

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEX FLORES Y LOPEZ, APPELLANT.

*G.R. Nos. 143435-36. November 28, 2003*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Quezon City, Branch 95, convicting appellant Alex Flores y Lopez of attempted murder in Criminal Case No. Q-99-84269 and consummated murder in Criminal Case No. Q-99-84270 and sentencing him to suffer the penalty of reclusion perpetua in the latter case.

#### The Indictments

The appellant was charged with attempted murder in an Information, the accusatory portion of which reads:

That on or about the 7[th] day of June 1999, in Quezon City, Philippines, the said accused, with intent to kill, qualified by evident premeditation and treachery taking advantage of superior strength, did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts by then and there stabbing one GERY QUEZON y BUO with a fan knife, but the said accused was not able to perform all the acts of execution which would produce the crime of murder as a consequence by reason of some causes, other than by his own spontaneous desistance, that is, said GERY QUEZON y BUO was able to parry the thrust, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[2]

He was charged of murder in an Information, the accusatory portion of which reads:

That on or about the 7[th] day of June 1999, in Quezon City, Philippines, the said accused, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SONY QUEZON y BUO, by then and there stabbing the victim with a fan knife, hitting him on the chest, while said victim was sleeping, thereby inflicting upon said SONY QUEZON y BUO serious mortal wound, which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said accused.

CONTRARY TO LAW. [3]

The appellant was arraigned on June 28, 1999, assisted by counsel, and entered a plea of not guilty.

As synthesized by the trial court, the evidence of the prosecution is as follows:

The prosecution presented Dr. Tomas Suguitan, the medico-legal officer who conducted the autopsy on the body of the victim of the murder case, Sony Quezon y Buo; Gery Quezon y Buo, the prosecution's eyewitness; PO2 Marlon Rivera, the police investigator; Dr. Aida Ico, the medico-legal officer who treated the victim in the attempted murder case, Gery Quezon y Buo; and S/G Rotelo Miro, the security guard of Baliwag Bus Terminal, whose testimonies may be summed as follows:

On June 7, 1999 at 4:00 in the morning, inside the construction site at Annapolis Street, Cubao, Quezon City, Gery Quezon, the victim in the attempted murder case (Crim. Case No. Q-99-84269) and his brother, Sony Quezon, the victim in the murder case (Crim. Case No. Q-99-84270) were sleeping when the accused, Alex Flores, a co-worker of the victims, who slept on the upper portion of the building being constructed, suddenly stabbed the chest of Sony Quezon who was lying on the floor. Thereafter, Gery Quezon, who was sleeping near his brother Sony Quezon heard his brother shouting "Putang ina mo" that awakened him. Before Gery Quezon could help his brother, the accused suddenly stabbed Gery Quezon twice with a batangas knife which the latter was able to parry. The two (2) stabbing thrusts, however, caused injuries on Gery's hands. Thereafter, the accused, Alex Flores, ran while the two brothers, Sony and Gery, gave chase. The two (2) brothers, Gery and Sony, however, failed to catch up with the accused as the latter was running very fast and Sony Quezon suddenly stumbled on the pavement. When Gery Quezon saw his brother stumbling on the pavement, Gery Quezon carried and boarded him to the hospital. At the hospital, Gery Quezon was treated as may be shown from the Medical Certificate (Exhs. "F" to "F-2"), while Sony Quezon was declared dead on arrival. As a result of the incident, Gery Quezon executed a Sworn Statement (Exhs. "G" to "G-2") detailing as to how the stabbing incident took place.

In the meantime, the accused Alex Flores, who ran away from the construction site, was seen in the vicinity of the Baliwag Transit not far from the place of the incident by a tricycle driver who called the attention of security guard, Rotelo Miro, from the bus station. Alex Flores was immediately apprehended by the said security guard. The accused was turned over to the police station for further investigation. Security guard Rotelo Miro later on gave his sworn statement (Exhs. "J" & "J-1") to the police investigator.

Meanwhile, police investigators led by PO2 Marlon Rivera, respondent to the crime scene and found within the vicinity of the place of the incident a balisong or lanseta which the police officer turned over to the Crime Laboratory Services to determine the presence of human blood as evidenced by the Letter-Referral addressed to the PNP Crime Laboratory Services (Exhs. "I" to "I-2").

The body of Sony Quezon was then referred to the PNP Crime Laboratory for autopsy as seen in the Letter-Request dated June 7, 1999 (Exhs. "A" & "A-1") and in connection therewith, Gery Quezon, brother of Sony Quezon, executed a Certificate of Identification and Consent for Autopsy (Exhs. "B" & "B-1").

Dr. Tomas Suguitan, medico-legal officer, then conducted an autopsy on the body of Sony Quezon and placed in writing his findings in Medico-Legal Report No. M-0512-99 (Exhs. "C" to "C-4"), the pertinent findings of which state as follows:

...

- Abrasion, frontal region, measuring 0.5 x 0.2 cm., 6.5 cms. right of the anterior midline.

- Stab wound, left mammary region, measuring 1.7 x 0.7 cm., 1.5 cms. from the anterior midline, 8 cms. deep, 119 cms. from the heel, directed posteriorwards, upwards and medialwards, fracturing the sternum at the level of the 3<sup>rd</sup> rib, piercing the pericardial sac and the ascending aorta.

...

Aside from the Medico-Legal Report, Dr. Suguitan likewise prepared a human sketch detailing the locations of the wounds (Exhs. "D" to "D-2") sustained by the victim. Finally, he prepared a Certificate of Death (Exhs. "E" to "E-3") of Sony Quezon which he signed at the dorsal portion.

Dr. Suguitan gave the expert opinion that the victim died because of the stab wound on the chest (Exhs. "D" to "D-2") as it penetrated the aorta, a big blood vessel which connected directly to the heart, and the stab wound was caused by a bladed instrument. He further testified that the abrasions might have been caused by a direct contact of the skin with a rough surface and are consistent with falling to the ground.

Gery Quezon, the eyewitness and the victim of the attempted murder case, was himself treated at the East Avenue Medical Center for his wounds by Dr. Aida Ico which medico-legal findings are embodied in the Medico-Legal Certificate issued on June 7, 1999 (Exhs. "F" to F-2"), the pertinent portion of which are hereby quoted as follows:

...

- laceration dorsum, L wrist (4 cms.)

- laceration web bet. thumb & index finger L (4 cms.).

After the investigation of the case and the pieces of evidence already collated, P/Insp. Timoteo Gascon Pacleb made a Letter-Referral (Exhs. "H" to "H-2") addressed to the Office of the City Prosecutor for the conduct of inquest proceedings.[4]

The trial court summarized the evidence of the appellant, thus:

On June 6, 1999 at about 11:00 in the evening, the accused was having a drinking session with Gery, the victim in the attempted murder case, and a certain Rick inside the construction site at Annapolis Street, Cubao, Quezon City. Gery and Rick had a heated argument regarding the liquor that they were drinking. Because there was so much noise, he called Gery's attention and demanded him to be quiet which irritated Gery. Thereafter, he went to the upper floor on the left side while Gery and Rick were left behind. At 4:00 in the morning of the following day, while he was going down near the door, Gery hit him with a piece of wood. After he was hit, he turned around and picked up a piece of wood and both he and Gery were struggling for the possession of a piece of wood. During the struggle, the fan knife of Gery Quezon fell from Gery's waist to the ground which he picked up. While Gery was attacking him, he saw Gery's brother armed with a piece of wood and at that point, the two Quezon brothers hit him with pieces of wood and in defense of himself, the knife he picked up was used by him to repel and prevent the attack of the two (2) brothers which unfortunately hit the chest of Sony Quezon. Thereafter, he ran away and proceeded to the Baliwag Bus Terminal to surrender to the police authorities. Thereat, he was arrested by the security guard and was later brought to the hospital for treatment of the wounds he sustained as shown in the Medico-Legal Certificate dated June 7, 1999 (Exhs. "1" & "1-A" issued by Dr. Enouel Steve C. Battung of the East Avenue Medical Center, which is quoted as follows:

...

"Laceration, 2 cms. (L) zygomatic area."

...

Aside from the medico-legal certificate, the doctor likewise prepared a diagram (Exhs. "2" to "2-C") indicating the location of the wound.[5]

The trial court rendered judgment convicting the appellant of the crimes charged, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in the following:

- In Crim. Case No. Q-99-84269, the Court finds the accused, Alex Flores y Lopez, GUILTY beyond reasonable doubt of the crime of Attempted Murder and, there being one mitigating circumstance of voluntary surrender (par. 7, Art. 13, Revised Penal Code), is hereby sentenced to suffer the indeterminate penalty of from six (6) months and one (1) day of prision correccional minimum, as the minimum penalty, to six (6) years of prision correccional maximum, as the maximum penalty; and

- In Crim. Case No. Q-99-84270, the Court finds the accused, Alex Flores y Lopez, GUILTY beyond reasonable

doubt of the crime of Murder defined in and penalized by Article 248, Revised Penal Code, as amended by Republic Act No. 7659 and, there being one mitigating circumstance of voluntary surrender (par. 7, Art. 13, Revised Penal Code), is hereby sentenced to suffer the penalty of reclusion perpetua.

The accused is hereby ordered to pay the heirs of the victim, Sony Quezon y Buo, the amount of P50,000.00, as death indemnity. The Court cannot award actual or compensatory and moral damages as the prosecution offered none in the recovery of the same.

### **IT IS SO ORDERED.[6]**

The appellant appealed the decision of the RTC contending that the trial court erred in finding him guilty despite the manifest inconsistencies in the testimony of prosecution witness Gery Quezon; and in rejecting his plea of self-defense.

The appellant asserts that it was impossible for him to have stabbed Gery Quezon, as he was lying on top of the table and Sony Quezon was between them. He could not have stabbed Gery Quezon on the left portion of the chest, because the appellant was on the latter's right side. Thus, Gery Quezon could not have parried the appellant's thrusts, considering that the deceased Sony Quezon had been stabbed on the chest and was bleeding profusely. It is incredible that he managed to give chase to the appellant as he fled from the situs criminis.

The appeal is partially meritorious.

Like alibi, self-defense is a weak defense. It is easy to fabricate and difficult to disprove.[7] It is a time-worn excuse resorted to by assailants.[8] If the accused invokes self-defense, the burden of evidence is shifted on him, to prove with clear and convincing evidence, the confluence of the following essential elements: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. The accused must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, because having admitted the killing, the testimony of the witnesses of the prosecution can no longer be disbelieved.[9]

Whether the accused acted in self-defense, complete or incomplete, is a question of fact best addressed to the trial court.[10] The consistent ruling of this Court is that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties and its assessment of the probative weight of the evidence on record, as well as its conclusions on its findings are accorded high respect if not conclusive effect. This is because of the trial court's opportunity to observe and monitor at close range, the conduct, demeanor and deportment of witnesses as they testify. This rule, however, is inapplicable where the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which if considered would alter the outcome of the case.[11] The Court scrutinized the records of the case and we find no reason to deviate from the trial court's finding that the appellant failed to prove with clear and convincing evidence that he acted in self-defense when he stabbed the victims.

First. After stabbing the victims, the appellant fled from the situs criminis to the Baliwag Transit Terminal where the policemen arrested him. The appellant threw the knife he used to stab the victims towards the direction of the gate of the building under construction.[12] He did not proceed to the police station to surrender to the police authorities and report that he stabbed the victims in self-defense. The appellant's flight from the situs criminis and his failure to surrender himself and the knife he used to kill the victims belie his plea of self-defense.[13]

Second. When the policemen arrived at the situs criminis, they found the fan knife used by the appellant in stabbing the victim. They did not find any pieces of wood.[14]

Third. The appellant contradicted himself when he testified that Sony Quezon hit him on the left cheek with a piece of wood,[15] as he earlier testified that it was Gery Quezon who hit him on the cheek.[16] He later changed his testimony when he stated that Sony Quezon hit him on the back,[17] adding that Gery Quezon also hit him on the left shoulder.[18] But the medical certificate the appellant adduced in evidence shows that he only sustained a wound on the left cheek.[19] There is no showing that he sustained any injuries on his head, back and shoulder.

Fourth. The appellant testified that as he and Gery Quezon were hitting each other with the pieces of wood they were each armed with, Gery's fan knife fell and the latter forthwith picked it up:

**Q**

And what happened to you after you were hit with a piece of wood?

**A**

I turned around and picked up the piece of wood.

**Q**

What part of the body were you hit when you (sic) first hit by Gery?

**A**

My back. (Witness pointing to his back at the left portion of his shoulder.)

**Q**

What happened next after you were able to get a piece of wood?

**A**

We hit each other with a piece of wood that we were holding.

**Q**

After that, what happened next?

**A**

While we were hitting with (sic) each other with the piece of wood, his fan knife fell.

**Q**

After that, what happened next?

**A**

He picked it up.

**Q**

After picking it up, what happened next?

**A**

The two brothers helping (sic) each other in hitting me.[20]

On cross-examination, the appellant asserted that when he hit the body of Gery Quezon with a piece of wood, the fan knife fell from the latter's waist. After Sony Quezon hit him with a piece of wood on the cheek, the appellant then picked up the knife and stabbed Sony Quezon with it, thus:

Q (sic)

The quarrel between Gery and I came ahead and we hit each other with a piece of wood, Your Honor, and after I hit him with a piece of wood on his arm, a knife fell to the ground and his brother Sony approached me and hit me on the check. I picked up the knife and I stabbed Sony on the chest.

**Q**

So when you were hit and you picked up the knife, where was Sony Quezon in relation to you?

**A**

He was seated on the chair inside the place where we were quarreling with his brother, Your Honor.

**Q**

So, what was the position of Sony Quezon when you stabbed him?

**A**

He was seated, Your Honor.

**Q**

Are you sure he was seated?

**A**

He was already standing when I stabbed him, Your Honor.

**Q**

I will ask you again. When he hit you with a piece of wood on the left cheek, you fell?

**A**

Yes, Your Honor.

Q

And then you picked up the knife?

A

Yes, Your Honor.[21]

The appellant also testified that while he was picking up the fan knife, Sony Quezon hit him on the back with a piece of wood. The appellant then stabbed Sony Quezon on the cheek and fled to the Baliwag Transit Terminal.

Fifth. The appellant's laceration on the left cheek is not conclusive proof that Gery Quezon and his brother Sony Quezon were the unlawful aggressors and that the appellant acted in self-defense. We agree with the ratiocinations of the trial court, thus:

The court does not likewise believe the asseverations of the accused that the brothers Quezon hit him with pieces of wood several times before the accused stabbed Sony and Gery Quezon. For, if this were so, the accused could have suffered hematoma or contusion or at least an injury brought about by the use of a piece of wood. Albeit the accused tried to corroborate his claim of being hit by pieces of wood, he could only show a lacerated wound on the cheekbone which is not even a fatal wound. The lacerated wound could not even be considered a conclusive evidence that it was caused by a piece of wood as the wound could have been caused by the knife during the scuffle between the accused and Gery Quezon that ensued after the accused made two (2) stabbing thrusts on Gery Quezon. Notably, it is the evidence of the prosecution that is credible, consistent, and in accord with the physical evidence. Gery Quezon categorically and candidly testified that it was a knife that was used by the accused in inflicting a single stab wound on Sony Quezon's chest while he was sleeping. The medico-legal findings clearly show that a single penetrating stab wound with a trajectory of posteriorwards, upwards and medialwards at the chest with the use of a knife had caused the death of the victim. Gery Quezon likewise testified that he sustained stab wounds on his hands which he used in parrying the stabbing thrusts of the accused. Said claim is strongly supported by the medico-legal findings to the effect that Gery Quezon's hands sustained stab wounds. Physical evidence is mute but an eloquent manifestation of truth and rates high in the hierarchy of trustworthy evidence (*People vs. Nepomuceno*, 298 SCRA 450).[22]

#### The Crimes Committed by the Appellant

The trial court erred in appreciating treachery against the appellant. The Court has ruled that to prove treachery, there must be proof beyond reasonable doubt that the accused made some preparations to kill the victim in such a manner as to ensure the consummation of the crime or to make it impossible or difficult for the person attacked to defend himself. A killing at the spur of the moment is not treacherous.[23] Treachery cannot be appreciated against the accused when the witness did not see the commencement of the assault. [24] Absent any particulars as to the manner in which the aggression commenced, treachery cannot be considered.[25]

In this case, Gery Quezon admitted that he did not see the appellant stab his brother. He testified that when he woke up, the appellant had already stabbed Sony Quezon. The appellant then proceeded to stab him as he awoke:

COURT: (to the Witness)

Q

So, why do you say that he was stabbed once?

**A**

Because I heard him shouting once and after I heard him shouting once, that was the time that I woke up, Your Honor.

**Q**

But by the time that you woke up, your brother was already stabbed?

**A**

Yes, Your Honor.

**Q**

And that you did not actually see your brother being stabbed once as you have claimed a while ago?

**A**

Yes, Your Honor.

ATTY. STA. ANA: (to the Witness)

**Q**

And when you woke up, according to you, the accused stabbed you?

**A**

Yes, sir, when I woke up he also stabbed me.

**Q**

What was your position when Alex Flores stabbed you?

**A**

I was lying on top of the table with my two hands placed behind my head, sir.

**Q**

How come that you were able to parry the thrust of Alex Flores when both of your hands were pinned by your head?

**A**

When I was awakened, I saw Alex Flores making thrust at me and in the nick of time, I was able to parry his thrust, sir.

PROS : (to the Court)

May we request that the vernacular be placed on record "sinangga ko ang saksak niya."

COURT: Granted.[26]

All told then, the appellant is guilty beyond reasonable doubt only of homicide in Criminal Case No. 99-84270 and attempted homicide in Criminal Case No. 99-84269.

#### The Proper Penalties for the Crimes

##### Committed by the Appellant

The trial court erred in appreciating the mitigating circumstance of voluntary surrender in favor of the appellant. To be entitled to the mitigating circumstance of voluntary surrender, the same must be shown to have been spontaneous and made in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense that will be incurred in his search and capture.[27] In this case, the appellant fled to the Baliwag Transit terminal after stabbing the victims. He was preparing to board a bus when the police authorities arrived and arrested him. The appellant is, thus, not entitled to the mitigating circumstance of voluntary surrender.

Under Article 249 of the Revised Penal Code, as amended by Republic Act No. 7659, the imposable penalty for homicide is reclusion temporal which has a range of twelve (12) years and one (1) day to twenty (20) years. The imposable penalty for attempted homicide under Article 249 in relation to Article 6 of the Revised Penal Code is prision correccional which has a range of six (6) months and one (1) day to six (6) years. There being no modifying circumstances in the commission of homicide, the appellant may be sentenced to an indeterminate penalty of ten (10) years of prision mayor in its medium period, as minimum, to fifteen (15) years and six (6) months of reclusion temporal in its medium period, as maximum. For the felony of attempted homicide, the appellant may be sentenced to an indeterminate penalty of five (5) months and one (1) day of arresto mayor in its medium period to two (2) years, four (4) months and one (1) day of prision correccional in its medium period, as maximum.

#### Civil Liabilities of the Appellant

##### for the Two Felonies

In Criminal Case No. 99-84269, the Court did not award any moral damages to the victim Gery Quezon. But according to Article 2219, paragraph 2 of the New Civil Code, the victim is entitled to moral damages in a criminal offense resulting in physical injuries. Victim Gery Quezon testified on his injuries and the physical suffering and anxiety he felt from his wounds. Considering the nature of his injuries, he is entitled to moral damages in the amount of P10,000.00. In Criminal Case No. 99-84270, the trial court did not award actual damages for failure of the prosecution to prove the same. Nevertheless, the heirs of the victim, Sony Quezon, are entitled to temperate damages in the amount of P25,000.00.[28]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Quezon City, Branch 95, is AFFIRMED WITH MODIFICATION.

In Criminal Case No. 99-84269, the appellant is convicted of homicide under Article 249 of the Revised Penal Code and there being no modifying circumstances in the commission of the felony, is sentenced to suffer an indeterminate penalty ranging from ten (10) years of prision mayor in its medium period, as minimum, to fifteen (15) years and six (6) months of reclusion temporal in its medium period, as maximum. The appellant is directed to pay to the heirs of the victim Sony Quezon the amount of P25,000.00 as temperate damages.

In Criminal Case No. 99-84270, the appellant is found guilty beyond reasonable doubt of attempted homicide under Article 249 in relation to Article 6, last paragraph, of the Revised Penal Code, and there being no modifying circumstances in the commission of the felony, is sentenced to suffer an indeterminate penalty ranging from five (5) months and one (1) day of arresto mayor in its medium period, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, in its medium period, as maximum.

The appellant is ordered to pay to the victim Gery Quezon the amount of P10,000.00 as moral damages. With costs against the appellant.

**SO ORDERED.**

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

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[1] Penned by Judge Diosdado M. Peralta, now Associate Justice of the Sandiganbayan.

[2] Records, p. 1.

[3] Rollo, p. 3.

[4] Rollo, pp. 15-17.

[5] Id. at 17-18.

[6] Id. at 23.

[7] *People v. Ocsimar*, 253 SCRA 689 (1996).

[8] *People v. Tuson*, 261 SCRA 711 (1996).

[9] *People v. Rabanal*, 349 SCRA 655 (2001).

[10] *Calim v. Court of Appeals*, 351 SCRA 559 (2001).

[11] *People v. Baldogo*, G.R. No. 128106-07, January 24, 2003.

[12] TSN, 21 September 1996, p. 61.

[13] *People v. Tumayao*, 356 SCRA 491 (2001); *Calim v. Court of Appeals*, *supra*; *People v. Janairo*, 311 SCRA 58 (1999); *People v. Piamonte*, 303 SCRA 577 (1999); *People v. Tampon*, 258 SCRA 115 (1996); *People v. Gregorio*, 255 SCRA 380 (1996).

[14] Exhibit "H;" TSN, 17 August 1999, pp. 2-4.

[15] TSN, 6 September 1999, p. 6.

[16] *Ibid.*

[17] *Id.*

[18] *Id.*

[19] Exhibit "2" & "B."

[20] TSN, 16 September 1999, p. 6.

[21] TSN, 21 September 1999, p. 5.

[22] Records, p. 90.

[23] *People v. Salvador*, 279 SCRA 164 (1997).

[24] *People v. Garcia*, 258 SCRA 411 (1996).

[25] *People v. Luayon*, 260 SCRA 739 (1996).

[26] TSN, 13 August 1999, pp. 14-15.

[27] *People v. Deopante*, 263 SCRA 691 (1996).

[28] *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003.

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