

## THIRD DIVISION

[ G.R. NO. 168997, April 13, 2007 ]

**GREGORIO PELONIA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* under Rule 45, assailing the July 30, 2004 Decision<sup>[1]</sup> and the June 24, 2005 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 17476 which affirmed with modification the April 2, 1993 Decision of the Regional Trial Court (RTC) of Davao City, Branch 13, in Criminal Case No. 14,182.

Petitioner Gregorio Pelonia was indicted for murder in the RTC of Davao City. The accusatory portion of the Information filed against him reads:

That on or about August 17, 1986, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a rifle, with treachery and evident premeditation and with intent to kill, willfully, unlawfully and feloniously shot one Ignacio Nacilla and thereby inflicting upon the latter gunshot wounds which caused his instantaneous death.

Contrary to law.<sup>[3]</sup>

On arraignment, petitioner, assisted by counsel, entered a plea of not guilty.

### **The Case for the Prosecution**

As culled by the CA, the case for the People is summarized as follows:

On the evening of 17 August 1986, the deceased, Ignacio Nacilla, along with Winefredo Bustamante, Monico Betarmos, and Boy Domondon, went to the barrio of Tawan-Tawan, Davao City to attend the celebration of the eve of the fiesta of the said barrio. Ignacio Nacilla wanted also to see his brother, Lanoy, who lives in the same *barangay*. Along the way, they stopped by the residence of the *Barangay* Captain of Tawan-Tawan to ask permission to enter the barrio as was the practice there. The *Barangay* Captain responded favorably by sending three (3) members of the Civilian Home Defense Force (CHDF), now CAFGU, to accompany them into the *barangay* centro.

From the *Barangay* Captain's home, the group stopped at Blacito's Store where the deceased, Nacilla, bought bottles of beer for the group. They drank the beer there. After a while, Boy Guhiling, one of the CHDF,

invited them to have supper at the house of Gregorio Pelonia, the accused. The group accepted the invitation and proceeded to the house of the accused. Upon their arrival, the accused bade them to come up to the balcony. The group heeded the accused's call, after which the deceased along with Betarmos, Bustamante and Domondon sat themselves at the balcony while Guhiling went downstairs. The accused, who was then busy preparing some fiesta meals, returned to the kitchen and finished the chopping of meat with his bolo, at the conclusion of which he left the said bolo in the kitchen. He prepared the table, set it for dining, laid the food on it and called the group into the sala to enjoy what he had offered.

Betarmos and Bustamante stood up to approach the table. The deceased, however, remained seated and declared that his purpose in coming to the accused's house was not to eat but to kill. The deceased had a long-standing grudge against the accused because some time ago the accused had reported the deceased to the Marines for being abusive, for which reason the Marines picked up the deceased and brought him to the camp and manhandled him, obviously to teach him a lesson. Incidentally, the deceased is husky in built and relatively tall in contrast to the accused whose head could reach up only until the deceased's shoulders.

At this point, Betarmos butted in and said that they were at the accused's house to eat supper, to which the deceased agreed. But seemingly seething with anger, the deceased could not contain himself. He said that the accused was perhaps depending so much on his garrand rifle, his issued firearm as member of the CHDF. Enraged by the deceased's insulting comment, spoken in his (the accused's) own home, in front of his visitors and family, by one whom he had not even invited to the event, the accused rushed to his room to get his rifle. Betarmos and Bustamante heard the cocking of a gun. Betarmos told the deceased that they had better go down because something bad might happen to them. The deceased refused to leave. He said that he would not fight back and would just let himself be killed. Betarmos and Bustamante ran towards the door. The accused returned to the sala and fired a warning shot towards the ceiling and ordered the deceased to go downstairs because he was being abusive. The deceased declared, "I will not go down if nobody is killed." The accused ran to the kitchen and jumped to the ground and told Guhiling to come upstairs and get the deceased. Guhiling and Flor Losica, sister-in-law of the accused, proceeded upstairs just as Betarmos and Bustamante were rushing out of the house. The belligerent pronouncements of the deceased about wanting to kill, the rush of movements of flight of those who were in the house, and the sound of the cocking of a gun must have struck fear in the hearts of the accused's wife and children. They were all crying. Hearing their cries, the accused went back upstairs through a hole in his room. His wife was kneeling in front of the deceased imploring him not to hurt her husband. The deceased was adamant and did not budge from his stance. The accused shot the deceased with his rifle.<sup>[4]</sup>

Petitioner interposed self-defense. The trial court summarized his evidence, as follows:

It was the eve of the fiesta of *Barangay* Tawan-Tawan when at around 8:00 o'clock in the evening of August 17, 1986, Gregorio Pelonia received a group of visitors in his house. They were Winnie Bustamante, Boy Guhiling, Monico Betarmos and Ignacio Nacilla. Upon the introduction of Boy Guhiling, Gregorio Pelonia invited them to come up. The group seated themselves in the balcony, while Gregorio Pelonia went back to the kitchen to finish the chopping of the meat, after which he put aside the meat in a basin, placed the bolo he was using on top of the meat and placed the whole thing on the native sink. He prepared the table, then he called the group to partake of the food.

Monico Betarmos, Boy Guhiling and Winnie Bustamante came inside the sala but Ignacio Nacilla who also came forward spoke that his purpose in coming was not to eat but to kill because he has a long standing grudge against Pelonia and that this is the time to avenge himself. Pelonia asked what he had done against Nacilla but the latter took hold of Pelonia's shoulder and pushed him to a chair. Pelonia's wife cried for help and Cipriano Losica came up but he was collared by Nacilla. Thus, Pelonia was able to run towards his room and got his gun, then he went back to the sala and fired a warning shot upwards, saying that Nacilla should better go down because he is abusive. Then, Pelonia ran towards the kitchen and jumped to the ground. He told Boy Guhiling to get Nacilla and Boy Guhiling, together with Flor Losica, went upstairs. Pelonia heard the shout and crying of his wife and children so he went back upstairs through the fox hole (an underground passage in his room). Emerging in his room, he proceeded to the sala where he saw Ignacio Nacilla holding the bolo which he (Pelonia) used to chop meat. Again, he warned Nacilla to go down but the latter instead attacked Pelonia who was able to evade the blows. When Pelonia saw that Nacilla was about to thrust the bolo towards him, he shot Nacilla.<sup>[5]</sup>

The trial court conducted an ocular inspection of the *locus criminis*, without, however, a representative from the prosecution.

On April 2, 1993, the RTC rendered its Decision finding petitioner guilty of homicide, thus:

WHEREFORE, accused Gregorio Pelonia, having been found to be guilty of the crime of Homicide as proved by the prosecution beyond reasonable doubt, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of Eight (8) Years and One (1) Day of *prision mayor* as minimum to Fourteen (14) Years Eight (8) Months and One (1) Day of *reclusion temporal* as maximum.

He is further ordered to indemnify the heirs of Ignacio Nacilla, the following amounts, to wit:

1. P50,000.00 for the death of Ignacio Nacilla;
2. P150,000.00 for his loss of earning capacity;

3. P20,000.00 for moral damages;
4. P5,000.00 for and as attorney's fee; and
5. Costs of suit.

SO ORDERED.<sup>[6]</sup>

The RTC rejected petitioner's theory of self-defense, holding that it was not established by clear and convincing evidence. The RTC ruled that the prosecution had failed to prove the qualifying circumstances of treachery and evident premeditation. It held that treachery cannot be presumed and, like evident premeditation, must be proved as conclusively as the killing itself. According to the trial court, the evidence presented by the prosecution failed to show the circumstances which would qualify the crime to murder.

Petitioner appealed to the CA, claiming that the following errors were committed by the trial court:

I. THE LOWER COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT MERELY ACTED IN SELF-DEFENSE WHEN HE SHOT THE DECEASED.

- A. There was unlawful aggression on the part of the victim.
- B. There was reasonable necessity of the means employed by the accused to prevent or repel the aggression of the deceased.
- C. There was lack of sufficient provocation on the part of the accused who defended himself.

II. THE LOWER COURT ERRED IN FAILING TO CONSIDER THE OCULAR INSPECTION OF THE SCENE OF THE CRIME CONDUCTED ON 16 APRIL 1988.

III. THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.<sup>[7]</sup>

On July 30, 2004, the CA rendered the assailed Decision affirming the trial court's judgment of conviction with modification as to the penalty imposed, to wit:

WHEREFORE, the assailed Decision of the Regional Trial Court dated 02 April 1993 is hereby MODIFIED. The accused is hereby entitled to the MITIGATING CIRCUMSTANCES of sufficient provocation, passion and obfuscation, and voluntary surrender which, taken altogether, constitute a special mitigating circumstance. The accused shall suffer the indeterminate sentence of 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. HOWEVER, in light of the circumstances surrounding this case, this Court recommends the EXECUTIVE CLEMENCY be extended to the hereunder accused. Without pronouncements as to cost.

SO ORDERED.<sup>[8]</sup>

The appellate court affirmed the findings and conclusion of the trial court that petitioner failed to prove by clear and convincing evidence that he acted in complete or incomplete self-defense. The appellate court gave no credence and probative weight to his testimony and that of his witnesses:

There is question, however, as to whether such aggression, i.e., the bolo attack on the accused, ever took place. The lower court gave credence to the prosecution's version that the deceased did not attack the accused with a bolo.

We agree with such findings.

1) Flor Losica testified that it took the accused no more than 30 seconds in going downstairs after the warning shot and going up again to face the deceased. The lower court concluded that in that short a time, the deceased could not have possibly taken the bolo from the kitchen, else the accused would have found the deceased in the kitchen or in the dining room and not in the sala as he claimed.

The defense relies heavily on a contradictory testimony offered by witness Helen Pelonia, wife of the accused, to the effect that the accused took 5 minutes in going down and back up again to the sala to face the deceased, that such 5-minute period be given credence over the 30-second period as testified by Flor Losica.

The time-tested doctrine is that a trial court's assessment of the credibility of a witness is entitled to great weight — even conclusive and binding on this Court if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Credibility is a matter that peculiarly falls within the province of the trial court as it had the opportunity to watch and observe the demeanor and behavior of the witnesses at the time of their testimony. Thus, assigning value and weight to each testimony is within its jurisdiction. The trial court's assessment of the credibility — or the lack of it — of appellant and his version of the incident appears supported by the records.

At any rate, whether it is Losica's thirty (30) seconds or Helen Pelonia's five (5) minutes, this court understands that they were only estimates. It could have been more than 30 seconds; it could have been less than 5 minutes. Whether the deceased had the time or opportunity to get the bolo and use it as an assault weapon will only be relevant if, indeed, there is proof that there was an attack. In the case at bar, the court *a quo*'s conclusion that there could not have been any bolo used by the deceased during this unfortunate incident is in accord with the evidence.

2) As for Patm. Galerita's testimony that upon investigation of the incident, he saw a bolo on the floor near the victim's right hand, other prosecution witnesses averred that Nacilla had no bolo or was not holding a bolo. Again, the trial court's assessment of the credibility — or the lack of it — appears supported by the records.

3) The physician who conducted the Necropsy Report, Dr. Napoleon dela