

## THIRD DIVISION

[ G.R. No. 205316, June 29, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DE CASTRO AND RANDOLF<sup>[1]</sup> PABANIL, ACCUSED-APPELLANTS.**

### DECISION

**VILLARAMA, JR., J.:**

On appeal is the May 23, 2012 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 04343 affirming appellants' conviction for the crime of murder.

The factual antecedents:

Eric De Castro (Eric), Roland Pabanil (Roland) and appellants Romeo De Castro (Romeo) and Randolph Pabanil (Randolf) were charged with Murder under the following Information:

That on or about the 16<sup>th</sup> day of August, 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with LPG tank, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to kill, abuse of superior strength and insult or in disregard of the respect due the offended party on account of his rank, did then and there willfully, unlawfully and feloniously attack, assault and hit on the head with the said LPG Tank one Senior Police Officer II (SPOII) Orlando De Leon, a police officer, while in the performance of his official duties, thereby inflicting upon the latter traumatic and fatal injuries which caused his death.

CONTRARY TO LAW.<sup>[3]</sup>

When arraigned, the four accused pleaded not guilty. Trial on the merits ensued.

Evidence for the prosecution established that at around 3:00 a.m. of August 16, 2006, Edwin Lonzame (Lonzame), who works as a baker at AMM Bakery at Apolinario Street, Bangkal, Makati City, saw the victim SPOII Orlando De Leon (De Leon) at their bakery buying milk and bread. A man later identified as Randolf also came to buy from the bakery. Shortly, another man arrived and punched Randolf. De Leon pacified them until the man ran away but he continued talking with Randolf and they had an altercation. At this point, another man, later identified as Romeo, arrived and hit De Leon on the head. De Leon fell and was mauled by Randolf, Romeo, Eric and Roland, the latter two are familiar with Lonzame as they used to stand-by at the bakery almost everyday being car wash boys in the car wash area near the bakery.<sup>[4]</sup>

While pinned down, De Leon was hit on the face by Randolph with a stove and gas tank he took from a nearby store. De Leon tried to stand up but Romeo prevented him from doing so and they grappled for possession of De Leon's service firearm. The said gun went off, and shortly Romeo again took it and pointed the gun at De Leon. When the gun did not fire, Romeo hit De Leon's head with the gun, dragged him to the street and left. De Leon was again mauled by Randolph, Eric and Roland who took turns in hitting him with a gas stove. When Romeo returned, he picked up the gas tank and dropped it on De Leon's face.<sup>[5]</sup>

In the morning of the same day, all four accused were arrested and De Leon's service firearm was surrendered to the arresting officer, Randy Laman Ozo.<sup>[6]</sup>

In the meantime, Eric died and the case against him was dismissed.<sup>[7]</sup>

Dr. Voltaire Nulud of the Philippine National Police Crime Laboratory testified that, based on his autopsy and medico-legal report, De Leon died of intracranial hemorrhages and sustained traumatic head injuries caused by a heavy, solid material.<sup>[8]</sup>

The defense gave a different version of the incident. Randolph testified that in the morning of August 16, 2006, he was drinking with his brother, Roland and cousins Romeo and Eric, and with another friend they call "Kabayo" in the interior of Apolinario Street. Around 2:30 a.m., he went out to buy cigarettes at AMM Bakery and saw a man (De Leon) talking to Liezl, the bakery's saleslady who is his (Randolph's) textmate. When Liezl finally attended to him, another man in white *sando* approached and hit him at the back of his ear and ran away. He went after said man but he met De Leon who told him "*Siga ka ba rito?*" De Leon then poked his gun at him, kicked him and told him to go home. He went back to his drinking session and told Romeo that he was punched at the bakery. Romeo went to the place of the punching incident and he tried to stop Romeo, warning the latter that one of the men at the bakery had a gun. After five minutes, he followed Romeo and saw him in front of the bakery having an altercation with De Leon who was trying to draw his gun. He then approached De Leon slowly from the side so De Leon would not see him, thinking that De Leon would shoot Romeo. De Leon fell after he hit him. Romeo then held De Leon's hand and he punched the man three times. The gun fired and he hit De Leon with a gas tank. When he was about to hit De Leon a third time, Roland arrived, took the gas tank from him, and told him to go home.<sup>[9]</sup> He then stood up and took the gun from Eric. They left De Leon unconscious and bloodied.

Romeo gave similar statements as that of Randolph. He had a heated conversation with De Leon, they were hurling invectives. He testified that Randolph approached De Leon as the latter was trying to pull his gun.<sup>[10]</sup>

On the part of Roland, he testified that he had nothing to do with the killing but merely pacified De Leon and his brother Randolph whom he saw trying to hit De Leon with a gas tank. However, he failed to submit his counter-affidavit during the preliminary investigation.

In its Decision<sup>[11]</sup> dated December 4, 2009 in Criminal Case No. 06-1675, the Regional Trial Court (RTC) of Makati City, Branch 66, found appellants guilty of

murder. They were sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay De Leon's heirs P12,000 as burial expenses, P50,000 as life indemnity, P50,000 as moral and exemplary damages, and costs. Roland Pabanil was acquitted.<sup>[12]</sup>

In their appeal before the CA, appellants argued that the RTC erred in considering the qualifying circumstances of abuse of superior strength and disregard of the respect due on account of De Leon's rank.<sup>[13]</sup> They pointed out that the prosecution failed to prove the qualifying circumstance of abuse of superior strength. They claimed that Randolph punched De Leon as he thought the latter was about to shoot Romeo. When De Leon fell and drew his gun, Randolph was forced to get the LPG tank and hit De Leon with it. Appellants also argue that at the time of the incident, they did not know that De Leon is a police officer.<sup>[14]</sup>

The CA denied the appeal and affirmed with modification the RTC Decision. The *fallo* of the assailed CA Decision reads:

**WHEREFORE**, the appeal is **DENIED** for lack of merit. The Decision dated December 4, 2009 of the Regional Trial Court of Makati City, Branch 66 in Crim. Case No. 06-1675, which found ROMEO DE CASTRO alias "Omeng" and RANDOLF PABANIL alias "Oloy" **GUILTY of MURDER** and sentenced to suffer the penalty of **RECLUSION PERPETUA** is hereby **AFFIRMED** with the MODIFICATION in that the amount of P12,000.00 as interment and burial expenses to be awarded [to] the heirs of Sr. Police Officer II Orlando De Leon shall be **DELETED**. The amount of civil indemnity to be awarded [to] the heirs of SPO II De Leon shall also be increased from P50,000.00 to P75,000.00. In addition, Appellants ROMEO DE CASTRO and RANDOLF PABANIL are **ORDERED** to pay the heirs of SPO II De Leon moral damages in the amount of P50,000.00, exemplary damages in the amount of P30,000.00 and temperate damages in the amount of P25,000.00. All awards shall further incur interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>[15]</sup>

The CA agreed with the RTC that appellants failed to prove the elements of defense of a relative. The CA noted that there was no unlawful aggression on the part of De Leon. In fact, Randolph hit De Leon because he thought that De Leon was with the man who punched him and not because he was threatened by De Leon's gun. And if it was indeed the threat of a gun which prompted appellants to hit De Leon, there was no more unlawful aggression when Randolph repeatedly attacked De Leon. The CA also said that Romeo admitted he already had possession of the gun when appellant Randolph repeatedly hit De Leon with a gas tank. If De Leon was the aggressor, De Leon's aggression ceased the moment he was disarmed. When Randolph repeatedly hit De Leon who had no more weapon and had fallen, there is thus no more self-defense or defense of a relative, said the CA. The CA further noted that De Leon's skull was broken into small pieces and held that the severity of De Leon's injuries reveals that the force used against him by appellants was not reasonable to disarm him or prevent him from harming others.

But while the CA agreed with appellants that the prosecution failed to prove the

circumstance of disregard of the respect due on account of De Leon's rank, it nevertheless ruled that abuse of superior strength is present in this case. The CA said that De Leon was already helpless when he was repeatedly attacked with a gas tank.

Hence, this appeal. Appellants filed a manifestation in lieu of supplemental brief.<sup>[16]</sup>

Did the CA err in affirming appellants' conviction for the crime of murder?

We rule in the negative.

Article 248 of the Revised Penal Code, as amended, defines the crime of murder, to wit:

ART. 248. *Murder*. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, **taking advantage of superior strength**, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x (Emphasis supplied)

To be convicted of murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code, as amended; and (4) the killing neither constitutes parricide nor infanticide.<sup>[17]</sup>

In this case, the foregoing elements of the crime of murder were duly established. De Leon was killed. Appellants killed him. De Leon's killing was attended by abuse of superior strength, one of the qualifying circumstances under Article 248 (1) of the Revised Penal Code, as amended. De Leon's killing is not parricide or infanticide. In fact, appellants do not dispute the first, second and fourth elements. They merely questioned the second element, the presence of the qualifying circumstance of abuse of superior strength.

To take advantage of superior strength is to purposely use excessive force, out of proportion to the means of defense available to the person attacked.<sup>[18]</sup> We agree with the CA that the qualifying circumstance of abuse of superior strength is present in this case. As aptly pointed out by the CA, De Leon was already helpless when he was repeatedly attacked with a gas tank. Appellants clearly used excessive force against the already unarmed and defenseless De Leon. This is clear from Romeo's own testimony:

Q -You said that your cousin Randolph Pabanil came, where did he come from?

A -From behind, sir.

Q -From behind of whom?

A -Behind the man wearing leather jacket, sir.

x x x x