

## SECOND DIVISION

[ G.R. No. 182750, January 20, 2009 ]

**RODEL URBANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### **D E C I S I O N**

**VELASCO JR., J.:**

This petition for review under Rule 45 seeks to reverse and set aside the Decision<sup>[1]</sup> dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 25371 which affirmed with modification the April 30, 2001 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 39 in Lingayen, Pangasinan in Criminal Case No. L-5028. The RTC found petitioner Rodel Urbano guilty beyond reasonable doubt of the crime of Homicide.

#### **The Facts**

In an Information filed before the RTC, petitioner was charged with Homicide, committed as follows:

That on or about the 28<sup>th</sup> of September 1993 in the evening, in Barangay Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hit and maul Brigido Tomelden, inflicting upon him mortal injuries and as borne out from the autopsy report the following findings:

#### **EXTERNAL FINDINGS:**

A- Softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear.

B- Clotted blood over the (R) occipito-temporal area.

C- No lacerations noted.

#### **INTERNAL FINDINGS:**

A- On opening the skull there is oozing of dark colored blood from the brain substances.

B- More darkened blood vessels at the (L) side of the brain.

#### **CAUSE OF DEATH:**

Cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident.

Which directly caused his death, to the damage and prejudice of the heirs of the said Brigido Tomelden.

CONTRARY to Article 249 of the Revised Penal Code.

Petitioner, when arraigned, pleaded not guilty to the charge. Following the parties' waiver of pre-trial, trial on the merits then ensued.

As summarized in the decision subject of review, the prosecution's evidence established the following facts:

On September 28, 1993, at around 8:00 p.m., the victim Brigido Tomelden and petitioner were at the compound of the Lingayen Water District (LIWAD) in Lingayen, Pangasinan, having just arrived from a picnic in the nearby town of Bugallon, Pangasinan, where, with some other co-workers, they drunk beer in a restaurant. While inside the compound, the two had a heated altercation in the course of which Tomelden hurled insulting remarks at petitioner. Reacting, petitioner asked why Tomelden, when drunk, has the penchant of insulting petitioner.

The exchange of words led to an exchange of blows. Cooler heads succeeded in breaking up the fight, but only for a brief moment as the protagonists refused to be pacified and continued throwing fist blows at each other. Then petitioner delivered a "lucky punch," as described by eyewitness Orje Salazar, on Tomelden's face, which made Tomelden topple down. Tomelden was on the verge of hitting his head on the ground had their companions not caught him and prevented the fall. The blow, however, caused Tomelden's nose to bleed and rendered him unconscious.

Petitioner and his other co-workers brought Tomelden to the office of the LIWAD general manager where he spent the night. He remained in the compound the following day, September 29, 1993. Upon arriving home at around 6:00 p.m. of that day, Tomelden informed his wife, Rosario, of the fight the previous night and of his having been rendered unconscious. He complained of pain in his nape, head, and ear which impelled Rosario to immediately bring him to the Lingayen Community Hospital where Dr. Daisy Arellano examined him and treated his lacerated left index finger, contusions, and hematoma at the right cerebrum.

On October 2 and 7, 1993, Tomelden went back to the hospital complaining of dizziness, headache, and other pains. The attending doctors observed the patient to be in a state of drowsiness and frequent vomiting. On October 8, 1993, Rosario brought Tomelden to the Sison Memorial Provincial Hospital in Dagupan City, where the attending physician, Dr. Ramon Ramos, diagnosed Tomelden suffering from "brain injury, secondary to mauling to consider cerebral hemorrhage."<sup>[3]</sup>

Tomelden was confined in the provincial hospital until 3:00 p.m. of October 10, 1993, and, due to financial constraints, was thereafter discharged despite signs negating physical condition improvement. Upon reaching their house, however, Tomelden again complained of extreme head pain, prompting his wife to bring him back to the Lingayen Community Hospital where Dr. Arellano again attended to him.

This time, things turned for the worst, the doctor noting that Tomelden appeared to be semi-conscious, sleepy, uncooperative, and not responding to any stimulant. Tomelden died at 9:00 p.m. of that day due, per Dr. Arellano, to "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The defense presented petitioner who denied having any intention to kill, asserting that hypertension, for which Tomelden was receiving treatment, was the cause of the latter's death.

### **The Ruling of the RTC**

On April 30, 2001, the RTC rendered judgment finding petitioner guilty as charged. The *fallo* of the RTC's decision reads:

WHEREFORE, the prosecution having established beyond reasonable doubt the guilt of the accused of the crime of HOMICIDE as defined and penalized under Art. 249 of the Revised Penal Code, this Court in the absence of any modifying circumstances, hereby sentences said accused to suffer the indeterminate prison term of eight (8) 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 the legal heirs of the victim in the amount of PHP50,000.00, plus cost of the suit.

The period of preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.<sup>[4]</sup>

Therefrom, petitioner appealed to the CA, his recourse docketed as CA-G.R. CR No. 25371.

### **The Ruling of the CA**

On January 25, 2008, the CA rendered a decision, affirming the conviction of petitioner, but awarding moral damages to the heirs of Tomelden, disposing as follows:

WHEREFORE, in the light of the foregoing, the appeal of the accused-appellant is DISMISSED. The decision appealed from is AFFIRMED with MODIFICATION that an award of P50,000.00 moral damages is GRANTED.

Remand of the records should immediately follow finality for the consequent execution of the decision.<sup>[5]</sup>

The appellate court held that the commission by petitioner of the crime of homicide, as defined and penalized under Article 249<sup>[6]</sup> of the Revised Penal Code (RPC), had been proved beyond moral certainty of doubt, pointing to the lucky punch as the proximate cause of Tomelden's hospitalization and ultimately his death. And like the RTC, the CA found no qualifying circumstance to increase or lower the penalty.

Following the denial of petitioner's motion for reconsideration, per the CA

Resolution<sup>[7]</sup> of April 24, 2008, he interposed this petition.

### **The Issues**

On essentially the same issues raised before the CA, petitioner now urges the Court to set aside the appealed decision, or at least modify it, maintaining that the appellate court:

I. x x x erred in affirming the decision of the [RTC] finding [him] guilty beyond reasonable doubt of the crime charged.

II. x x x erred in not appreciating the mitigating circumstances of sufficient provocation on the part of the victim and lack of intent to commit so grave a wrong in favor of the petitioner.<sup>[8]</sup>

### **The Court's Ruling**

The petition is partly meritorious.

### **Homicide Duly Proved**

It is petitioner's threshold posture that the fist injury Tomelden sustained was not "the main underlying cause of his death."<sup>[9]</sup> In this regard, petitioner draws attention to the fact that the fist fight in question happened on September 28, 1993. Tomelden, however, died only on October 10, 1993 or 12 days thereafter and that, during the intervening days, particularly September 29, 1993, the deceased regularly reported for work. Moreover, petitioner avers that days prior to the fateful incident of September 28, 1993, Tomelden failed to come to work as he was suffering from malignant hypertension and that this circumstance greatly engenders doubt as to the proximate cause of the victim's death. Petitioner, thus, contends that he could only be adjudged guilty of physical injuries.<sup>[10]</sup>

We are not persuaded.

The prosecution witness, Salazar, testified about petitioner's lucky punch hitting Tomelden right smack on the face. And even if Tomelden's head did not hit the ground as his co-workers averred that actuality, that punch gave him a bleeding nose and rendered him unconscious right after the September 28, 1993 fight. From then on, Tomelden was in and out of the hospital complaining of headache, among other pains, until his demise on October 10, 1993, or 12 days after the blow that made Tomelden unconscious.

Significantly, Dr. Arellano testified conducting an autopsy on the body of Tomelden and stressed that the "softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear" of the victim could have been caused by a fist blow. She also opined that the fist blow which landed on Tomelden's head could have shaken his brain which caused the cerebral concussion; and that the cause of the victim's death was "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The combined effects of the testimonies of Salazar and Dr. Arellano, buttressed by that of Rosario who related about her husband's post September 28, 1993 severe

head pain, clearly establish beyond cavil the cause of Tomelden's death and who was liable for it.

The CA observed aptly:

It was through the direct accounts of the prosecution witnesses of the events that transpired during the fistcuff incident x x x more specifically the landing of the "lucky punch" on the face of [Tomelden], taken together with the result of the medical examinations and autopsy report which described the death of the victim as "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident" that we are convinced that the "lucky punch" was the proximate cause of [Tomelden's] death. The prosecution had satisfactorily proven that it was only after the incident that transpired on September 28, 1993 that the victim was hospitalized on several occasions until he expired, twelve days later x x x. It is moreover of no consequence whether the victim was able to report for work during the intervening days x x x.

We find no reason to depart from the doctrinal rule that great weight is accorded the factual findings of the trial court, particularly with respect to the ascertainment of the credibility of witnesses. There was absence of any ill motive on the part of x x x Salazar who in fact testified that he was a friend of both [petitioner] and [Tomelden]; more so on the part of the attending physicians.<sup>[11]</sup> x x x

Petitioner's suggestion that Tomelden succumbed to heart ailment and/or that his death was the result of his malignant hypertension is untenable, given that the post-mortem report yields no positive indication that he died from such malady.

### **Mitigating Circumstances Present**

Petitioner next contends that the mitigating circumstances of no intention to commit so grave a wrong and sufficient provocation on the part of the victim ought to be appreciated in petitioner's favor.

On this score, we agree with petitioner.

Paragraphs 3 and 4 of Art. 13, RPC provide as follows:

Art. 13. Mitigating circumstances.--The following are mitigating circumstances:

x x x x

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct