

THIRD DIVISION

[G.R. No. 107699, March 21, 1997]

ALEX JACOBO Y SEMENTELA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Self-defense in a prosecution for homicide shifts the burden of proof to the appellant. Having admitted the killing, the accused must prove by convincing evidence the various elements of his chosen defense. On appeal, this burden becomes even more difficult as petitioner must show that the courts below committed reversible error in appreciating the evidence and the facts, for basic is the rule that factual findings of trial courts, when affirmed by the appellate court, are binding upon the Supreme Court. Where two persons agree to fight, there is no unlawful aggression; where there is no unlawful aggression, there can be no self-defense.

This is a petition for review on *certiorari* of the Decision, dated May 21, 1992 and the Resolution dated October 23, 1992 of the Court of Appeals in GA-G.R. CR No. 11358, affirming the trial court's judgment finding petitioner guilty of homicide.

An Information for homicide was filed against petitioner on February 5, 1988, viz.:
[1]

"That on or about April 14, 1987, in the City of Manila, Philippines, the said accused did then and there willfully (sic), unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one ROMEO DE JESUS Y MATEO, by then and there stabbing him with a knife on the different parts of the body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law."

Upon arraignment, petitioner pleaded not guilty. At the trial, he invoked self-defense. Finding that petitioner's narration was "well-nigh inconceivable" due to his vacillating statements at different stages of the trial, Judge Inocencio D. Maliaman of the Regional Trial Court of Manila, Branch 14, ruled as follows:[2]

"WHEREFORE, finding the accused guilty of the crime charged in the Information beyond reasonable doubt, he is hereby sentenced to suffer an Indeterminate Penalty of six (6) years and one (1) day of Prison Mayor as its minimum to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal as its maximum. He is further sentenced to

indemnify the heirs of the offended party the amount of thirty thousand pesos (P30,000.00) for the death of the deceased and to pay the costs.

In the service of the sentence the accused is entitled to the provisions of Article 29 of the Revised Penal Code, as amended."

On appeal, the Second Division of the Court of Appeals^[3] affirmed the decision of the trial court, holding that the strategy adopted by appellant was "diametrically opposed to what jurisprudence exacts from an accused who professes a justifying circumstance to secure exoneration."^[4] The dispositive portion of this assailed Decision reads:^[5]

"WHEREFORE, except as to the civil indemnity to be paid by appellant which is hereby increased to fifty thousand pesos (P50,000.00) pursuant to the ruling of the Supreme Court in *People vs. Bartulay* (192 SCRA 621; 631), the decision appealed from is hereby affirmed in all other respects."

Acting on a motion for reconsideration, the Special Former Second Division^[6] of Respondent Court modified the assailed Decision by holding that voluntary surrender should be considered as a mitigating circumstance in petitioner's favor. The dispositive portion of Respondent Court's impugned Resolution, dated October 23, 1992, reads:^[7]

"WHEREFORE, the dispositive portion of Our decision dated May 21, 1992, stating that (')the decision appealed from is hereby affirmed in all other respects('), is hereby RECONSIDERED in that the accused-appellant, credited with the mitigating circumstance of voluntary surrender, is hereby sentenced to suffer an Indeterminate Penalty of six (6) years and one (1) day of Prision Mayor, as minimum, to ten (10) years, two (2) months and twenty-one (21) days of Reclusion Temporal, as maximum.

SO ORDERED."

Petitioner still disagreed with the modified sentence. Hence, this petition.

The Facts

The facts of the case as found by Respondent Court are as follows:^[8]

"At around 5 A.M. of April 14, 1987 (i)n Extremadura, Sampaloc, Manila, during a wake over the dead son of Edilberto Bermudes, Bermudes was gathering the drinking glasses used by the mourners when he heard appellant ask if anybody would kill him. Appellant, who was holding a foot-long knife, approached Jessie Peralta who was seated asleep on a chair, and took aim at Peralta. Bermudes shouted at him to stop. Appellant desisted but next approached Romeo de Jesus who was lying down on a bench. De Jesus woke up and a quarrel between the two

ensued. Appellant and De Jesus, who was likewise armed with a ('')beta(''), stabbed each other (TSN, pp. 5-9, 11-12, August 15, 1988, Edilberto Bermudes) and then separated, both appearing not seriously injured because they were still standing. De Jesus asked appellant why the latter was going away instead of finishing the fight. Appellant and De Jesus resumed stabbing each other until the latter suddenly fell down and appellant ran away (Supra at pp. 14-15).

Rodolfo S. Ilagan, an investigator at the Western Police District, was on duty when a report about a stabbing incident in Extremadura was received at the station. With Cpl. Pena, he proceeded to the area where they say the dead body of de Jesus which was identified by a brother of said victim. He questioned the people in the vicinity who disclosed that appellant was the culprit (TSN, p. 3, October 25, 1989, Rodolfo S. Ilagan). On April 23, 1987, appellant was brought to the police station by an agent of the NBI to whom appellant had surrendered (Supra at p. 6).

Dr. Marcial Cenido, Medico-Legal Officer of WPD who conducted the autopsy on the victim, made the following post-mortem findings, viz.:

'EXTERNAL INJURIES AND EXTENSIONS INTERNALLY :

1. Penetrating stab wound, left upper lateral thorax below the armpit by 4 cm., measuring 7 cm. x 14.5 cm. in depth, directed very slightly forwards, slightly upwards and towards the midline thru the 2nd intercostal space and incising the upper 2/3 of the 3rd rib, perforating the upper lobe of the left lung, the pericardium and the ascending aorta;
2. Non-penetrating stab wound, right upper quadrant of the abdomen, 13 cm. from the anterior midline, measuring 4.5 cm x 2.3 cm. x 8 cm. in depth, directed obliquely backwards, slightly upwards and towards the lateral thru the muscles tissue; and
3. Abrasions, left forehead and xygomatic (sic) region, tip of the left shoulder, left lower antero-lateral thorax, left upper quadrant of the abdomen, lower left antero-lateral lumbar, below the right anterior superior iliac spine, right upper posterior thorax and dorsum of the right small finger.

INTERNAL FINDINGS:

1. Stab wounds of the internal organs and tissues indicated under the internal extensions of the external wounds with recovered blood of about 300 cc. from the left thoracic cavity and generalized pallor; and
2. Recovered from the stomach a small amount of mucoid material without alcoholic odor.

CAUSE OF DEATH:

Penetrating stab wound, chest below the left armpit, perforating the left lung and

ascending aorta.' (Exh. "D", p. 99, Records.)

Appellant admitted that he was drunk at the wake but that it was the victim Romeo de Jesus, a person with several pending criminal cases (TSN, pp. 3-7, December 15, 1989, Philip Santiago), and Peralta who tried to stab him. He parried the knife thrusts and did not know if he hit the victim who suddenly fell on his chest. After the incident, he surrendered to the NBI (TSN, PP. 8-12, 16, February 1, 1989)."

Evidence for the Prosecution

The prosecution presented witnesses Edilberto Bermudes, Dr. Marcial Cenedo, Dominador de Jesus and Rodulfo Ilagan. The trial court summarized their testimonies in this wise:^[9]

"x x x Bermudes testified x x x that on April 14, 1987 at around 5:00 o'clock in the morning, he was then attending the wake of his son together with ten persons. While he was gathering the used glasses, he heard Alex Jacobo said, (sic) (')Who would kill me('). Then he approached Jessie Peralta who was then asleep and tried to stab him. He shouted at the accused not to stab Jessie Peralta because he was asleep. The accused desisted, and directed his aggression (sic) against Romy de Jesus. The accused was then armed with a pointed weapon with a length of one foot, while Romy de Jesus was armed with (a) beta. The two protagonists stabbed each other and then separated. Romy de Jesus asked the accused why he was going away and not finish the fight. The two again fought and Romy de Jesus (fell) down.

On cross-examination, he testified that the deceased and the accused were near each other when the accused (should be the decedent) said: (')why do you go away why not finish the fight.(')

Jessie Peralta was sleeping three meters away from the place where the incident happened, but he did not wake up during the fight. The fight lasted for about 15 minutes. There were more than 15 people during the fight. He saw the sister-in-law of the deceased who tried to pacify them saying, (')do not stab him.(')

Dr. Marcial Cenedo, a Medico Legal Officer of the Western Police District, testified that he conducted an autopsy of the cadaver of Romeo de Jesus at the Funerario Oro in Sampaloc. He conducted the autopsy after the presentation of the identification of the body (Exhibit "A"). He prepared the skeeth (sic) (Exhibit "B"), the Certificate of Death (Exhibit "C"), and the Post Mortem Examination Findings as Exhibit "A" x x x.

xxx
xxx

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The abraisons (sic) mentioned in the foregoing Post Mortem Findings may

have been caused by the struggle between the deceased and his opponent. He recovered 300 cc of blood from the left thoracic cavity resulting from hemorrhage. The small amount of mucoid material without alcoholic (sic) odor was recovered from the stomach. The only fatal wound was the wound mentioned in No. 1 in the report.

On cross-examination he (sic) testified that the penetrating wound could have been inflicted by one facing the deceased if he is right handed. The non-penetrating stab wound in the right upper equaduct of the abdomen (sic) right lower upper and the left lower and upper were likewise inflicted frontally. The penetrating (sic) wound at the upper lobe of the left lung was inflicted from the left side and frontally. This wound is the extension of injury no. 1 with the exception wound no. 1, the other injuries were superficial. (sic)

Dominador de Jesus testified that he is the brother of the deceased. They incurred the following expenses during the internment(sic): P1,050.00 for transportation, P1,120.00 for flowers, P2,000.00 for food and drinks, P410.00 for the funeral parlor, P1,020.00 for the transfer of the bones of his mother, and P700.00 for the church services or a total of P6,650.00.

Rodulfo Ilagan testified that he is a policeman assigned at Western Police District. He investigated the stabbing incident and prepared the progress report (Exhibit "I") and the Advance Police Report (Exhibit "H")."

Version of the Defense

Petitioner differed from the foregoing. He contended that he, instead of the deceased, had been the victim of an unlawful aggression, having simply reacted when confronted with a scythe. His testimony was synthesized by the trial court, to wit: ^[10]

"x x x (T)hat on April 15, 1987, he was then attending the wake of the son of Edilberto Bermudes when Romeo de Jesus and Jessie Peralta attacked him wounding him on both arms. Romeo de Jesus tried to stab him and said, (')you are finished, and I will finish you.(') Then Romeo de Jesus fell on his chest.

He denied having attempted to stab Jessie Peralta as he was not around during the incident and he does not know why Romeo de Jesus and Jessie Peralta assaulted him, but it maybe due to the incident that happened while the three of them had a drinking spree before the incident. While they were (')nagiinuman(') with Romeo de Jesus complained why there was no cigarette and (')polutan(') although they were nagiinuman. Because of the comment of Romeo de Jesus he went to buy cigarette. When he returned Dobby was no longer with the group so he also decided to leave, but when he was a few meters away, he heard someone shouting his name. When he looked back, he saw Romeo de Jesus and Jessie Peralta rushing towards him. He parried a thrust with his left hand and shouted (')tapos ka na('). He does not know what kind