

THIRD DIVISION

[G.R. No. 181843, July 14, 2014]

MIGUEL CIRERA Y USTELO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

LEONEN, J.:

Treachery as a qualifying circumstance must be deliberately sought to ensure the safety of the accused from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery.

We are asked to decide on a petition for review on certiorari^[1] of the Court of Appeals' decision^[2] dated November 20, 2007 and the Court of Appeals' resolution^[3] dated February 18, 2008. The Court of Appeals affirmed the Regional Trial Court's decision^[4] dated July 2, 2004 that found petitioner guilty of two (2) counts of frustrated murder and sentenced him to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to 17 years and four (4) months of reclusion temporal as maximum for each count.^[5]

This case arose out of two (2) informations for frustrated murder filed against petitioner:

Criminal Case No. Q-00-91821

That on or about the 20th day of April 2000, in Quezon City, Philippines, the said accused, with intent to kill, with evident premeditation and by means of treachery, did, then and there, willfully, unlawfully and feloniously attack and assault and employ personal violence upon the person of one GERARDO NAVAL by then and there stabbing the latter with a sharp bladed weapon hitting him at the left back portion of his body, thereby inflicting upon said offended party physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is, by the timely and able medical attendance rendered to said GERARDO NAVAL which save his life, to the damage and prejudice of the said offended party.^[6]

Criminal Case No. Q-00-91842

That on or about the 20th day of April 2000, in Quezon City, Philippines, the said accused, with intent to kill, with evident premeditation and by

means of treachery, did, then and there, wilfully, unlawfully and feloniously attack and assault and employ personal violence upon the person of one ROMEO AUSTRIA by then and there stabbing the latter with a sharp bladed weapon hitting him at the left back portion of his body, thereby inflicting upon said offended party physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is, by the timely and able medical attendance rendered to said ROMEO AUSTRIA which save his life, to the damage and prejudice of the said offended party.^[7]

Upon arraignment, petitioner pleaded not guilty to the offenses charged against him.^[8]

The prosecution presented private complainants Gerardo Naval and Romeo Austria as witnesses.^[9] It also presented Dr. Raisa D. Francisco, Carlos Angeles, and Arnold Angeles as witnesses.^[10] Petitioner testified for the defense.^[11]

Facts according to the prosecution

Romeo Austria testified that at around 8:30 a.m. on April 20, 2000, he was playing a lucky nine game at a wake on Araneta Avenue, Quezon City.^[12] Miguel arrived, asking money from Austria so he could buy liquor.^[13] In response, Austria asked Miguel "to keep quiet."^[14] Gerardo Naval "arrived and asked [Austria] to go home."^[15] There was an exchange of words between Naval and Miguel.^[16] Austria "stood up [and] felt that he was stabbed."^[17] As he ran home, he noticed Miguel "armed with a knife,"^[18] this time chasing Naval.^[19] Austria was "hospitalized . . . and was . . . confined for more than a month."^[20] He spent around P110,000.00 for his hospitalization.^[21] On cross-examination, Austria testified that he saw Miguel attempt to stab him again.^[22]

Gerardo Naval testified that Miguel was irked when he asked Austria to go home.^[23] After he and Miguel had an exchange of words, he "felt a hard blow on his back."^[24] Naval retaliated.^[25] However, he ran away when he saw Miguel holding a knife.^[26] Miguel chased Naval who fell on the ground.^[27] When Naval saw that Miguel was "about to stab him again, he hit [Miguel] with a bench"^[28] and left him lying on the ground, unable to stand.^[29] According to Naval, "he did not see the [knife] land on his back."^[30] Naval was also confined at the hospital but only for six (6) days.^[31]

Dr. Carlos Angeles testified that "he treated [Austria] for [the] stab wound at [his] back."^[32] He declared that Austria could have died without an emergency operation.^[33] According to him, "a long and sharp instrument, probably a knife,"^[34] could have been used to stab the victim.^[35]

Dr. Arnold Angeles, Naval's doctor, testified that "continuous blood loss"^[36] could have caused Naval's death.^[37]

Facts according to the defense

Miguel testified that he saw private complainants at a wake.^[38] Naval tapped his back and asked, "Anong problema mo?" to which he answered, "Wala naman."^[39] Thereafter, Naval punched Miguel.^[40] As he was about to stand up, he was hit by a hard object on his head, causing him to lose consciousness.^[41] He was brought to UERM Memorial Hospital where Naval identified him.^[42] He was then brought to Station 11 in Galas, Quezon City.^[43] Miguel also testified that only Naval identified him at the hospital.^[44]

The parties stipulated that Dr. Renan Acosta, supposedly the second defense witness, conducted Miguel's examination.^[45] He issued a temporary medical certificate and a separate permanent medical certificate.^[46]

Regional Trial Court

In its decision, the Regional Trial Court found petitioner guilty beyond reasonable doubt of two (2) counts of frustrated murder.^[47] He was sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to 17 years and four (4) months of *reclusion temporal* as maximum for each count.^[48] Petitioner was ordered to indemnify Austria P25,000.00 as moral damages and P100,000.00 as actual damages; and Naval P25,000.00 as moral damages and P10,000.00 as temperate or moderate damages.^[49] Petitioner was also ordered to pay the costs of suit.^[50] The dispositive portion of the Regional Trial Court decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Re: Criminal Case No. 00-91841-finding accused MIGUEL CIRERA y USTELO guilty beyond reasonable doubt of the crime of Frustrated Murder hereby sentencing him to suffer the indeterminate penalty of imprisonment of **Six (6) years and one (1) day of Prision Mayor as MINIMUM to Seventeen (17) Years and Four (4) months of Reclusion Temporal as MAXIMUM** and to indemnify private complainant Gerardo Naval in the amount of Twenty Five Thousand (P25,000.00) Pesos as and by way of morals [sic] damages and in the absence of evidence, the amount of Ten Thousand (P10,000.00) Pesos as and by way [of] Temperate or moderate damages;

2. Re: Criminal Case NO. 00-91841-finding accused MIGUEL CIRERA y USTELO guilty beyond reasonable doubt of the crime of Frustrated Murder, hereby sentencing him to suffer the indeterminate penalty [of] **Six (6) years and one (1) day of Prision Mayor as MINIMUM to**

Seventeen (17) years and four (4) months of Reclusion Temporal as MAXIMUM and to indemnify private complainant Romeo Austria in the amount of Twenty Five Thousand (P25,000.00) Pesos as and by way of moral damages and the amount of One Hundred Thousand (P100,000.00) Pesos as actual damages.

3. To pay the cost of suit.^[51] (Emphasis in the original)

The Regional Trial Court found that petitioner caused the stab wounds of private complainants.^[52] Naval and Austria were able to positively identify him and describe how they obtained their injuries.^[53]

Petitioner's acts were not attended by evident premeditation as ruled by the trial court.^[54] However, there was treachery on petitioner's end, considering the length of time it took private complainants to realize that they were stabbed.^[55] This, according to the Regional Trial Court, was a method or form that tended to insure the execution of an act without risk from the offended party's defense.^[56]

Petitioner appealed^[57] the Regional Trial Court's July 2, 2004 decision to the Court of Appeals, raising as issue the credibility of the prosecution's witnesses and, hence, the correctness of his conviction.^[58]

Court of Appeals

In a decision^[59] promulgated on November 20, 2007, the Court of Appeals affirmed the decision of the trial court.

The Court of Appeals was not persuaded by petitioner's arguments pointing to alleged inconsistencies in the prosecution witnesses' narratives. It found that the inconsistency between Naval's testimony and his sworn affidavit on the number of times petitioner was hit might be attributed to the fact that "the statement was taken . . . while he was [still at] the hospital [unable] to fully understand its contents".^[60] The Court of Appeals was not persuaded either by petitioner's argument that Austria and Naval failed to testify that they saw him stab them.^[61] The Court of Appeals held that "no other person could have committed the crime"^[62] as "all the circumstances point to [petitioner] as the author of the crime."^[63]

The Court of Appeals affirmed the finding of the trial court that there was treachery in this case because "the attack was so sudden and unexpected"^[64] that "self-defense was not possible."^[65]

Petitioner's motion for reconsideration was denied in the Court of Appeals' resolution^[66] promulgated on February 18, 2008.

Petitioner, in this case, raises the following issue:

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL WHICH IN EFFECT, AFFIRMS THE JUDGMENT OF CONVICTION RENDERED BY THE TRIAL COURT, DESPITE THE PATENT LACK OF EVIDENCE AGAINST THE PETITIONER AND FOR THE FAILURE OF THE PROSECUTION TO PROVE THE PETITIONER'S GUILT BEYOND REASONABLE DOUBT.^[67]

Petitioner argues that the Court of Appeals failed to consider the inconsistencies in Austria's and Naval's statements.^[68] Austria's statement that only Naval and petitioner were standing behind him was inconsistent with Austria's other statement that "petitioner was on his left side, while [Naval] was on his right side."^[69]

Petitioner also stresses that Austria's claim that Naval and petitioner "were still having an altercation when he suddenly felt a stab blow at his back"^[70] was inconsistent with Naval's alleged failure to mention "that he had an altercation with the petitioner before the stabbing incident."^[71] Petitioner claims that it was not possible for him to have stabbed Austria without Naval noticing since he was having a heated exchange of words with Naval.^[72]

Petitioner insists that the claim that "petitioner was armed with a knife"^[73] was not proven since "the knife was not recovered."^[74] Petitioner was left immobile, yet "nobody bothered to retrieve the knife"^[75] he supposedly used in committing the crimes charged against him.^[76] Petitioner also points out that other players in the lucky nine game might have gotten mad at private complainants when Naval allegedly asked Austria to go home for a drinking spree.^[77]

Petitioner also argues that there was no treachery.^[78] Even assuming that an assault was sudden and unexpected, there must be "evidence that [the] mode of assault was consciously and deliberately adopted to [e]nsure the execution of the crime without risk to the [petitioner]."^[79] Given "private complainants' superiority in number"^[80] and considering that petitioner "was left behind unconscious,"^[81] private complainants were not left without "opportunity to retaliate."^[82]

Respondent counters that the "trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which . . . would alter the result of the case."^[83]

Private complainants point out that the circumstances of the case show treachery since they were attacked from behind.^[84] Further, they claim that there was no warning that they were in danger when they were stabbed.^[85]

The petition should be partly granted. Treachery did not exist and, hence, petitioner may only be convicted of two counts of frustrated homicide.