina had not seen the commencement of the assault on her husband. She had no way of knowing if her husband had given sufficient provocation therefore. All that she saw, on responding to her husband's cry for help, was that he was on the ground, there was blood on his person, and two men were boxing and kicking him. After she had tried vainly to get the men to stop beating her husband, she had gotten a bolo from her home and rushed back to defend her fallen spouse who, for all she knew, was already seriously wounded. Unarmed, and her husband to all appearances already hors de combat, she evidently could offer no reasonable defense, or otherwise

cause cessation of the assault on her husband. And whatever might have transpired immediately on her return with the bolo -- whether she forthwith sailed into the two assailants, or whether Fernando Jimenez had indeed tried to prevent her from helping her husband and sought to disarm her to prevent her in consequence of which she had flailed wildly about with her weapon, and inflicted the injuries in question on him -- the fact of the matter is that under the circumstances, she obviously felt the compelling urgency for swift action to stop the assault on her prostrate husband, and there was nothing else she could do towards this end except to try to hit out at his attackers. She must have been near panic. She had no time to think. She had to act, and act quickly. The circumstances certainly afforded her no time to investigate the nature of her husband's injuries, determine if he was in danger of death, analyze the situation and ascertain what would be the most reasonable mode by which with her bolo she could stop her husband's mauling -- whether she should use the flat, not the sharp edge of the weapon, should first announce that she had a bolo and would use it if they did not cease in their nefarious acts, etc.

The Court is therefore satisfied that Procefina had acted in justifiable defense of her husband. In the situation in which she had found herself, she was justified in believing that her husband was the victim of an unlawful aggression by two (2) men, who had gotten the better of him and had already succeeded in bloodying his face and dropping him to the ground; she had no way of knowing if her husband had given provocation for the attack; she herself had not given any such provocation; and the means employed by her were not in the premises unreasonable considering that without any weapon, she was no match for either of the assailants, much less both of them.

WHEREFORE, the Decision of the Court of Appeals dated August 19, 1986 is REVERSED and another rendered, ACQUITTING the petitioner, with costs de officio. The bond for her provisional liberty is cancelled.

SO ORDERED.

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

[1] In June, 1980, the original criminal jurisdiction of municipal circuit courts was concurrent with that of Courts of First Instance in the eleven so-called special cases provided in Sec. 87 (b) of the Judiciary Act of 1948, as amended, where the penalty provided by law was imprisonment for more than six months or a fine of more than two hundred pesos. Among these special cases were "(2) Assaults where the intent to kill is not charged or evident upon the trial," i.e., physical injuries (SEE Feria: Civil Procedure, 1969 ed., pp. 107-108, and Annotations on BP 129 and the Interim Rules and Guidelines of the Supreme Court, 1983 ed., Phil. Legal Studies, Series No. 1, pp. 29-30, citing Peo v. Palmon, 86 Phil. 350; Natividad v. Robles, 87 Phil. 834, and Peo. v. Nazareno, 70 SCRA 531). Said concurrent jurisdiction was eliminated by BP 129

[2] Rendered on June 29, 1982 by Judge Jose T. Suelto, Municipal Circuit Court of Babak-Samal, Davao (copy appended to petitioner's brief filed in the Court of Appeals: Rollo, p. 15)

[3] Appeals from judgments of conviction rendered by inferior courts in the exercise of concurrent original jurisdiction with Courts of First Instance were appealable directly to the Court of Appeals or the Supreme Court (Feria. Civ. Procedure, op. cit., p. 108, citing Andico v. Roan. L-26563, Apr. 16, 1968).

[4] Rollo, pp. 10-14; written for the Twelfth Division by Puno, J., with whom concurred Campos, Jr. and Aldecoa, Jr., JJ.

[5] Rollo, p. 51

[6] Id., p. 12

[7] Id., p. 12

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