

## SECOND DIVISION

[ G.R. No. 140680, May 28, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RENY DE LOS REYES, APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 98-343, convicting appellant Reny de los Reyes of murder, sentencing him to suffer *reclusion perpetua*, and ordering him to pay damages to the heirs of the victim in the amount of P75,000.00 as civil indemnity; P75,000.00 as moral damages; and P5,000.00 as funeral expenses.

On May 5, 1998, an Information was filed against the appellant which reads as follows:

On January 13, 1998 at about 4:00 o'clock in the afternoon, more or less, at Sitio Digcamara, Barangay Mapulog, Municipality of Naawan, Province of Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab to death one Felomeno Omamos, with the use of a knife, thereby hitting the victim on the different parts of his body which caused his instantaneous death.<sup>[2]</sup>

Upon arraignment, the appellant entered a plea of guilty, but interposed self-defense. A reverse trial, thus, ensued.

#### **Case for the Prosecution<sup>[3]</sup>**

At around 3:00 p.m. on January 13, 1998, the appellant's distant cousin, Myrnaflor Gaid, was in the house of her uncle, Mario de los Reyes. Myrnaflor wanted to have herself massaged by her Aunt Flora who was a *manghihilot*. While Myrnaflor was waiting for her aunt, the appellant arrived and placed a bet in the game of jai-alai. He then took a stainless steel knife from the banggera of the kitchen and went out of the house. The appellant informed Mario that he was borrowing the latter's knife, mounted his bicycle and left.

At around the same time, Felomeno Omamos was leaving their house to tether their cow, and brought along with him his five-year-old son. Worrying about the weather, Annaliza, his wife, decided to follow, to give father and son an umbrella. At a distance, Annaliza saw her husband walking along the road, followed by their son. The appellant appeared on a bicycle and pedaled behind the two. He suddenly stabbed Felomeno at the back with a knife, prompting Annaliza to shout, "Jofet,"<sup>[4]</sup>

do not stab my husband!" The appellant continued stabbing Felomeno as the little boy began to cry. Felomeno was stabbed on the elbow, the back and the chest.

Annaliza shouted for help. Ruel Omamos, Felomeno's elder brother, was the first to respond, followed by Marcillano Matano, Felomeno's grandfather. They got an Elf truck and brought Felomeno to the Naawan Municipal Hall where he was transferred to an ambulance coming from Cagayan de Oro City. Felomeno was, thereafter, brought to the Northern Mindanao Medical Center. Felomeno died in the hospital at around 7:50 p.m. while undergoing treatment for his wounds.

Despite the repeated issuance of *subpoena duces tecum* and *ad testificandum*, the medico-legal officer failed to attend the hearing to testify on the victim's medical records. The prosecution and the defense then agreed to waive the presentation of the said witness. The victim's death certificate<sup>[5]</sup> was admitted by the defense. The cause of death was indicated therein as follows:

UNDETERMINED PROB HYPOVOLEMIC SHOCK 2° TO MASSIVE HEMOTHORAX (R CHEST 2° TO STAB WOUND R ANT CHEST).<sup>[6]</sup>

### **The Version of the Defense<sup>[7]</sup>**

At around 3:30 p.m. on January 13, 1998, the appellant was riding his bicycle<sup>[8]</sup> and went to the house of his uncle, Mario de los Reyes, at Sitio Digcamara, Naawan, Misamis Oriental, to read the tabloid *Bandera*. The appellant saw Felomeno Omamos along the road, who whistled to him and shouted, "*Hoy! Ayaw na ug agi diri kay adunay mahitabo kanimo!*" (Do not pass this way otherwise, something might happen to you)." The appellant ignored Felomeno and proceeded to his uncle's house. He did not tell his uncle of the appellant's threat. After finishing reading the newspaper for about thirty to forty minutes, the appellant left for his house.

As the appellant rode his bicycle, he saw Felomeno alone, walking ahead of him. When the appellant was about twenty to twenty-five meters or so behind Felomeno, the latter suddenly turned around and picked up a stone about the size of two clenched fists. As the appellant neared Felomeno, at a distance of about five to six meters, the latter threw the stone at him. The stone barely missed the appellant, but the left side of the rear tire of his bicycle was hit, causing two spokes to be detached from the tire rim. The appellant fell off the right side of the bicycle in a crouching position, with his hands still holding on to the handlebars. The appellant saw Felomeno walking towards him, and suddenly took out a stainless steel knife. He thrust the knife towards the appellant, but the latter released his grip on the bicycle handlebars and stepped back to evade the thrust. Felomeno thrust at the appellant a second time, and the latter was able to parry the thrust. The appellant then turned around and, with both hands, held Felomeno's right wrist, and was able to wrest the knife from the latter. The appellant then thrust the knife, hitting Felomeno on his left posterior arm near the armpit. The appellant again thrust the knife towards Felomeno, this time stabbing the latter on the chest. With the knife still embedded on the victim's chest, the appellant took off and went to his mother's house. He immediately told his mother, Francisca, that he had stabbed Felomeno and said to her, "*Atimana ninyo ang akong pamilya kay mosurrender ako*" (Take good care of my family because I will surrender)." When his mother asked him when he planned to surrender, the appellant replied he would do so at twilight. Francisca then

rushed to the house of her brother-in-law, Mario de los Reyes, and informed the latter of the incident. That night, the appellant went to the Naawan Police Station, reported the stabbing incident and surrendered himself to the police authorities.

Mario de los Reyes corroborated, in part, the testimony of his nephew, the appellant.

After trial, the court a quo rendered its decision, the dispositive portion of which reads as follows:

IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, this Court hereby finds the accused RENY DE LOS REYES, GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER, as charged in the Information, without any aggravating circumstance, with one (1) mitigating circumstance and sentences the accused, RENY DE LOS REYES, to the penalty of *RECLUSION PERPETUA*, with all the accessory penalties provided for by law, and to indemnify Analisa (sic) Omamos and her two children, Felomeno Omamos, Jr. and Fe Luisa Mae Omamos, the sum of Seventy-Five Thousand Pesos (P75,000.00) and to pay the same offended parties the sum of Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and to pay Five Thousand Pesos (P5,000.00) as funeral expenses, and to pay the costs.

The accused is, however, credited in the service of his sentence with the full time under which he has undergone preventive imprisonment.

SO ORDERED.<sup>[9]</sup>

On appeal to this Court, the appellant contends that the lower court erred as follows:

### **I**

IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER QUALIFIED BY TREACHERY AND EVIDENT PREMEDITATION, AND REJECTING HIS PLEA OF SELF-DEFENSE.

### **II**

IN NOT BELIEVING THE TESTIMONY OF ACCUSED-APPELLANT AS CORROBORATED BY A WITNESS.

### **III**

IN RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCE ADDUCED DURING THE TRIAL IN FAVOR OF ACCUSED-APPELLANT.<sup>[10]</sup>

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

The appeal is dismissed.

The appellant's claim of self-defense deserves scant consideration. Case law has it that like alibi, the affirmative defense of self-defense under Article 11, paragraph 1

of the Revised Penal Code, is a weak defense.<sup>[11]</sup> The accused who invokes self-defense thereby admits having killed the victim, and the burden of evidence is shifted on him to prove, with clear and convincing evidence, the confluence of the following essential elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and, (3) lack of sufficient provocation on the part of the person defending himself.<sup>[12]</sup> The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, the same can no longer be disbelieved. The accused cannot escape conviction if he fails to prove the essential elements of a complete self-defense.<sup>[13]</sup>

The accused cannot invoke self-defense, complete or incomplete, unless he proves unlawful aggression on the part of the victim.<sup>[14]</sup> Unlawful aggression exists when there is an actual and sudden attack or imminent peril to the life and limbs of the person defending himself coming from the victim.<sup>[15]</sup> Retaliation, as distinguished from unlawful aggression, exists when the inceptual unlawful aggression of the victim has already ceased and there is no evidence that he persists in consummating the same.<sup>[16]</sup> The accused cannot invoke self-defense if he kills the victim by way of retaliation.<sup>[17]</sup>

The issue of whether the accused acted in complete or incomplete self-defense for that matter is a question of fact to be resolved by the trial court on the basis of the evidence on record.<sup>[18]</sup> It is a settled rule that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and its conclusions based on the said findings are given high respect, if not conclusive effect by the appellate court. This is because of the trial court's unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. However, this rule will not apply if the trial court ignored, overlooked, misinterpreted or misconstrued cogent facts and circumstances of substance, which, if considered, would alter the outcome of the case.<sup>[19]</sup>

In this case, the trial court disbelieved the testimony of the appellant and his witness, and gave credence and full probative weight to the prosecution's witnesses. We have reviewed the evidence on record and find no justification to deviate from the findings of the trial court that the appellant failed to prove that he acted in self-defense when he killed the victim.

First. Mario de los Reyes, the appellant's uncle, made it appear in his testimony that Felomeno was still alive on January 30, 1998, although the appellant already admitted that he had stabbed and killed the victim earlier at 3:00 p.m. of January 13, 1998. The testimony of Mario de los Reyes reads:

Q Mario de los Reyes, will you please inform the Honorable Court where were you on January 30, 1998, at about 2:00 o'clock in the afternoon?

A I was in my house.

Q Will you please tell the Honorable Court what you were doing there, if there was any?

A I was busy drying my copra.

Q While you were drying your copra, did you notice something else?

A Yes, Sir.

Q Will you please inform the Honorable Court, what did you notice at that time?

A At 2:00 o'clock in the afternoon of January 30, 1998, Felomeno Omamos passed by our house.

Q Now, after that, what else did you notice, if there was any?

A Felomeno Omamos told me, "Tatay, I think your copra is already dry; do you know this is already money and we could beat a jai-alai." But I told him, "maybe, you are drunk, you better go home."

Q After that, what else happened, if there was any?

A I went down from the copra dryer and Felomeno Omamos said, "Tatay, did Fidel Gaid pass by here?" and I told him, "he had not passed by;" and he said, "If he passed by this time, maybe, he will be killed.

Q Do you know why he was looking for Fidel Gaid?

A Felomeno Omamos was looking for Fidel Gaid because they were enemies because Felomeno Omamos was stabbed by Fidel Gaid before.<sup>[20]</sup>

Second. It is incredible that Felomeno, who was walking alone on the road, knew of the appellant's presence. It must be stressed that the appellant was riding on his bicycle and was about twenty to twenty-five meters behind the victim;

Third. The appellant failed to surrender to the police authorities the knife he used to kill the victim. Such failure to surrender the weapon renders doubtful the appellant's claim that Felomeno, and not his uncle Mario de los Reyes, owned the knife.<sup>[21]</sup>

Fourth. The appellant failed to adduce evidence to prove that Myrnaflor Gaid nurtured any ill motive to falsely testify against the appellant. Absent such evidence, the testimony of Myrnaflor Gaid must be accorded full probative weight.<sup>[22]</sup>

Assuming for the nonce, that the appellant's testimony is the truth, nevertheless, he cannot invoke complete or incomplete self-defense. While the victim was inceptually the unlawful aggressor, the aggression ceased as soon as the appellant had managed to wrest the knife from him and no longer committed any overt act evidencing persistence to consummate the unlawful aggression. This is borne by the testimony of the appellant himself, viz:

Q Now, who has a bigger physical built, you or the victim?

A The victim has a bigger built.

Q Did I get it from you that after he made his second thrust, you moved your left foot and holding his right hand by clipping his right hand which was holding the knife as you demonstrated?

A Yes, Ma'am.