353 Phil. 170

SECOND DIVISION

[111168-69, June 17, 1998]

JOAQUIN E. DAVID, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals. Petitioner Joaquin E. David was charged, in two separate informations, with homicide and frustrated homicide for the fatal shooting of Noel Nora and the serious wounding of the latter's brother, Narciso Nora, Jr., on March 28, 1981, in Malabon, Metro Manila.

After trial, petitioner was found guilty as charged. The dispositive portion of the decision, dated August 17, 1988, of the Regional Trial Court of Kalookan City reads: [1]

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of Homicide under Articles 249 and 64(1) of the Revised Penal Code, and for the crime of Frustrated Homicide under Articles 249 and 50, without any mitigating or aggravating circumstance in both cases, and hereby sentences the accused,
>
> For the crime of Homicide, to suffer an indeterminate sentence of EIGHT (8) YEARS and ONE (1) DAY of prision mayor medium, as minimum, to SIXTEEN (16) YEARS of reclusion temporal medium, as maximum;
>
> For the crime of Frustrated Homicide, to suffer an indeterminate sentence of TWO (2) YEARS and ONE (1) DAY of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as maximum.
>
> And ordering the accused:
>
> 1. To indemnify the heirs of Noel Nora the sum of -
>   P30,000.00 for the death of Noel Nora
>   P37,000.00 for actual damages
>   P30,000.00 for moral damages
>   P20,000.00 for and as attorney's fees
>
>   or a total sum of P117,000.00;
>
> 2. Further, to indemnify Narciso Nora the sum of -
>   P8,728.00 for actual damages
>   P20,000.00 for moral damages
>
>   or a total sum of P28,000.00

SO ORDERED.

On appeal, the Court of Appeals, in its decision[2] rendered on October 29, 1992, modified the sentence after crediting petitioner with the mitigating circumstance of voluntary surrender:[3]

> The penalty prescribed by law for homicide is *reclusion temporal*. Since there is one (1) mitigating and no aggravating circumstance, the penalty should be imposed in the [sic] its minimum period. Applying the Indeterminate Sentence Law, the range of penalty next lower to that prescribed by the Revised Penal Code for the offense is *prision mayor*. For the crime of Homicide, the penalty is therefore modified to a minimum of 10 years and 1 day of *prision mayor* to a maximum of 14 years and 8 months of *reclusion temporal*.
>
> As to the crime of Frustrated Homicide, the same is likewise modified to a minimum of 4 years and 1 day of *prision correccional* to a maximum of 6 years and 1 day of *prision mayor*.
>
> > WHEREFORE, except for the modifications above indicated, the rest of the appealed judgment is hereby AFFIRMED in all respects.
>
> SO ORDERED.

On July 29, 1992, the appellate court further modified the sentence on petitioner on the ground that the evidence did not show that he had a police record or that he was incorrigible. The dispositive portion of the court's resolution[4] stated:

> WHEREFORE, except for the penalties imposed which is hereby modified to read as follows: 1) for the crime of Homicide with one mitigating circumstance - the penalty ranging from six (6) years and one (1) day of *prision mayor* as minimum and twelve (12) years and one (1) day of *reclusion temporal* as maximum; and 2) for the crime of frustrated homicide with one mitigating circumstance - six (6) months and one (1) day of *prision correccional* as minimum to six (6) years and one (1) day of *prision mayor* as maximum, the motion for reconsideration is DENIED for lack of merit.
>
> SO ORDERED.

Still not satisfied, petitioner brought this appeal from the decision, as modified, of the Court of Appeals. Petitioner contends that[5]-

I.

> THE PUBLIC RESPONDENT COURT OF APPEALS GRIEVOUSLY ERRED IN NOT HOLDING THAT THE ELEMENTS OF SELF-DEFENSE HAVE BEEN ESTABLISHED BY PETITIONER BY EVIDENCE WHICH IS CLEAR, SUFFICIENT, SATISFACTORY, CREDIBLE, CONVINCING, COMPETENT AND PERSUASIVE.

II.

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO CONSIDER THE EXCULPATORY FACTS IN FAVOR OF THE PETITIONER WHICH IF DULY CONSIDERED WOULD HAVE COMPLETELY EXONERATED PETITIONER FROM THE CRIMES CHARGED.

III.

THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT IF THERE WAS NO COMPLETE SELF-DEFENSE, THEN AT THE VERY LEAST THERE IS IN THIS CASE AN INCOMPLETE SELF-DEFENSE. STILL, IF PETITIONER'S DEFENSE IS DISBELIEVED, OTHER MITIGATING CIRCUMSTANCES SHOULD BE APPRECIATED IN PETITIONER'S FAVOR.

IV.

THE DECISION OF THE PUBLIC RESPONDENT COURT OF APPEALS IS NOT IN ACCORDANCE WITH THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

The prosecution evidence in this case is as follows:

On March 28, 1981, at about 10:00 p.m., while the Nora brothers Arturo, Arnel, Noel and Narciso were walking along Flerida Street in Malabon, Metro Manila on their way home to Capitan Tiago Street, they saw petitioner near the compound of his house. Noel Nora, the deceased, confronted him about derogatory remarks allegedly made by the latter. Petitioner ran to his house to get a gun. When the Nora brothers reached the intersection of Flerida and Capitan Tiago Streets, he shouted at them "*Putang ina ninyo* (You sons of a bitch)" and other epithets, and then fired four times at them. One shot hit Noel, killing him. Another shot hit Narciso Nora on the ankle. Another nearly hit the zipper of Arturo Nora.

Petitioner claimed self-defense. He alleged that on the night in question, he went to the corner of Flerida and Capitan Tiago Streets because Noel Nora had earlier challenged him to a fight. However, upon reaching the place, he found that Noel had brought along his three (3) brothers and other companions who ganged up on him. Petitioner claimed that Noel Nora stabbed him with a knife, hitting him on the left arm and that the group could have stabbed him several times more had he not been able to dodge their blows. He said when he tried to run away, the victim's brothers held both his arms while Narciso hit him with a piece of wood on the thighs and buttocks and the others boxed him on the abdomen. Petitioner said he was able to run away, but the Nora brothers chased him, shouting, "We will enter your house and we will kill you." Petitioner therefore took the .38 caliber gun of his father (who was a policeman) from the cabinet on the ground floor of their house.

Petitioner went out of the house. The Nora brothers, who were just five (5) steps away from the door of their house, ran after seeing that petitioner had a gun. But after running to the other side of the street, they hurled stones at petitioner and shouted derogatory words at him. Petitioner claimed he afterward went inside the compound, but he slipped, whereupon the Nora brothers advanced toward him. He warned them not to get near, but they kept coming closer, for which reason petitioner fired at them. Petitioner was then from four (4) to five (5) meters away from the group. Petitioner afterward went inside their house and gave the gun to his mother.

In rejecting petitioner's claim of self-defense, the Court of Appeals said:[6]

> The bone of contention in this case centers on the issue of self-defense. The trial court, in denying the same, ruled that since there was no unlawful aggression immediately preceeding [*sic*] the shooting of the victims, the claim of self-defense to justify the acts of the accused is unavailing.
>
> For its part, the appellant contends that the lower court erred in its appreciation of the evidence and testimony of witnesses relative to the locus of the shooting incident. The appellant claims that notwithstanding the direct contradiction made by defense witnesses regarding the locus of the crime, the same does not in any way diminish the credibility of appellant's story and his claim of self-defense.
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> The contention is devoid of merit. In this case, the issue with respect to the locus of the crime is determinative not only of the place of its commission. More importantly, it is decisive in determining the existence of unlawful aggression as justification for appellant's claim of self-defense.
>
> The facts of the case and the evidence presented during the trial reveal that the shooting of the victims happened outside the residential compound of the accused. No matter how the defense try to belabour the issue by claiming in its reply brief that there were in fact two (2) compounds - the residence of the accused being a small compound within the bigger compound of his relatives' residence and that the victims were shot inside this big section albeit outside the residential compound of the accused, the evident fact remains that the victims were shot not in the vicinity of appellant's residence as claimed by the defense but in the streets, after the accused has taken his father's gun from their house. Noteworthy is the testimony of defendant's mother to the effect that:
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> > Court: The Court would like to ask. Was your son outside or inside the gate of your compound when you went to verify the shots?
> >
> > Witness: He was about to enter the gate of our compound.
> >
> > Court: When you say he was about to enter the gate of the compound, he was coming from the outside of the compound of course?
> >
> > Witness: He was outside the gate of our compound.
> >
> > (TSN, 11 November 1987 p. 13)
>
> The accused who claims self-defense must prove its elements clearly and convincingly. The rationale is because such proceeds from the admission of the accused that he killed or wounded another, which is a felony, for which he should be criminally liable unless he established to the satisfaction of the Court the fact of legitimate defense (Castanares v. Court of Appeals, 92 SCRA 567)

> As correctly appreciated by the trial court, the evidence established that there was in fact no immediate unlawful aggression to warrant the acts of the accused in shooting the victims. While the accused was indeed mauled and beaten up by the deceased and his companions, the aggression stopped when the accused was able to free himself from the assault of the group and thereafter sought refuge in their house. An act of aggression, when its author does not persist in his purpose or when he discontinues his attitude to the extent that the object of his attack is no longer in peril is not unlawful aggression warranting self-defense (People v. Macariola, 120 SCRA 92)
>
> Having sought refuge in their house after the aggression had ceased, the accused should have desisted from stepping out of their abode with his father's gun. In going after the deceased and his companions after the unlawful aggression ceased to exist, the act of the accused became retaliatory in nature, done for the purpose of avenging whatever pain and injuries he had suffered from the hands of the victims. Consequently, the same cannot be considered as constituting self-defense for the act to repel the unlawful aggression must immediately follow such unlawful aggression (US v. Ferrer, 1 Phil. 56).

First. Petitioner contends that the unlawful aggression of the Noras and their group did not cease and that the finding of the Court of Appeals that it did is contrary to the evidence, particularly the testimonies of Inocencio Antonio and Florthelito Vergara.

Petitioner omits to mention the testimonies of his two other witnesses, Eduardo Bartolo and Pilar David, on which the trial court and the Court of Appeals relied for their finding that there was no longer any unlawful aggression when petitioner shot the victims. Bartolo testified that on March 28, 1981, he heard shots and the sound of stones being hurled. When he stepped out of his house to find out what was going on, he saw petitioner near the gate of their compound, aiming his gun at the Nora brothers. For her part, Pilar David, mother of petitioner, told the court that because she heard gunshots, she went to the gate of their compound to see what was going on. She said she saw petitioner getting inside the gate of the compound.

Another defense witness, Inocencio Antonio, testified that the victims were rushing toward petitioner when they were at the corner of Flerida and Kapitan Tiago Streets. Antonio said:

> ATTY. CRESCINI: [Defense Lawyer]
>
> Q Where were those teenagers numbering 5 to 6 at that time that Jake David was about to fire those two (2) last shots?
>
> A At the corner of Flerida and Kapitan Tiago Streets and they were rushing towards Jake David, sir.[7]

The testimonies of these witnesses belie petitioner's claim that he shot the Nora brothers because they had come dangerously close to getting inside their house, having in fact entered their compound. Indeed, only Florthelito Vergara corroborated petitioner's testimony that he shot the victims because they had come close to their house by getting inside their compound.