

SECOND DIVISION

[G.R. No. 212156, June 20, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. GERRY
AGRAMON, ACCUSED-APPELLANT.**

D E C I S I O N

CAGUIOA, J:

On appeal is the Decision^[1] dated October 30, 2013 of the Court of Appeals (CA), Special Twentieth Division in CA-G.R. CR-HC No. 00982, which affirmed with modification, the Decision^[2] dated December 8, 2008 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, in Criminal Case No. 4625.

The Facts

In an Information^[3] filed with the RTC, accused-appellant Gerry Agramon (Gerry) was charged with Murder, the accusatory portion of which reads:

That on or about the 24th day of December, in the Municipality of San Miguel, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one PELITA ABOGANDA, with the use of a short bladed weapon (pisao) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

WOUNDS:

1. Stab wound anterior chest, 3.0 cm above left nipple, 8.0 cm from midsternal line at the level of the 3rd left intercostal space.
length- 1.7 cm
Depth - 6.0 cm

Directed posteriorly perforating ascending aorta

2. Incised wound elbow left lateral aspect
Length-5.0 cm
Depth-3.0 cm

CONCLUSION:

Cause of death was massive hemorrhage (*sic*) secondary to the stab wound in the chest. Weapon most probably use (*sic*) was a small sharp bladed pointed instrument.

which wound caused the death of said PELITA ABOGANDA.

CONTRARY TO LAW.

Carigara, Leyte, January 20, 2006.^[4]

Upon his arraignment, Gerry pleaded not guilty to the charge.^[5]

Thereafter, trial on the merits ensued.^[6] The prosecution presented Roger Agramon (Roger), Dr. Federico De Veyra, Jr. (Dr. Federico), the Municipal Health Officer of San Miguel, Leyte, PO2 Jessefesto Quintana and PO1 Niño Gervacio, as witnesses, who testified to the following facts:

On December 24, 2005, at about 6:00 in the evening, Roger, who just came from the farm, was sitting inside his dwelling with Pelita Aboganda (Pelita), his common-law wife, in Brgy. Kinalumsan, San Miguel, Leyte when his brother, Gerry, who appeared to be drunk, came to their dwelling yelling "I will kill you all." Gerry entered the house armed with an unsheathed bladed weapon and delivered a stab thrust against Roger, who was able to hold the weapon with his hand causing him to sustain four (4) wounds.^[7] Pelita, Roger's common law wife, who was then two (2) months pregnant, tried to cover Roger in order not to be hit again.^[8] Pelita was stabbed by Gerry on her left breast. When Roger was about to run, Gerry stabbed him and the weapon got stuck at his back.^[9] Gerry searched for another weapon inside the house and when the former saw the long bolo, he chased Roger who ran towards the barangay hall.^[10]

Upon reaching the barangay hall, Roger sought help from the barangay officials who were then celebrating their Christmas party. Gerry arrived at the barangay hall brandishing his weapon and roaming around the area. The barangay officials were not able to pacify him, so they asked help from the police officials of San Miguel, Leyte. When the police arrived, they arrested Gerry.^[11]

Pelita died, while Roger was taken to the Eastern Visayas Regional Medical Center for treatment.^[12]

The postmortem report of Dr. Federico showed that Pelita suffered one (1) stab wound in the chest and one (1) incised wound in the elbow; and died due to the massive hemorrhage secondary to the stab wound in the chest.^[13]

Gerry, on the other hand, interposed self-defense.^[14] He asserted that on December 24, 2005, in the morning, he was all alone at Sitio Bangon, Brgy. Kinalumsan, San Miguel, Leyte, gathering *tuba* as his primary job. On that day, while he was on his way to work, he was chased by his brother Roger, who was then holding a long bolo. Roger was allegedly mad at him because his three (3) pigs destroyed Roger's plants the previous day. When he saw his brother chasing him, Gerry ran towards the direction of his house and rested there for a while before going back to work.^[15]

After work, as Gerry was on his way home at around 6:00 in the evening, Roger accosted him and immediately delivered a hacking blow at him. Gerry was not hit as he was able to jump to a tree. Gerry then stabbed Roger with the scythe he was carrying for work. He tried to stab Roger again, but he was unable to hit him as

Roger's wife, Pelita, came to his defense and used her body as a shield to protect Roger. Gerry then stepped back and was not able to go near the victims as his uncle held him and brought him to their residence.^[16]

RTC Ruling

In a Decision^[17] dated December 8, 2008, the RTC gave full faith and credit to the version of the prosecution and found Gerry guilty beyond reasonable doubt of the crime of Murder. The RTC held that the number and nature of the wounds inflicted upon the victim disproves Gerry's claim of self-defense.^[18]

The RTC further ruled that the number and location of the wounds of the victims as compared to the unscathed accused was indicative of the treacherous execution of the crime, with the victims having no opportunity to defend themselves. The RTC also declared that evident premeditation was apparent from the fact that the accused was armed with two (2) scythes at the time of the incident and several hours had already lapsed from morning to 6:00 in the evening for him to reflect on his intentions to commit the crime.^[19]

The RTC sentenced Gerry to suffer the maximum penalty of *reclusion perpetua* and to pay civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 to the heirs of the victim, Pelita.^[20]

CA Ruling

In the assailed Decision,^[21] the CA denied the appeal and affirmed with modification the ruling of the RTC.

The CA agreed with the RTC that Gerry failed to prove self-defense because the element of unlawful aggression is explicitly wanting.^[22] However, as regards the qualifying circumstances of treachery and evident premeditation, the CA found that only evident premeditation was clearly established.^[23] The CA held that treachery cannot be appreciated because the attack on Pelita was not sudden and unexpected as Roger and Pelita were aware of the imminent danger to their lives.^[24]

The CA found Gerry guilty of Murder and sentenced him to *reclusion perpetua*, without eligibility for parole. The CA further ordered Gerry to pay the heirs of Pelita the amounts of: (1) P75,000.00 as civil indemnity, (2) P50,000.00 as moral damages, (3) P30,000.00 as exemplary damages and (4) P25,000.00 as temperate damages, plus interest on all damages awarded at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.^[25]

Hence, this appeal.^[26]

Issue

Whether the CA erred in affirming Gerry's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.^[27] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.^[28] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[29]

In the instant case, Gerry was charged with Murder, qualified by treachery and evident premeditation. The RTC found that both qualifying circumstances attended the killing of Pelita; while the CA found that only the qualifying circumstance of evident premeditation was established.

After a careful review and scrutiny of the records, the Court holds that Gerry can only be convicted of Homicide, not Murder.

Treachery and evident premeditation were not established beyond reasonable doubt.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.^[30] Thus, for Gerry to be convicted of Murder, the prosecution must not only establish that he killed Pelita; it must also prove, beyond reasonable doubt, that the killing of Pelita was attended by treachery or evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.^[31]

The Court agrees with the CA that the prosecution fell short of proving that Gerry consciously and deliberately adopted means which would ensure that Pelita could not defend herself or seek help. As aptly noted by the CA, Pelita was forewarned of the impending danger to her life.

In this case, the fact that accused-appellant came yelling and threatening his brother Roger and his family prior to the attack shows that there was no treachery, and that the latter were aware of the imminent danger to their lives. Certainly, Roger knew that the fight with his brother/accused-appellant, could lead to greater physical harm. The existence of a struggle before the attack on the victim Pelita clearly shows that she was forewarned of the impending attack, and that she was afforded the opportunity to put up a defense.^[32]