

SECOND DIVISION

[G.R. No. 132750, December 14, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELGER GUZMAN, ACCUSED-APPELLANT.

DECISION

DE LEON, JR., J.:

This is an appeal from the Decision^[1] dated September 30, 1997 of the Regional Trial Court, Branch 16, Ilagan, Isabela, finding accused-appellant Elger Guzman guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information charging accused-appellant with the crime of murder reads:

That on or about the 18th day of November, 1995, in the municipality of Ilagan, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill and by means of treachery, did then and there, willfully, unlawfully and feloniously, assault, attack and stab with a Fan Knife (Balisong) one Elmer Aquino, inflicting upon him a stab wound on his body, which directly caused his death.^[2]

When arraigned on July 29, 1997, accused-appellant Elger Guzman, assisted by counsel, pleaded not guilty.^[3] Thereafter, trial on the merits ensued.

The version of the prosecution:

Eyewitness Lolito Aquino testified that in the evening of November 18, 1995, he attended the wedding party held at the residence of Feliciano Valdez in Barangay Bigao, Ilagan, Isabela. Dancing started at 7:00 o'clock in the evening. At about 10:00 o'clock in the evening, Lolito Aquino was watching the dance by the roadside while he was beside his nephew, Elmer Aquino. Appellant Elger Guzman who was known to Lolito Aquino since childhood, was also watching the dance. Then Elmer Aquino approached the appellant and asked if they could talk somewhere else. Elmer Aquino did not try to touch appellant when he made the request. Appellant answered "*id toyen*" meaning "let's talk here." Thereafter, appellant stabbed Elmer Aquino with a fan knife hitting him in the chest just below the left shoulder. Elmer Aquino ran towards the dance hall, and then fell and died on the spot. At the time of the stabbing incident, Lolito Aquino was only two (2) meters away from the appellant and Elmer Aquino. Lolito Aquino gave his sworn statement^[4] to the police regarding the incident.

Dr. Rodelmar De Leon, Municipal Health Officer of San Isidro, Isabela, conducted an autopsy of the victim and found one stab wound on the upper lobe of the victim's

left lung, which was fatal. The cause of death was hypovolemic shock secondary to massive bleeding. There was also a four-centimeter incised wound at the base of the right thumb of the victim, which could have been caused by a sharp object like a knife.^[5] Dr. De Leon prepared the Autopsy Report^[6] on the body of the victim and a diagram^[7] of the location of the wounds sustained by the victim.

Salcedo Aquino, father of the victim, testified that Elmer Aquino was married to Rodalyn Aquino, who was in Singapore. They have two (2) children. Elmer Aquino was a farmer earning Fourteen Thousand Pesos (P14,000.00) per cropping. He was saddened by the death of his son and prayed for moral damages.^[8]

The defense admitted the funeral expenses incurred by the victim's family in the amount of Ten Thousand Pesos (P10,000.00), and the expenses for the nine-day wake in the amount of Ten Thousand Pesos (P10,000.00).^[9]

The version of the defense:

Accused-appellant Elger Guzman, a farmer, gave a different version of the stabbing incident. He declared that he stabbed Elmer Aquino accidentally in self-defense. Appellant testified that in the evening of November 18, 1995, while he was watching the dance at the wedding party of Rufino Valdez in Barangay Bigao, Ilagan, Isabela, Elmer Aquino pulled him and told him to go out because he was going to tell him something. He told Elmer that they should just talk right then and there because he was watching the dance. Nevertheless, Elmer pulled him three (3) times but he refused to go outside with him. Thereafter, Elmer tried to stab him with a kitchen knife, but he was able to take hold of Elmer's right hand which held the knife, twisted it and pushed it away from him (appellant), as a result of which Elmer was hit in his left upper chest. Appellant stated that he did not stab Elmer, and that he did not expect Elmer to die as a result of grappling with him. When he saw Elmer wounded, he ran away because he was afraid. On November 21, 1995, three (3) days after the incident, he surrendered to Policeman Rodrigo Lucas of Ilagan, Isabela to prove that he was not at fault. He was afraid to surrender because he heard that the police always hurt the suspect in jail.^[10]

Defense witness Leonard Angangan testified that in the evening of November 18, 1995, he attended the wedding party held at the house of Feliciano Valdez located at Centro Bigao, Ilagan, Isabela, where he saw Elmer Aquino, accused-appellant Elger Guzman and many others. He knew Elmer Aquino and appellant because they were barriomates. He observed that Elmer Aquino was irritable and uneasy. Elmer Aquino was then smoking marijuana the smell of which he was familiar with because he had tried smoking marijuana before. He (Angangan) was standing beside appellant watching the dance when Elmer Aquino approached the appellant and tried to pull the latter outside the dance hall, but he did not succeed. Thereafter, Elmer Aquino tried to stab appellant with a stainless steel knife but appellant was able to parry the thrust. Appellant then held the hand of Elmer and twisted his arm. Elmer fell to the ground and then got up. When Leonard Angangan saw the people scampering, he also ran away. He did not notice that someone was stabbed. He only learned that Elmer Aquino was stabbed by the appellant from his parents who heard the news when they went to the market. The brothers and sisters of the appellant requested him to be a witness.^[11]

Rebuttal witness Benny Ramos, uncle of the victim, Elmer Aquino, and a resident of Barangay Bigao, testified that at the time of the stabbing incident, he was just two (2) meters away from the appellant and Elmer Aquino. When Elmer Aquino approached the appellant, Elmer was not armed with a knife. He heard Elmer asked appellant if they could talk outside. Appellant did not reply, and then he stabbed Elmer. Ramos stated that it was not true that appellant and Elmer grappled for the possession of the knife.^[12]

On September 30, 1997, the court *a quo* rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing findings and considerations, the prosecution having proved the guilt of the accused beyond reasonable doubt for the offense charged, and there being no aggravating nor mitigating circumstance to consider, the Court hereby sentences the accused to RECLUSION PERPETUA, with all the accessory penalties provided for by law; to indemnify the heirs of the deceased victim the sum of P20,000.00 for funeral expenses; P600,000.00 for lost earnings and an additional P300,000.00 by way of moral and exemplary damages, and to pay the costs.

SO ORDERED.^[13]

Appellant ascribed to the trial court this lone error:

THE TRIAL COURT ERRED WHEN IT DISREGARDED AND FAILED TO TAKE INTO ACCOUNT THE TWO MITIGATING CIRCUMSTANCES OF UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM AND VOLUNTARY SURRENDER BY THE ACCUSED IMMEDIATELY AFTER THE INCIDENT.^[14]

Appellant faulted the trial court for not taking into account two (2) mitigating circumstances, that is, unlawful aggression on the part of the victim and his (appellant's) voluntary surrender after the stabbing incident. Appellant contended that the victim was the unlawful aggressor, and in defending himself against the victim's aggression, he accidentally stabbed the victim. Appellant asserted that when he refused to go with the victim outside the dance area, it was the victim who drew from his waist a bladed weapon and tried to stab him. However, he was able to take hold of the right wrist of the victim's hand, which held the weapon, and in the process of pushing the bladed weapon away from him (appellant), the weapon hit the victim once in the upper shoulder causing his death. The slit found in the hand of the victim showed that it was the victim who was the aggressor. He later voluntarily surrendered to the local authorities.

The appeal is partly meritorious.

Appellant insists on his version of the incident that in self defense, he accidentally stabbed the victim who was the unlawful aggressor. However, the trial court gave credence to the version of the prosecution that appellant just stabbed the victim after the latter asked appellant if they could talk outside the dancing place. The trial court stated, thus:

The question here is credibility-whose tale is to be credible. One thing though is undeniable, that it was the accused who stabbed the deceased victim. To the accused claim that the stabbing was accidental, this yarn hardly deserves credence and must be rejected. For how could the accused defense be two-pronged, one claiming that the stabbing was accidental and by his sworn statement he virtually claims complete self-defense? The posturing of the defense in the stabbing incident cannot be acceptable because of its glaring inconsistency and indubitably illogical. Then, too, his offer to enter a plea of guilty of the lesser offense of homicide betrays his dismal pretensions. His defense, therefore, if ever, deserves scant consideration.^[15]

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Well-settled is the rule that where the credibility of witnesses is in issue, the appellate courts will generally not disturb the findings of the trial court, which is in a better position to determine the issue, having the advantage of hearing and witnessing the deportment of the witnesses during trial, in the absence of any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.^[16] In the instant case, we see no reason to disturb the findings of the trial court.

We have carefully reviewed the records and agree with the Solicitor General's observation that the prosecution witness, Lolito Aquino, positively testified that appellant stabbed Elmer Aquino without any provocation from the latter. On the other hand, appellant's testimony of the incident before the court was inconsistent with the facts given in his counter-affidavit^[17] dated December 3, 1996. In said counter-affidavit, which was executed more than one year after the stabbing incident, appellant stated that while he was attending a wedding dance at the residence of Feliciano Valdez in Barangay Bigao, Ilagan, Isabela, Elmer Aquino suddenly grabbed the left side of his body and simultaneously tried to stab him with a knife, but he was able to parry the thrust. Before the court *a quo*, however, he testified that Elmer Aquino tried to stab him when he refused to accede to Elmer's request that they talk outside the dance area, but he was able to parry the thrust. Moreover, appellant stated in his counter-affidavit that in the course of grappling for the possession of the knife, he stabbed and wounded the victim in his body just to stop his unlawful aggression against his person, while he testified in court that in the process of twisting Elmer's right hand (which held the knife) and pushing it away from him (appellant), he accidentally stabbed and wounded Elmer. Although appellant denied the portion in his counter-affidavit wherein he stated that he stabbed and wounded Elmer just to stop the latter's unlawful aggression on his person, claiming that he was still in a state of shock at that time, his denial is hardly credible considering that he executed his counter-affidavit more than one year after the stabbing incident, which is a sufficient period of time for him to recover his composure. The aforementioned inconsistencies only show that the appellant's version of the incident is contrived in his effort to exculpate himself from liability. Further, as observed by the Solicitor General, defense witness Leonard Angangan, who did not see the actual stabbing of the victim, was also inconsistent in his testimony as he first stated that Elmer Aquino did not talk to appellant before he

dragged appellant outside, and then later stated that he heard Elmer requesting appellant that they go outside and talk but appellant refused.^[18] Pitted against the self-serving testimony of appellant and the testimony of defense witness Leonard Angangan, who did not see the actual stabbing of the victim, the positive testimony of prosecution witness Lolito Aquino deserves more weight and credence. The absence of evidence of improper motive on the part of the prosecution witness Lolito Aquino to testify against the appellant strongly sustains the conclusion that no such improper motive exists and that his testimony is worthy of full faith and credit.^[19]

Invoking incomplete self-defense, appellant appeals for the Court's appreciation of the mitigating circumstance of unlawful aggression in his favor. Appellant, however, failed to establish by clear and convincing evidence that he acted in self defense. Unlawful aggression presupposes an actual, sudden and unexpected attack or an imminent danger thereof, and not merely a threatening or intimidating attitude.^[20] In the case at bar, the request of the victim Elmer Aquino to appellant that they talk outside the dance area was not an unlawful aggression that justified appellant to stab him in self-defense. Hence, the trial court did not err in disregarding the said mitigating circumstance.

However, we agree with appellant that the court *a quo* erred in not appreciating the mitigating circumstance of voluntary surrender in his favor. Voluntary surrender has the following requisites: (a) that the offender had not been actually arrested; (b) that the offender surrendered himself to a person in authority or to the latter's agent; and (c) that the surrender was voluntary.^[21] For voluntary surrender to be appreciated, the same must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture.^[22]

The trial court erroneously held that appellant's surrender was not voluntary because his surrender was more of an apprehension on his part that if apprehended he would be subjected to torture which is more speculative than real.^[23] However, the transcript showed that initially appellant was afraid to surrender because he heard that the police always hurt the suspect in jail. Upon the advice of his brothers and cousin, appellant nevertheless surrendered to Policeman Rodrigo Lucas at the latter's residence in Linglingay, Gamu, Isabela on November 21, 1995, three (3) days after the stabbing incident.^[24] To us, although appellant was afraid to surrender because of his apprehension that he would be hurt in jail, yet appellant in fact voluntarily surrendered to policeman Rodrigo Lucas, thus saving the authorities the trouble and expense in effecting his capture. Granting that it were also true that appellant surrendered to Policeman Rodrigo Lucas because he was afraid that if apprehended by another policeman he would be subjected to torture, this circumstance should not affect the voluntariness and spontaneity of his surrender. In the parallel case of *People v. Amazan*,^[25] although the accused-appellant therein surrendered four (4) days later because of fear of reprisal, the Court said that the admission should not be taken against him, as it has been held^[26] that said circumstance does not detract from the spontaneity of the surrender, nor does it alter the fact that by giving himself up, the accused-appellant has saved the State the time and trouble of searching for him until arrested. In *People v. Bautista*,^[27] this Court appreciated the mitigating circumstance of voluntary surrender in favor of