

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELO ZETA Y DOLOROSO, ACCUSED-APPELLANT.

G.R. Nos. 140901-02. May 09, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Angelo Zeta y Doloroso was charged with carnapping and murder in two separate informations as follows:

Criminal Case No. 95-694-MK

That on or about the 28[th] day of October 1995, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and without knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and drive away Toyota, 2 door with Plate No. NAW-414 belonging to one Roberto V. Mabasa, to the damage and prejudice of the owner thereof in an undetermined amount.

Contrary to law.[1]

Criminal Case No. 95-695-MK

That on or about the 28[th] day of October 1995, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a gun, with intent to kill and by means of treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault and shoot one JOSE ZETA JR. thereby inflicting upon the latter gunshot wounds which directly caused his death.

Contrary to law.[2]

The evidence shows that at around 4:00 in the morning of October 28, 1995, Jan Ryan S. Zeta was listening to the radio inside his room at the second floor of their residence along Beige Street, Concepcion, Marikina City. He heard his father, Jose Zeta Jr., and his uncle, accused-appellant Angelo Zeta, exchanging invectives against each other. Apparently, accused-appellant went outside the house and Jose followed him. Suddenly, Jan Ryan heard three gunshots. He rushed downstairs and saw his father bloodied and lying on his side on the ground. He approached his father and found him barely breathing. He also saw his Aunt Glazy and her son downstairs. Meanwhile, accused-appellant boarded the company car assigned to Jose, a two-door Toyota. Before driving away, accused-appellant opened the door of the car and shot Jose once more on the left side of his abdomen. Accused-appellant then sped towards Beige Street and turned left on the corner.

Jan Ryan informed his mother, Lea Priscilla Zeta, that accused-appellant shot his father. Meanwhile, the wounded Jose managed to bring himself to the hospital on board a jeepney. He later died in the hospital.

Dr. Cristina Freyra of the Philippine National Police Central Crime Laboratory conducted an autopsy and found that the victim suffered four gunshot wounds. She opined that due to the absence of smudging, the gun was fired

at a distance of more than two feet.

Accused-appellant admitted the killing but invoked self-defense. He claimed that between 12:00 to 1:00 in the early morning of October 28, 1995, he went to Jose's house to talk about a problem regarding the husband of Jose's former girlfriend. According to accused-appellant, Jose suggested that they kill his former girlfriend's husband, who was insured for P4,000,000.00. Fearing that the .45 and .38 caliber guns he lent to Jose might be used in the latter's plan, accused-appellant asked Jose for the return of the guns. A heated argument and an exchange of invectives ensued between them. Jose became very angry but, nevertheless, turned over accused-appellant's .45 caliber gun. Thereafter, accused-appellant decided to go home. As he was about to board his car, Jose allegedly shot him with his .38 gun but missed. Accused-appellant returned fire and shot Jose. Accused-appellant then proceeded to Police Precinct No. 8 in Quezon City and surrendered himself to Police Officers Wilfredo Macadangal and Tony Tolentino.

The trial court rendered judgment against accused-appellant, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, accused ANGELO ZETA y DOLOROSO is hereby found GUILTY beyond reasonable doubt of the crime of murder as charged against him in Criminal Case No. 95-695-MK and is ordered to suffer the penalty of RECLUSION PERPETUA, there being no generic aggravating circumstance in the commission thereof. The accused is further ordered to indemnify the heirs of the victim, Jose Zeta, Jr., for the latter's death, the amount of FIFTY THOUSAND PESOS (P50,000.00); to pay the amount of THIRTY THOUSAND PESOS (P30,000.00) as moral damages; the amount of FOURTEEN THOUSAND PESOS (P14,000.00) as funeral expenses; the amount of SEVEN HUNDRED SEVENTY PESOS (P770.00) as hospitalization expenses; and the amount of ONE MILLION NINE HUNDRED SIXTY THOUSAND PESOS (P1,960,000.00) for the victim's loss of earning capacity (applying the formula in *People v. Delmando*, G.R. No. 123300, September 25, 1998 following the doctrine laid down in *Davila v. PAL*, 49 SCRA 497), considering that the victim died at he age of 37 with an estimated gross monthly income of P20,000.00 and reasonable living expenses of P10,000.00 per month.

The said accused, however, is ACQUITTED, of the crime of Carnapping as charged against him in Crim. Case No. 95-694-MK for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant is now before us on appeal, raising the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT HOLDING THAT ACCUSED-APPELLANT KILLED THE VICTIM IN SELF-DEFENSE.

II

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT DID NOT KILL THE VICTIM IN SELF-DEFENSE, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AGAINST HIM AND CONSEQUENTLY, IN NOT CONVICTING HIM ONLY OF HOMICIDE.

III

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING IN ACCUSED-APPELLANT'S FAVOR THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

IV

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED-APPELLANT IS CIVILLY LIABLE, THE TRIAL COURT GRAVELY ERRED IN AWARDING P1,960,000.00 FOR THE LOSS OF EARNING

CAPACITY OF THE DECEASED AS SUCH AWARD LACKS ANY LEGAL OR FACTUAL BASIS AT ALL.

Accused-appellant's claim of self-defense is untenable.

Jan Ryan's testimony regarding the shooting directly controverts accused-appellant's claim of self-defense. Accused-appellant contends that Jan Ryan's testimony is self-serving and incredible and therefore should not have been considered as he did not see the actual shooting incident. He likewise claims that Jan Ryan's testimony was uncorroborated even by Jose's common-law wife, Glazy. He insists that Jan Ryan's testimony was contrary to human experience as Glazy did not do anything and merely looked at her fallen husband despite being asked for help by Jan Ryan.

Accused-appellant misses the point. It is axiomatic that when an accused invokes self-defense, the onus probandi to show that the killing was justified shifts to him. Even if the prosecution evidence was weak, it could not be readily dismissed considering that the accused had openly admitted his responsibility for the killing.[3]

Self-defense, like alibi, is inherently a weak defense, which can easily be concocted. For self-defense to prosper, appellant must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (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.[4]

The question of whether accused-appellant acted in self-defense is essentially a question of fact.[5] In self-defense, unlawful aggression is a primordial element. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude – but, most importantly, at the time the defensive action was taken against the aggressor.[6]

It appears that accused-appellant miserably failed to prove the elements of self-defense. As found by the trial court:

In the case at bar, the accused failed to present evidence to show that the deceased was guilty of aggression to justify the accused's aggression in repelling it. From the latter's own account of the crime, he allegedly shot and killed his brother before he boarded the car and thereafter when his brother tried to reach for the gun, shifted the gear into its reverse and stopped and fired another shot to (sic) him and then fled away (sic) and surrendered himself and the guns, to his police friend, Tony Tolentino, at police precinct no. 8 in Quezon City who filed charges against him for illegal possession of firearms and which was dismissed by the Regional Trial Court, Branch 90 of Quezon City for failure of the prosecution to prove his guilt beyond reasonable doubt. It appears therefore that the deceased was not armed at all at the time when the accused shot him, three (3) times frontally and one (1) shot at the back, which finally caused the death of the victim. There has really been no reasonable necessity for the action taken as well as the means employed which will support the time worn excuse resorted to by assailant as self-defense in criminal cases.[7]

In contrast to the paucity of evidence for the defense's theory that Jose was armed, the latter was found to have been shot four (4) times, three (3) at the front and one (1) at the back, one of which proved fatal. It bears repeating that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia which disprove a plea for self-defense because they demonstrate a determined effort to kill the victim and not just defend oneself.[8]

Accused-appellant next argues that, even granting that he did not kill Jose in self-defense, he should have been convicted only of homicide as the qualifying circumstance of treachery was absent. He reasoned that since a heated argument preceded the shooting, he never consciously adopted the means, methods or forms by which he shot the victim. Further, he could not have consciously adopted that method of attack, that is, shooting the victim

while the latter was in a helpless condition, since it was a continuous aggression.

On this score, we find merit in accused-appellant's contention. Treachery or *alevosia* is committed when two conditions concur, namely: (1) that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[9] The essence of treachery is that the attack is deliberate and without warning – done in a swift and unexpected manner, affording the hapless and unsuspecting victim no chance to resist or escape.[10]

Treachery cannot be established where no particulars are known regarding the manner in which the aggression was carried out, or how it began or developed. Treachery must be based on positive or conclusive proofs, not mere suppositions or speculations. Moreover, it must be proved as clearly and as convincingly as the killing itself.[11]

In the case at bar, Jan Ryan did not witness the onset of the attack as he was upstairs. He only testified that prior to hearing the three (3) gunshots, he heard his father Jose and accused-appellant exchanging invectives and apparently having a heated discussion.[12] Time and again, it has been ruled that there is no treachery where the attack was preceded by a quarrel and a heated discussion.[13]

The prosecution, nevertheless, argues that Jan Ryan saw how Jose was fired upon a fourth time even if the latter was already down on the ground and bleeding from the first three gunshots wounds.

It is a fundamental rule of long standing that for treachery to be appreciated, that circumstance must be present at the inception of the attack, and if absent and the attack is continuous, treachery, even if present at a subsequent stage, is not to be considered.[14] That the final fatal blows may have in truth been delivered under conditions exhibiting some features of treachery does not remedy the fact that the prosecution failed to prove the existence of treachery at the onset of the attack.[15] In the absence of the qualifying circumstance of treachery, accused-appellant's conviction must be modified so that he is found guilty not of murder but only of homicide.

Accused-appellant likewise contends that the trial court should have considered the mitigating circumstance of voluntary surrender.

The requisites of voluntary surrender are: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to the latter's agent; and (c) the surrender was voluntary. For surrender to be voluntary, it must be spontaneous and show the intent of the accused to submit himself unconditionally to the authorities, either: (1) because he acknowledges his guilt; or (2) because he wishes to save them the trouble and expense incidental to his search and capture.[16]

Immediately after the incident, accused-appellant went to his policeman-friend Tony Tolentino bringing with him his gun. Tony Tolentino in turn accompanied him to Police Precinct No. 8 in Quezon City where charges of illegal possession of firearms were initially filed against him. The fact that accused-appellant surrendered in Quezon City and not in Marikina City where the crime was committed does not deviate from the fact that he surrendered voluntarily and spontaneously.

By giving himself up, accused-appellant saved the State the time and trouble of searching for him until arrested.[17] Thus, the mitigating circumstance of voluntary surrender should be credited in his favor.

Therefore, accused-appellant is guilty of the crime of Homicide only, penalized under Article 249 of the Revised Penal Code with reclusion temporal. Considering the attendance of the mitigating circumstance of voluntary surrender, the penalty shall be imposed in its minimum period, pursuant to Article 64 (2) of the aforesaid Code.

Applying further the Indeterminate Sentence Law, accused-appellant is entitled to a minimum term to be taken within the range of the penalty next lower, i.e., prision mayor. Hence, accused-appellant is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.

The award of P1,960,000.00 for loss of earning capacity has no basis. The trial court based said award on the bare testimony of Jose Zeta III, the victim's son. No documentary evidence was presented to support such award. Hence, it must be deleted conformably with this Court's ruling in *People v. Panabang*:^[18]

Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. A self-serving statement, being unreliable, is not enough. The father of the victim has testified on the latter's monthly income of P12,000.00. But for lost income to be recovered, there must likewise be an unbiased proof of the deceased's average, not just gross, income. An award for lost earning capacity refers to the net income of the deceased, i.e., his total net of expenses.

On the other hand, in line with prevailing jurisprudence, we affirm the award of P50,000.00 as civil indemnity for the death of the victim. The trial court's award of P30,000.00 as moral damages should be increased to P50,000.00, in accordance with prevailing jurisprudence. The award for funeral and medical expenses being amply supported by documentary evidence is also sustained.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Marikina City, Branch 272, in Criminal Case No. 95-695-MK, is MODIFIED: Accused-appellant is found guilty of the crime of Homicide and is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. He is further ordered to pay the heirs of the deceased, Jose Zeta, Jr., moral damages in the increased amount of P50,000.00, in addition to civil indemnity in the amount of P50,000.00, funeral expenses in the amount of P14,000.00, and medical expenses in the amount of P770.00, awarded by the trial court. The award of loss of earning capacity in the amount of P1,960,000.00 is DELETED for lack of basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Austria-Martinez, JJ., concur.

[1] Decision, Rollo, p. 14.

[2] Records, p. 1.

[3] *People v. Galvez*, G.R. No. 130397, January 17, 2002.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] Decision, Records, p. 331.

[8] See Note 5.

[9] *People v. Salva*, G.R. No. 132351, January 10, 2002.

[10] *People v. Hermosa*, G.R. No. 131805, September 7, 2001.

[11] People v. Briones Aytalin, G.R. No. 134138, June 21, 2001.

[12] TSN, July 16, 1996, p. 5.

[13] People v. Lumintigar, G.R. No. 132557, January 15, 2002.

[14] People v. Magallanes, 275 SCRA 222 [1997].

[15] People v. Embarga, 319 SCRA 304 [1999].

[16] People v. Sion, 277 SCRA 127 [1997].

[17] Ibid.

[18] G.R. Nos. 137514-15, January 16, 2002.

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