

MARCELO JERVOSO AND NORMA CLOSA, VS. PEOPLE OF THE PHILIPPINES & HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 89306. September 13, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

In this petition for review, the petitioners assail the decision of the Court of Appeals affirming, with modification of the penalty only, the decision of the trial court which convicted petitioner Marcelo Jervoso of homicide for the fatal stabbing of Rogelio Jervoso, but which appreciated in his favor the mitigating circumstance of voluntary surrender. The trial court and the Court of Appeals also convicted his wife, Norma Closa, of slight physical injuries committed against the deceased.

The Court of Appeals set forth in its decision the conflicting versions of the prosecution and the defense as to how the crime was committed, thus:

"The facts as summarized in the People's brief as borne out by the evidence and WE quote, [are] as follows:

"The evidence for the prosecution showed that on October 24, 1982, at about 2:20 o'clock in the afternoon, prosecution eyewitness Felicisimo Pamaus, a childhood friend of appellant spouses Marcelo Jervoso and Norma Closa as well as of the victim, Rogelio Jervoso, was in the poblacion of MacArthur, Leyte going towards the store of appellants for the purpose of buying bread. While said eyewitness was about four meters distance from the store, he saw the victim, Rogelio Jervoso, walking back and forth in front of said store and appellant Marcelo Jervoso was also present thereat. It was while Rogelio, who was still walking back and forth, had his back turned away from Marcelo when the latter, in the presence of his spouse and co-appellant Norma Closa, pulled from his waist a short bolo or 'pisao' measuring about 7-1/2 inches in length (Exh. 'D') and stabbed Rogelio at the back with said weapon (pp. 2-6, tsn, March 16, 1984).

"After being wounded, Rogelio ran away but was chased by Marcelo who was still holding the 'pisao' with his right hand and was closely being followed by his wife and co-appellant, Norma Closa, across the national highway and inside the hollow block-fenced yard of a certain Mrs. Olmedo. Catching up with Rogelio inside the fenced yard of Mrs. Olmedo where Rogelio had already fallen face downward upon entering the same, Marcelo stabbed Rogelio again at the back of the latter with the 'pisao.' Meanwhile, Norma Closa, who had picked up a stone measuring about 8 inches in length and 3-3/4 inches in width (Exh. 'E') struck the fallen Rogelio with said stone held by both her hands, hitting the latter on the left side of the face near the ear (pp. 5-8, 20, 21, 23, 24, tsn, March 16, 1984).

"Another eyewitness who was present and who saw the incident in question from its inception up to the time of its termination and who in fact tried to pacify Marcelo and Rogelio was Eleno Requioma. After Marcelo inflicted on Rogelio the second stab wound at the back and Norma Closa hit the latter with a stone (Exh. 'E') on the left side of the face near the ear and appellants went back to their house, it was Requioma, together with Dominador Moquia and Rolando Molero, who brought the victim to the Abuyog General Hospital where he later expired (pp.

5, 25, 26, 28, tsn, March 16, 1984). Requioma, however, failed to testify for the prosecution as he died during the pendency of trial of the case (p. 6, decision, p. 229, record).'

"The defense' evidence was briefly stated in the appellant's brief which WE also quote, as follows:

"At the trial of this case, principal accused MARCELO JERVOSO declared that on October 24, 1982 at about 2:00 o'clock in the afternoon he was in his office situated in front of his main house which is also near his store, making list of goods to be purchased in Tacloban City for his store; that his wife Norma Closa was inside their house bathing their children preparatory to their taking their afternoon nap; that Rogelio Jervoso, son of the brother of his adoptive father, entered his office without knocking, and arrogantly asked him why he was possessing the lands of Domingo Jervoso when he is not the real son and he is not also a legally adopted son; that Rogelio Jervoso was drunk at the time, demanded that an accounting of all the produce of the coconuts and palay of Domingo Jervoso's lands; that he told Rogelio to come back the next day so both of them would go and see his adoptive mother Afra Diaz who can enlighten him (Rogelio) about the matter.

"Seeing Rogelio already belligerent, Marcelo went outside his office. While he was already outside and about a meter from his store, he saw Ramon Taro and heard him shout: 'Boy, don't do that!' 'Boy' is the nickname of Rogelio Jervoso. Upon hearing Ramon Taro shout, Marcelo looked back just as Rogelio delivered a stabbing blow on him, hitting him on the left back part of his upper arm, with a 'pisao' (Exhibit 'D').

"After the first stab blow delivered by Rogelio, he (Marcelo) ran across the National Highway towards the gate of the house of Mrs. Olmedo. Marcelo was able to enter the front yard of Mrs. Olmedo's premises and he tried to escape, but Rogelio intercepted him by passing the other way. Marcelo ran toward the corner but was met by Rogelio, so he tried to retrace his steps to the gate, but when he was about to go out of the gate. Rogelio lunged at him and delivered another stabbing blow but he was able to get hold of the right wrists of Rogelio's hand holding the deadly weapon. Meanwhile, Rogelio's left arm was choking his check (sic) and pushing him towards the concrete fence of Mrs. Olmedo.

"So, he struggled to get hold of the 'pisao' and was able to wrest it from the hold of Rogelio by twisting Rogelio's right hand, but Rogelio was still holding his neck pinned in his left arm against the concrete fence. To defend himself, Marcelo delivered two stabbing blows at the back of Rogelio -- the first blow, with a downward stroke on his right back portion and the second by an upward stroke on his left back portion.

"After stabbing the victim Rogelio, he pushed Rogelio who fell to the ground on his left side, he ran towards the gate of Mrs. Olmedo's premises and on his way out he saw Ramon Taro and called him instructing him to fetch a policeman." (pp. 31-34, Rollo.)

The Court of Appeals affirmed the trial court's finding that the plea of self-defense was not proven by clear and convincing evidence:

"Regrettably missing in the appellants' evidence are the elements of self-defense which are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent and repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The defense failed to demonstrate the concurrence of the three essential elements with satisfactory evidence so as to entitle the appellant of the defense of self-defense.

"WE are entirely in accord with the trial court that the affirmative defense of self-defense was not proven by clear and convincing evidence. The evidence is doubtful, and lacks that requisite of certainty and sufficient credulity to sustain the plea of self-defense.

"Suffice it to say that the trial court did not err in finding that the guilt of both appellant was proven with proof

beyond reasonable doubt." (p. 36, Rollo.)

The dispositive part of its decision reads:

"WHEREFORE, the appealed judgment is hereby MODIFIED in the sense that the penalty to be imposed on appellant Marcelo Jervoso, should be an imprisonment of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years of prision mayor as maximum, and to indemnify the heirs of the deceased Rogelio Jervoso in the amount of P30,000.00, Philippine Currency.

"In all other respects, the appealed judgment is hereby affirmed. Costs against both appellants." (p. 37, Rollo.)

In their petition for review, the petitioners allege that the Court of Appeals erred:

(1) in ordering them (petitioners) to pay indemnity of P30,000 to the heirs of Rogelio Jervoso despite the reservation by said heirs of their right to file a separate civil action against the accused, which they did file in the Regional Trial Court of Manila, Branch XXXI where it was docketed as Civil Case No. 83-18958 entitled, "Digna Carino-Jervoso, et al. vs. Marcelo Jervoso and Norma Closa;" and

(2) in finding the petitioners guilty of the crimes charged without support of competent evidence and contrary to applicable laws and decisions of this Court.

The first assignment of error is meritorious. Section 1, Rule 111 of the Rules of Court provides:

"Section. 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

"Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

"A waiver of any of the civil actions extinguishes the others. The institution of or the reservation of the right to file any of said civil actions separately waives the others.

"The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"In no case may the offended party recover damages twice for the same act or omission of the accused.

"xxx xxx xxx."

The filing of a separate civil action for damages against the accused by the heirs of the deceased victim is authorized under Article 33 of the Civil Code which provides:

"Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

The term "physical injuries" in Art. 33 is used in a generic sense. It includes consummated, frustrated, or attempted homicide (*Madeja vs. Cruz*, 126 SCRA 293, cited in Vol. I, p. 62 Civil Code, 1990 Ed., by R.C. Aquino). Having reserved and filed in the Regional Trial Court of Manila a separate civil action to recover the civil liability of the accused arising from the crimes charged, the heirs of the deceased Rogelio Jervoso, are precluded from recovering damages in the criminal case against the accused, for they are not entitled to recover damages twice for the same criminal act of the accused. The trial court erred in awarding to the heirs of Rogelio

Jervoso in the criminal case P30,000 as civil indemnity for his death despite their reservation to file a separate civil action for that purpose. The Court of Appeals likewise erred in affirming the award.

The second assignment of error raises a purely factual issue: whether the evidence is sufficient to convict the accused of homicide. That issue may not be reviewed by this Court in an appeal by certiorari under Rule 45 of the Rules of Court, where only legal issues may be raised.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. Cr No. 04472 entitled, "People of the Philippines, plaintiff-appellee vs. Marcelo Jervoso and Norma Closa, defendants-appellants" is affirmed, except the award of P30,000 as indemnity for damages to the heirs of Rogelio Jervoso, which should be deleted. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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