

FIRST DIVISION

[G.R. No. 216642, September 08, 2020]

**PO2 BERNARDINO CRUZ Y BASCO, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

CAGUIOA, J:

This is an appeal^[1] filed under Rule 45 of the Rules of Court from the Decision^[2] dated June 23, 2014 and Resolution^[3] dated January 21, 2015 of the Court of Appeals, Special Fourth Division (CA), in CA-G.R. CR No. 35225, which affirmed *in toto* the Decision^[4] dated July 12, 2012 of the Regional Trial Court of Manila, Branch 5 (RTC) in Criminal Cases Nos. 08-263728 and 08-263729, finding petitioner PO2 Bernardino Cruz y Basco (Cruz) guilty beyond reasonable doubt of reckless imprudence resulting in homicide and frustrated homicide.

Facts of the Case

Cruz was charged with homicide under the following Information:

x x x x

That on or about September 9, 2008, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one GERWIN TORRALBA Y FERNANDEZ, 9 years old, a minor, by then and there firing and hitting the latter's head with a gun, thereby inflicting upon the said GERWIN TORRALBA Y FERNANDEZ mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.^[5]

He was also charged with frustrated homicide under the following Information:

x x x x

That on or about September 9, 2008, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one ARCHIBALD BERNARDO Y DAVID, by then and there firing and hitting the latter on the right wrist and left shoulder with a gun, thereby inflicting upon the said ARCHIBALD BERNARDO Y DAVID physical injuries which were necessarily fatal and mortal thus performing all the acts of execution which should have produced the crime of homicide as a

consequence, but which nevertheless did not produce it by reason or causes independent of the will of the said ARCHIBALD BERNARDO Y DAVID, which prevented his death.

Contrary to law.^[6]

When Cruz was arraigned on November 16, 2009, he pleaded not guilty to both charges.^[7] Thereafter, trial ensued.^[8]

Version of the Prosecution

On September 9, 2008, private complainant Archibald Bernardo y David (Bernardo) was manning his liquified petroleum gas (LPG) business when he received a call from a customer complaining that the LPG gas tank delivered earlier was leaking.^[9] Bernardo decided to attend to it personally and, using his own motorcycle, proceeded to the customer.^[10]

While cruising along Paulino Street and before reaching the intersection of Nepa and Alfonso Streets, Bernardo chanced upon Cruz who was also on a motorcycle in front of Balut Bakery.^[11] Earlier, one Petronillo Herero (Herero) noticed that Cruz traversing Paulino Street slowly while looking from side to side as if in search of someone.^[12]

Bernardo overtook Cruz but the latter tried to flag him down.^[13] When Bernardo looked back and their eyes met, Cruz placed his right hand on the gun tucked in his waist and then, in a challenging voice, shouted "Ano?" at Bernardo.^[14] Bernardo responded with "Ano rin."^[15] Immediately, Cruz drew his gun from his waist and fired successive shots at Bernardo, who sped off with his motorcycle to flee.^[16]

Before reaching the corner of Balasan Street, Bernardo stopped and got off his motorcycle.^[17] By then, he was already hit twice at the back of his left arm.^[18] He only realized this when he saw blood dripping from his arm.^[19] He also lost grip in his left arm, which forced him to stop the motorcycle and leave it behind.^[20] Bernardo tried to draw and cock his gun to retaliate but was unable to do so due to the injuries that he sustained.^[21] Meanwhile, Cruz continued firing his gun at Bernardo until he hit the latter again on his right wrist.^[22]

In the meantime, Gerwin F. Torralba (Torralba) was flying a kite in the area at that time.^[23] Torralba fell to the ground upon being hit by one of the bullets fired by Cruz.^[24] Upon seeing Torralba sprawled on the ground, Cruz stopped, left his motorcycle, and ran towards Nepa Street.^[25]

Meanwhile, Bernardo fled on foot and reached the Barangay Hall.^[26] He then hailed a pedicab and asked the driver to bring him and the wounded Torralba to the hospital.^[27] They were brought to Tondo Medical Center.^[28] Bernardo survived due to prompt medical treatment.^[29] Unfortunately, Torralba, who was transferred to Jose R. Reyes Memorial Medical Center, expired upon arrival thereat.^[30]

Version of the Defense

Cruz, a regular member of the Philippine National Police (PNP), was then assigned at Police Station 1 (PS-1) of the Manila Police District, located at Tondo, Manila City.^[31]

On September 9, 2008, Cruz was on a day shift duty (7:00 a.m. to 7:00 p.m.).^[32] Using his own motorcycle, he conducted a roving patrol along Paulino Street up to the vicinity of San Rafael Street, within the area and jurisdiction of PS-1.^[33] On his way back to PS-1, while traversing Paulino Street between the corners of Nepa and Batasan Streets, Bernardo, who was also on a motorcycle, suddenly overtook him, blocked his path and nearly collided with his motorcycle.^[34]

Cruz then asked Bernardo, "*Ano ba?*"^[35] It was then that he recognized that the person who overtook him was Bernardo, son of a former Barangay Chairman who was defeated by his mother in the recent election.^[36] Bernardo shouted back, "*Ano rin!*"^[37] At the same time, Bernardo drew his gun from his waist and pointed it at Cruz, while also moving away slowly on board his motorcycle.^[38] Faced with imminent danger to his own life, Cruz, a policeman, acted swiftly to prevent the aggression by drawing his service firearm and firing at the arms of Bernardo.^[39]

Although wounded, Bernardo tried to load and cock his handgun.^[40] Thus, Cruz had no other recourse but to fire at Bernardo again to repel the imminent danger.^[41]

Cruz was about to approach Bernardo to bring him to the hospital but hesitated when he saw several persons coming from the area where Bernardo resides.^[42] He was compelled to leave his motorcycle behind and leave the area on foot.^[43]

Thereafter, Cruz surrendered to his superior and turned-over his service firearms, and subsequently submitted himself for investigation.^[44] It was only then that he learned that during the incident, Torralba, a child who was playing, was accidentally hit and had died.^[45]

RTC Ruling

In a Decision dated July 12, 2012, the RTC found Cruz guilty beyond reasonable doubt of frustrated homicide with respect to the shooting of Bernardo. On the other hand, with respect to the death of Torralba, the RTC held that Cruz is only guilty of reckless imprudence resulting in homicide because of the lack of criminal intent. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, premises considered, the Court rules as follows:

1. In Criminal Case No. 08-263728, accused PO2 BERNARDINO CRUZ Y BASCO @ "BONG CRUZ" is GUILTY beyond reasonable doubt of Reckless Imprudence resulting in Homicide defined and penalized under Art. 365 in relation to Art. 249 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of [*arresto mayor*], as minimum to FOUR (4)

YEARS and TWO (2) MONTHS of [*prision correctional*], as maximum. In addition, accused is ordered to pay the heirs of Gerwin Torralba y Fernandez civil indemnity [*ex-delicto*] in the amount of P70,000.00, actual damages in the amount of P50,000.00, P24,000.00 for funeral and burial expenses, and P100,000.00 as moral damages and compensatory damages without subsidiary imprisonment in case of insolvency and to pay the costs of suit.

2. In Criminal Case No. 08-263729, accused PO2 BERNARDINO CRUZ Y BASCO @ "BONG CRUZ" is GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY as minimum to SIX (6) YEARS and ONE (1) DAY as maximum and to indemnify Archibald Bernardo y David the amount of P50,000.00 as actual damages and P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.^[46]

CA Ruling

On June 23, 2014, the CA promulgated the assailed Decision which affirmed *in toto* the RTC Decision. The CA upheld the sufficiency of the evidence presented by the prosecution and rejected Cruz's version of the events as lacking in credibility and for inconsistencies in the testimonies of the defense's witnesses. However, the CA no longer discussed Cruz's invocation of the justifying circumstance of fulfillment of duty, and the mitigating circumstances of voluntary surrender and/or sufficient provocation.

The dispositive portion of the CA Decision reads as follows:

WHEREFORE, premises considered, the decision of the court a quo in Criminal Case No. 08-263728 finding the accused-appellant guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide as well as in Criminal Case no. 08-263729 finding the accused-appellant guilty beyond reasonable doubt of the crime of frustrated homicide is **AFFIRMED** *in toto*.^[47]

Aggrieved, Cruz sought reconsideration of the above Decision but was denied by the CA in a Resolution dated January 21, 2015.

Hence, this appeal.

Cruz argues that the justifying circumstances of self-defense and lawful performance of duty should be appreciated in his favor.^[48] Alternatively, he maintains that his criminal liability should be mitigated given the sufficient provocation on the part of Bernardo, and by his voluntary surrender.^[49]

The Office of the Solicitor General (OSG) counters that the justifying and mitigating

circumstances raised by Cruz are not supported by evidence on record.^[50] Additionally, the OSG argues, as it did before the CA, that with respect to the death of Torralba, Cruz should be held guilty of homicide instead of just reckless imprudence resulting in homicide because Torralba's death was brought about by the same felonious act of shooting at Bernardo.^[51]

Issue

The parties submit the following issues for resolution of the Court:

1. Whether the CA committed a reversible error in ruling that Cruz was not acting in self defense or fulfillment of duty at the time of the shooting incident;
2. Whether the CA committed a reversible error in not appreciating the mitigating circumstances of sufficient provocation and voluntary surrender in favor of Cruz; and
3. Whether the CA committed a reversible error when it upheld the RTC ruling that, with respect to the death of Torralba, Cruz is guilty only of reckless imprudence resulting in homicide instead of homicide.

The Court's Ruling

An appeal by the accused in criminal cases throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.^[52] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[53]

After a judicious review of the records of the case at bar, the Court finds that a modification of the assailed CA Decision is in order.

Cruz was not acting in self-defense or fulfillment of duty

Cruz argues that he should not be held criminally liable for the death of Torralba and the injuries sustained by Bernardo because he was acting in self-defense and in the performance of his duty as a police officer. The Court finds no merit in his position.

On the matter of self-defense, the Court concurs with the findings of both the RTC and the CA that Cruz's act of shooting was not precipitated by any unlawful aggression on the part of Bernardo. In self-defense, the accused bears the burden of proving by clear and convincing evidence the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.^[54] Of these three elements, the existence of unlawful aggression on the part of the victim is the most important.^[55] The test for the presence of unlawful aggression is whether aggression from the victim put in real