

THIRD DIVISION

[G.R. No. 218250, July 10, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIO COSGAFA Y CLAMOCHA, JIMMY SARCEDA Y AGANG, AND ALLAN VIVO Y APLACADOR, ACCUSED-APPELLANTS.

DECISION

TIJAM, J.:

This is an appeal from the Decision^[1] dated December 12, 2014 of the Court of Appeals (CA) of Cebu City, in CA-G.R. CR-H.C. No. 00418, sustaining the accused-appellants' conviction for the crime of murder by the Regional Trial Court (RTC) of Tagbilaran City, Branch 2, in its Decision^[2] dated May 28, 2006 in Criminal Case No. 12230.

Factual and Procedural Antecedents

Accused-appellants Gio Cosgafa y Clamocho (Gio), Jimmy Sarceda y Agang (Jimmy), and Allan Vivo y Aplacador (Allan) were charged with murder in an Information dated April 28, 2004 as follows:

That on or about the 26th day of October 2002 in the municipality of Tubigon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill, treachery and abuse of superior strength, by suddenly attacking the victim Nathaniel Asombrado, Sr. without affording the latter an opportunity to defend himself with the use of Batangas knives and icepick, hitting him on the different parts of his body, arms and head, thus inflicting upon the latter mortal wounds which caused his instantaneous death; to the damage and prejudice of the heirs of the said victim in the amount to be proved during the trial.

Acts committed contrary to the provisions of Article 248(1) of the Revised Penal Code, as amended by Republic Act 7659.^[3]

Upon arraignment on May 28, 2004, accused-appellants pleaded not guilty. Pre-trial and, thereafter, trial ensued.

The prosecution presented the following witnesses, to wit: (1) Ronald Manatad (Ronald); (2) Panfilo Baura (Panfilo); (3) Rosbill Manatad (Rosbill); (4) Police Officer 3 Vincent Russam Mascariñas (PO3 Mascariñas); (5) Dra. Adoracion L. Torregosa (Dra. Torregosa); (6) Ruben Asombrado (Ruben); and (7) Senior Police Officer 1 Joel Sabang (SPO1 Sabang).^[4]

At around 6:30 p.m. of October 25, 2002, brothers Ronald and Rosbill, Panfilo, a certain Joseph Mantahinay (Joseph) and Joseph Bryan Mendez (Bryan) were at the victim's house for the *fiesta*. After dinner, they finished half a gallon of *Bahalina*, an aged native coco-wine. At around 1:00 a.m. the following day, the group decided to go to the disco held at a nearby school.^[5]

On their way thereto, the group stopped by a *sari-sari* store owned by a retired police officer Pedrito Lapiz (Lapiz) to talk to a certain person who called the victim. While waiting, Rosbill, Joseph, and Panfilo proceeded to the bridge, about seven meters away, and sat on the railings. When they got there, accused-appellants were already sitting on the railings across them. Suddenly, Gio approached Rosbill and tried to box him but he did not connect. Rosbill, Joseph, and Panfilo then ran back to where they left the rest of the group and told them what happened.^[6]

Upon learning what happened, the victim proceeded to the bridge to confront Gio. When he got there, accused-appellants took turns in holding and stabbing the victim. When the victim fell on the ground, the accused-appellants ran away. Seeing that the accused-appellants had deadly weapons and they had none, the victim's group failed to come to his rescue.^[7]

The victim was then brought to the hospital but was declared dead therein. Dra. Torregosa, Municipal Health Officer of Tubigon, Bohol, examined the victim's body and found that the victim sustained nine stab wounds, four incised wounds, and one contusion, succumbing thus to "Hypovolemia due to severe intra-abdominal hemorrhage, secondary to multiple stab wounds, abdomen, and chest" as reflected in the Post Mortem Findings.^[8]

During Dra. Torregosa's testimony in court, she declared that wounds 1 to 6, which were circular in shape and one centimeter in diameter, could have been inflicted by a sharp pointed instrument like an ice pick; wounds 7 and 8 located at the hypochondriac region, which could have been inflicted by a sharp pointed weapon such as a *Batangas* knife, were deeply penetrating and pierced the liver; also, wounds 9 to 13 could have been inflicted by a *Batangas knife*; while the contusion, wound 14, on the victim's forehead could have been inflicted by a fist or any hard object such as the handle of a screwdriver.^[9]

PO3 Mascariñas and SPO1 Sabang testified that while posted as security in the school where the disco was being held, around 2:30 a.m. of October 26, 2002, they responded to a report by Barangay *Tanod* Nicandro Cabug-os (Barangay *Tanod* Cabug-os) about a stabbing incident nearby. The victim was already brought to the hospital when they arrived at the crime scene. Upon inquiry around the area, they learned from Lapiz that accused-appellants were the ones responsible for the crime. They immediately conducted a hot pursuit, which resulted to the accused appellants' arrest.^[10]

At the police station, accused-appellants admitted that they were the ones who stabbed the victim. Jimmy even led the police officers to his house to surrender the *Batangas* knife that he used on the victim. It was wrapped in a white shirt with brownish blood-like stains when recovered. A *Batangas* knife was also recovered from Allan upon arrest. An unidentified person also handed to the police officers an

ice pick (screwdriver with sharpened tip) found at the crime scene.^[11]

Ruben, the victim's brother, testified as to the expenses incurred due to the victim's death, to wit: (1) PhP20,000 for the embalming per O.R. No. 3036; (2) PhP15,000 for the novena of the dead; (3) burial expenses such as PhP5,000 for the coffin and PhP3,000 for the tomb; (4) PhP13,000 attorney's fees for the preliminary investigation; (5) PhP18,000 for court hearings in the RTC; (6) PhP6,000 as miscellaneous expenses and food for the witnesses; (7) PhP13,500 for Tagbilaran City hearings, amounting to PhP93,500 altogether. An amount of PhP1 Million was also claimed for moral damages.^[12]

Only the accused-appellants testified for the defense.

Gio and Jimmy admitted in open court that they stabbed the victim but interposed self-defense. They, however, averred that Allan had no participation in killing the victim.^[13]

Gio admitted that he used the screwdriver/ice pick, while Jimmy admitted that he used the *Batangas* knife in stabbing the victim.^[14]

All three accused-appellants admitted that past 12 midnight of October 26, 2002, they were in the alleged area for the *fiesta*. They dined and consumed drinks in several houses. On their way home, they stopped at the bridge to wait for Gio and a certain Vito Babad to exchange pants when the victim's group arrived and sat on the opposite railings fronting Jimmy and Allan. Jimmy averred that one person from the victim's group stood up and asked them "What are you looking *Bay?*". Jimmy responded that they were just waiting for their companion. The victim's group then approached accused-appellants' group, which prompted Jimmy to push and box Rosbill although the latter did not get hit.^[15]

The victim's group then ran back to where the rest of their group were. On the other hand, accused-appellants' group ran towards the disco place when suddenly, they found the victim running after them. According to the accused-appellants, the victim was bigger and taller in built than them. When the victim gained upon them, he held Jimmy's shirt and kicked him, causing Jimmy to fall down. Jimmy then was able to get a hold of a tree branch and hit the victim with it. Gio then came to Jimmy's rescue and fought with the victim. According to Gio, however, he was no match to the victim as the latter was not only bigger and taller than him but also trained in martial arts. Hence, they were forced to stab the victim to defend themselves. At that moment, Gio and Jimmy did not notice where Allan went. When the victim finally fell on the ground, Gio and Jimmy ran towards the creek.^[16]

RTC Ruling

The RTC found the accused-appellants guilty beyond reasonable doubt of murder, rejecting Gio and Jimmy's uncorroborated claim of self-defense, as well as their claim that Allan had no participation in the perpetration of the crime. The trial court appreciated the qualifying circumstance of superiority in number in killing the victim, who was unarmed and alone, with the use of deadly weapons. Thus:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the Court finds accused Gio Cosgafa y Clamocha, Jimmy Sarceda y Agang, and Allan Vivo y Aplacador, guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 (1) of the Revised Penal Code, as amended by R.A. 7659, as embraced in the foregoing Information and hereby sentences each of the said accused to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties of the law, to indemnify the heirs of Nathaniel Asombrado, Sr., the sum of Php50,000.00 funeral expenses and litigation expenses in the sum of Php40,000.00 and attorney's fees in the amount of Php10,000.00 and to pay the costs.

The three accused who are detention prisoners are hereby credited in full of the period of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

SO ORDERED.^[17]

CA Ruling

The CA sustained the conviction of the accused-appellants. It rejected Gio and Jimmy's claim of self-defense and found that the prosecution evidence was sufficient to prove Allan's participation in the crime. The appellate court, however, modified the civil liability awarded to the heirs of the victim. It added awards for civil indemnity, moral damages, and temperate damages. The said court also found it proper to award temperate damages, in lieu of the actual damages, considering that some pecuniary expenses were definitely incurred by the victim's family albeit not proven. Lastly, it imposed an interest rate of six percent (6%) *per annum* for all the monetary awards from the date of finality of the decision until the same are fully paid. It disposed, thus:

WHEREFORE, premises considered, the Decision dated January 24, 2013 [sic] of the Regional Trial Court, Branch 35 of Iloilo City [sic] in Criminal Case No. 48928 [sic] is hereby **AFFIRMED with MODIFICATION** that appellants Gio Cosgafa y Clamocha, Jimmy Sarceda y Agang and Allan Vivo y Aplacador are jointly and severally **ORDERED** to pay the following:

- (1) Php75,000.00 as civil indemnity;
- (2) Php50,000.00 as moral damages;
- (3) Php50,000.00 as temperate damages;
- (4) Php40,000.00 as litigation expenses;
- (5) Php10,000.00 as attorney's fees.

Appellants are further **ORDERED** to pay the heirs interest on all damages (*sic*) awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment. No pronouncement as to costs.

SO ORDERED.^[18]

Hence, this appeal.

The Court gave the parties the opportunity to file their supplemental briefs but both parties manifested that they no longer intend to file the same, having already discussed all of their arguments in their respective briefs before the CA.^[19]

Issues

- (1) May Gio and Jimmy properly invoke self-defense?
- (2) Was Allan's participation in the crime sufficiently proven?
- (3) Does the circumstance of abuse of superior strength exist?

This Court's Ruling

Gio and Jimmy basically assert that they cannot be adjudged criminally liable for the resulting death of the victim as they only stabbed the latter in self-defense. Allan, on the other hand, faults the trial court for convicting him of the crime charged despite the categorical statement of his co-accused that he had no participation in the criminal act. Accused appellants also argue that abuse of superior strength cannot be appreciated to qualify the killing to murder as there is no gross disparity of forces to speak of since it was admitted that the victim was bigger and taller in size compared to the accused-appellants.

We find no merit in the instant appeal.

At the outset, let it be stated that absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings. Such findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.^[20]

Now for the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.^[21]

First. The fact of victim's death is undisputed.

Second. The fact that accused-appellants were the ones responsible for the victim's death was also established. Gio and Jimmy, in fact, admitted in open court that they stabbed the victim, which resulted to the latter's death, albeit they interposed self-defense to justify the killing. Jurisprudence is to the effect that when self-defense is pleaded, the accused thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.^[22]

The accused must discharge the burden of proving his affirmative allegation with certainty by relying on the strength of his own evidence, not on the weakness of that of the prosecution, considering that the prosecution's evidence, even if weak, cannot be disbelieved in view of the admission of the killing.^[23]