



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapeña
WILFREDO V. LAPEÑA
Division Clerk of Court
Third Division
AUG 15 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226392

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GISMUNDO, JJ.

NESTOR "TONY" CALIAO,
Accused-Appellant.

Promulgated:

July 23, 2018

Wilfredo V. Lapeña

X ----- X

DECISION

MARTIRES, J.:

Before the Court on automatic review is the 20 May 2016 Decision¹ rendered by the Court of Appeals (CA) in CA-G.R. CEB-CR.-H.C. No. 02006, which affirmed with modification the 25 September 2014 Decision² of the Regional Trial Court (RTC), Branch 18, Cebu City, in Criminal Case No. CBU-70511, finding accused-appellant Nestor "Tony" Caliao (*accused-appellant*) guilty beyond reasonable doubt of the crime of Murder.

THE FACTS

An Information filed on 20 August 2004 charged accused-appellant with murder committed as follows:

[Signature]

¹ *Rollo*, pp. 5-16; penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justice Gabriel T. Ingles and Associate Justice Edward B. Contreras, concurring.

² *CA rollo*, pp. 39-47; penned by Judge Gilbert P. Moises.

That on or about the 25th day of April 2004, at about 12:45 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a kitchen knife, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack, assault and stab with said knife one William A. Fuentes, hitting him on the left side of his body and inflicting upon him physical injuries which caused the death of the latter a day after.

CONTRARY TO LAW.³

The information was filed on 20 August 2004, but the accused was arrested only on 6 September 2010. Upon arraignment, accused-appellant pleaded not guilty, and trial thereafter ensued.

Version of the Prosecution

The prosecution presented Virginia Fuentes (*Virginia*), wife of the victim William Fuentes (*the victim*); Junnel Fuentes (*Junnel*), son of the victim; and market vendors Maximo Largo (*Maximo*) and Ricardo Tesorio (*Ricardo*).

Virginia and her husband William Fuentes, the victim in this case, owned a stall inside Taboan Market in Cebu City. During trial, Virginia testified that the victim and accused-appellant had an altercation on the night of 24 April 2004 because accused-appellant had placed garbage beside their store. The victim confronted accused-appellant who became angry and tried to strike the victim with a pipe. The victim secured a piece of wood to get back at accused-appellant, but Virginia stopped her husband from doing so.⁴

At three in the morning of the next day, accused-appellant called out to the victim and challenged him to a fistfight, but Virginia did not allow her husband to go out. When the victim went outside at past four that same morning, he found that the tires of their bicycle had been punctured.⁵

In the afternoon of 25 April 2004, Virginia was sleeping inside their store while her husband and their son Junnel were outside preparing *pusó*.⁶ Later on, the victim told his son that he was going to use the comfort room and would afterwards wake up his wife Virginia. As the victim approached their stall, Junnel saw accused-appellant suddenly appear and stab his father.

³ Records, p. 1.

⁴ CA *rollo*, pp. 39 and 42.

⁵ *Id.* at 42.

⁶ "*Pusó*" is the local term for hanging rice, which is rice boiled and wrapped in woven coconut leaves.

When the victim went inside the store to get away, accused-appellant followed and attempted to stab him again, but the victim got hold of an electric fan that he used to fend off accused-appellant and to push him outside the store. Accused-appellant kept shouting, "I will kill you!"⁷

Ricardo, who also had a stall in Taboan Market, was in his store selling *pusó* when he heard his mother-in-law shouting out to Racel Caliao (*Racel*), wife of accused-appellant, about what was happening. Racel immediately ran towards the victim's store and pulled accused-appellant away. Ricardo, together with Maximo, another stall owner, approached accused-appellant, who was holding a bloodied knife. They took the knife from accused-appellant and brought it along with him to the police station.⁸

Version of the Defense

The defense presented the testimonies of accused-appellant, Roberto Oralde (*Roberto*), and George Cabino (*George*).

Accused-appellant testified that he was at his store preparing *pusó* for delivery when the victim suddenly appeared and poured kerosene on the *pusó*. Thereafter, the victim took out an iron pipe and repeatedly struck accused-appellant with it until the latter was cornered. Accused-appellant picked up the kitchen knife he had used for cutting *pusó* and struck the victim with it. Thereafter, he went home. He also denied that he had quarreled with the victim the night before the incident.⁹

Roberto, who was in the market at the time of the incident because he worked for accused-appellant's mother, confirmed accused-appellant's version by testifying that he saw the victim bring a pipe into accused-appellant's store and repeatedly strike accused-appellant with it, prompting the latter to strike back with a knife. George, a bystander who witnessed the incident, corroborated the same. Roberto also testified that he saw the victim bring kerosene into accused-appellant's store.¹⁰

However, the prosecution presented rebuttal evidence to Roberto's testimony through Belinda Ligan (*Belinda*), who had been working at the Taboan Market since she was five (5) years old and whose store was just five (5) meters away from the store of accused-appellant's mother. She testified that she had never seen Roberto work for accused-appellant's

⁷ CA *rollo*, pp. 39-40.

⁸ Id. at 41.

⁹ Id. at 42.

¹⁰ Id. at 41-42.

mother and that she saw him for the first time only when he testified in court.¹¹

The RTC Ruling

The RTC ruled that self-defense could not be appreciated to exculpate accused-appellant for his failure to establish the elements thereof clearly and convincingly. It also found that the aggravating circumstances of treachery and evident premeditation are present in this case. Consequently, the RTC found accused-appellant guilty beyond reasonable doubt of murder, *viz*:

WHEREFORE, in view of the foregoing consideration, the Court finds the accused Nestor “Tony” Caliao guilty beyond reasonable doubt of the crime of Murder qualified by treachery and evident premeditation and imposes upon him the penalty of reclusion perpetua with all its accessory penalties. He is further ordered to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages.

SO ORDERED.¹²

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

The CA affirmed the conviction of the accused-appellant. However, it found that while treachery could be appreciated as a circumstance qualifying the crime to murder, evident premeditation could not be appreciated as an aggravating circumstance because it was not shown that accused-appellant had previously determined to kill the victim and that he had clung to said determination. Further, the CA found treachery was present because accused-appellant’s attack on the victim was sudden and unexpected, the latter being unaware of the former’s presence. The CA ruled, thus:

WHEREFORE, the instant appeal is **DENIED**. The 25 September 2014 Decision of Branch 18 of the Regional Trial Court of Cebu City in Criminal Case No. CBU-70511 is **AFFIRMED with MODIFICATION**. The aggravating circumstance of evident premeditation is **DELETED**. In addition, both civil indemnity and moral damages granted to the heirs of the victim are increased to ₱75,000.00 each. Exemplary damages are likewise **INCREASED** to ₱30,000.00.



¹¹ Id. at 43.

¹² Records, p. 159.

Accused Caliao shall pay interest at the rate of six percent (6%) per annum on the aggregate amount of all the monetary awards from the finality of this decision until fully paid.

SO ORDERED.¹³

Hence, this appeal.

The Present Appeal

Accused-appellant contends that the CA erred in affirming his conviction because all the elements of self-defense were sufficiently established. He also contends that the prosecution's account of the incident is not worthy of belief and credence because the prosecution witnesses, being the wife and son of the victim, are expected to be biased against the accused-appellant.

ISSUE

WHETHER ACCUSED-APPELLANT'S GUILT FOR MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

Although the Court finds no error in the CA's finding that accused-appellant killed the victim, accused-appellant may only be convicted of homicide.

Self-defense was not clearly and convincingly proven by accused-appellant.

Pursuant to the presumption of innocence enshrined in our Constitution, it is incumbent upon the prosecution to prove beyond reasonable doubt the crime charged rather than for the accused to prove his innocence. However, a person invoking self-defense in effect admits to having performed the criminal act but claims no liability therefor, because the actual and imminent danger to his or her life justified his infliction of harm against an aggressor.¹⁴ This dispenses with the prosecution's burden to prove that the accused performed the criminal act; what remains to be

¹³ *Rollo*, p. 16.

¹⁴ *People v. Macaraig*, G.R. No. 219848, 7 June 2017.

established is whether the accused was justified in inflicting the harm.¹⁵ This the accused must prove with clear and convincing evidence.¹⁶

To successfully invoke self-defense, an accused must prove the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.¹⁷

Among these three elements, the condition *sine qua non* for the justifying circumstance of self-defense is unlawful aggression. Without said aggression coming from the victim, there can be no self-defense.

As found by both the CA and the RTC, it was accused-appellant who attacked the victim when the former suddenly appeared at the latter's store and stabbed him. Both courts found accused-appellant's version of the events improbable, given that he failed to offer any explanation as to why the victim would suddenly pour kerosene on his *pusó*; or why, if such was the case, accused-appellant did not attempt to stop the victim and merely waited to see what the victim would do next, which he claimed was to strike accused-appellant with an iron pipe. Moreover, when Roberto testified that he saw the incident because he worked for accused-appellant's mother at Taboan Market where the incident happened, the prosecution presented rebuttal evidence through Belinda, who testified that in all her years as a vendor in the said market, she had never seen Roberto work there, considering that her store and that of accused-appellant's mother were only five (5) meters apart.

On the other hand, the CA and the RTC gave credence to the evidence of the prosecution. Both found that the prosecution was able to give a more credible account of the event, having ably established the root cause of accused-appellant's attack on the victim.

It is well-established that the trial court's findings on the credibility of witnesses is entitled to respect because it has the opportunity to observe the witnesses' demeanor and deportment on the witness stand and, therefore, is in the best position to weigh conflicting testimonies and to discern whether the witnesses are telling the truth.¹⁸ The Court finds that no oversight or misapplication of facts and circumstances exists to disturb said findings.

Accused-appellant's contention that the prosecution witnesses were biased against him due to their relationship with the victim fails to persuade.

¹⁵ *Velasquez v. People*, G.R. No. 195021, 15 March 2017.

¹⁶ *People v. Mediado*, 656 Phil. 377, 382 (2011).

¹⁷ *Velasquez v. People*, supra note 15, citing *Belbis v. People*, 698 Phil. 706, 719 (2012).

¹⁸ *People v. Amoc*, G.R. No. 216937, 5 June 2017.

This Court has held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony because no legal provision disqualifies relatives of the victim of a crime from testifying if they are competent.¹⁹ Here, accused-appellant failed to show proof that Virginia and Junnel's testimonies were biased. Relationship to the victim alone is not enough reason to discredit them.

Since it is duly established that it was accused-appellant who attacked the victim, then no unlawful aggression could be attributed to the victim. Consequently, his claim of self-defense must fail.

Treachery was not sufficiently proven.

Treachery exists when the prosecution has sufficiently established the concurrence of the following elements: (1) the accused employed means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.²⁰

Bearing in mind that the qualifying circumstance of treachery must be indubitably proven as the crime itself, the Court finds that it was not sufficiently proven in this case.

Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected. The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself."²¹

The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.²²



¹⁹ *Roca v. CA*, 403 Phil. 326, 333-334 (2001).

²⁰ *People v. Umawid*, 735 Phil. 737, 746 (2014).

²¹ *People v. Vilbar*, 680 Phil. 767, 786 (2012).

²² *Id.*

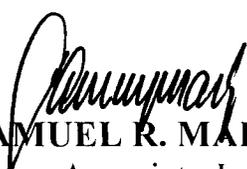
Here, there is no showing that accused-appellant consciously adopted the sudden attack to facilitate the perpetration of the killing. In fact, it was done in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions.

Since no qualifying circumstance exists, accused-appellant may only be convicted of homicide. Applying the Indeterminate Sentence Law and there being no mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term with a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. The Court thus imposes imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

The award of damages must be modified, consistent with prevailing jurisprudence. For crimes that result in the death of a victim and the penalty consists of divisible penalties, such as in this case of homicide, the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 for moral damages; and no award for exemplary damages.²³ In line with current policy,²⁴ the Court also imposes interest at the legal rate of 6% per annum on all monetary awards for damages from the date of finality of this decision until fully paid.

WHEREFORE, the instant appeal is **DISMISSED** for lack of merit. The 20 May 2016 Decision of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 02006 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Nestor "Tony" Caliao is found **GUILTY** of the crime of **HOMICIDE**, for which he is **SENTENCED** to imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and is **ORDERED** to pay the heirs of William Fuentes the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

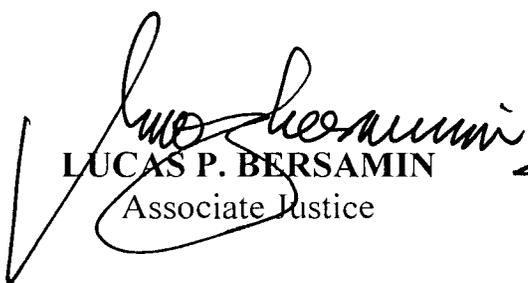
²³ *People v. Jugueta*, 783 Phil. 806, 846 (2016).

²⁴ *Id.* at 854.

WE CONCUR:



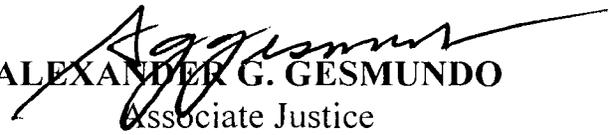
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



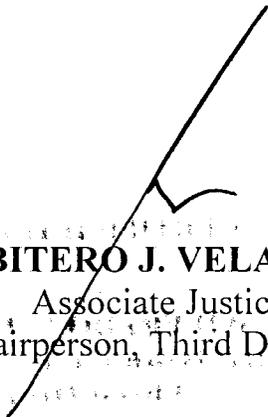
MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296,
The Judiciary Act of 1948, as amended)

WILFREDO
Division
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