

## SECOND DIVISION

[ G.R. No. 233479, October 16, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOMAR DOCA Y VILLALUNA, ACCUSED-APPELLANT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

This appeal assails the Decision dated March 28, 2017<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 08266 affirming the trial court's verdict of conviction for murder against appellant.

#### The Proceedings Before the Trial Court

##### The Charge

Under Information dated July 3, 2007, appellant Jomar Doca y Villaluna was charged with murder for the killing of Roger C. Celestino, *viz*:

That on or about July 1, 2007 in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused JOMAR DOCA Y VILLALUNA armed with a Rambo knife, with intent to kill, with evident premeditation and with treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab ROGER C. CELESTINO, a minor 17 years of age thereby, inflicting upon him stab wound which caused his death.

CONTRARY TO LAW.<sup>[2]</sup>

The case was raffled to the Regional Trial Court - Branch 4, Tuguegarao City, Cagayan. On arraignment, appellant pleaded "not guilty". Trial on the merits ensued.

During the trial, Rogelio Castro, Benjamin Cabisora, Dr. Rebecca Battung, SPO3 Bienimax Constantino and PO3 Roque Binayug testified for the prosecution. The testimony of Roger's father Pablo Celestino was dispensed with after the prosecution and the defense stipulated that Roger's death resulted in actual damages of P30,000.00. Meanwhile, appellant testified as lone witness for the defense.<sup>[3]</sup>

##### The Prosecution's Version

Eyewitness **Rogelio Castro** testified that on July 1, 2007, around 4 o'clock in the afternoon, he and Roger, along with two (2) others, were walking home from the house of Willie Cabisora in Villa Salud, Barangay Gadu, Solana, Cagayan when they saw appellant standing inside a waiting shed, drunk and angry. Appellant was looking for Roger, shirtless, revealing a Rambo knife strapped around his waist.

Roger was walking about fifty (50) meters ahead of them and arrived at the waiting shed first. As Roger was passing by appellant, the latter suddenly stabbed him in his left breast with the Rambo knife. As Roger fell on the ground, appellant immediately fled. He and his companions wanted to carry Roger into his house but the latter had already passed away.<sup>[4]</sup>

**Benjamin Cabisora** testified that he is Roger's relative and appellant's friend. On July 1, 2007, around 4:30 in the afternoon, he was seated in a waiting shed in front of the house of one Georgie Juan. Beside him stood appellant who appeared to be waiting for someone. He then saw Roger and his friends leave the house of Willie Cabisora. When Roger reached the waiting shed, he suddenly fell on the ground.<sup>[5]</sup>

**Dr. Rebecca Battung** testified that Roger died of shock due to loss of more than 1.5 liters of blood. The shock, in turn, was caused by severe hemorrhage from the stab wound in his chest

**PO3 Roque Binayng** and **SPO3 Bienimax Constantino** testified that on July 1, 2007, they received a report at the police station regarding a stabbing incident in Villa Salud. They proceeded to the area and saw Roger's lifeless body inside a waiting shed. The investigating team recovered a Rambo knife beside the body of the victim. According to witnesses, it was the same Rambo knife used in the killing.<sup>[6]</sup>

### **The Defense's Version**

Appellant invoked self-defense. He testified that on July 1, 2007, around 4:30 in the afternoon, he went to the house of his friend Georgie Juan. When he found out that Juan was not home, he decided to wait for him in a nearby waiting shed. There, he found prosecution witness Benjamin Cabisora. Roger arrived a few minutes later. Without warning, Roger boxed him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (*balisong*), he grappled with Roger for the weapon. He was able to take hold of the fan knife and use it to stab Roger. He immediately fled because he feared for his life. The following day, he surrendered to then Barangay Captain Edgar Palattao of Barangay Andarayan who took him to the police authorities.<sup>[7]</sup>

### **The Trial Court's Ruling**

By Judgment dated February 4, 2016,<sup>[8]</sup> the trial court found appellant guilty of murder, viz:

WHEREFORE, accused JOMAR DOCA y Villaluna is hereby found GUILTY beyond reasonable doubt for Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659.

The accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the private complainant the amount of SEVENTY-FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages, THIRTY THOUSAND PESOS (P30,000.00) as exemplary damages, and THIRTY THOUSAND PESOS (P30,000.00) as actual damages.

Records shows that the accused was under the custody of the Cagayan Provincial Jail, since July 3, 2007. The preventive imprisonment of the

accused during the pendency of this case shall be credited in full in his favor if he abided with the disciplinary rules upon convicted prisoners.

SO ORDERED.<sup>[9]</sup>

The trial court held that appellant admitted to killing Roger when he invoked self-defense. But to justify the killing, the burden was on appellant to prove that Roger provoked him into committing the act. Appellant failed to discharge this burden.<sup>[10]</sup>

Although the trial court did not find sufficient evidence to establish that the killing was premeditated, it nevertheless appreciated treachery to have qualified the killing to murder. Meanwhile, voluntary surrender was not appreciated in appellant's favor because it was not shown that he acknowledged his guilt or wished to save the authorities the trouble of searching for and capturing him when he surrendered to Brgy. Captain Palattao.<sup>[11]</sup>

### **The Proceedings before the Court of Appeals**

Appellant faulted the trial court for relying on Rogelio's alleged uncorroborated testimony. Benjamin merely testified that he saw Roger fall to the ground without mentioning appellant's participation in Roger's death.<sup>[12]</sup>

Too, the trial court erred in ruling that he employed treachery in killing Roger. The allegations of the witnesses that he was drunk, angry, and specifically looking for Roger should have cautioned Roger and his group from approaching him.<sup>[13]</sup>

Appellant maintained that he acted in self-defense.<sup>[14]</sup> At any rate, his voluntary surrender to Brgy. Captain Palattao should be considered as a mitigating circumstance.<sup>[15]</sup>

The Office of the Solicitor General (OSG), through Assistant Solicitor General Reynaldo L. Saldares and State Solicitor Jocelyn P. Castillo-Sarmiento defended the verdict of conviction. It riposted that the prosecution witnesses were able to identify appellant as the person who killed Roger. Treachery attended the killing since Roger was unarmed and had no means to defend himself. More, Roger was only seventeen (17) years old when the crime was committed; he was definitely weaker compared to appellant, a mature male. As for appellant's claim of self-defense, it may not prosper in the absence of proof that unlawful aggression emanated from Roger.<sup>[16]</sup>

### **The Court of Appeals' Ruling**

Under Decision dated March 28, 2017,<sup>[17]</sup> the Court of Appeals affirmed with modification on the monetary awards, viz:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated February 4, 2016 is AFFIRMED with MODIFICATION in that the award of Thirty Thousand Pesos (P30,000.00) as actual damages is deleted. In lieu thereof, temperate damages in the amount of Fifty Thousand Pesos (P50,000.00) is awarded. Accusedappellant Jomar Doca y Villaluna is further ordered to pay Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and Seventy-Five Thousand Pesos (P75,000.00) as exemplary damages. All damages awarded shall earn

interest at the legal rate of six percent (6%) per *annum* from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>[18]</sup>

The Court of Appeals did not entertain appellant's theory of selfdefense because his only proof thereof was his self-serving testimony. The testimonies of the prosecution witnesses also showed that Roger did not attack appellant in any way.<sup>[19]</sup>

The Court of Appeals appreciated the presence of treachery and qualified the killing to murder. It ruled that appellant's attack was so sudden and unexpected that Roger was completely deprived of a real chance to defend himself.<sup>[20]</sup>

Although the trial court erred when it failed to appreciate the mitigating circumstance of voluntary surrender, the Court of Appeals, nevertheless, affirmed the imposition of *reclusion perpetua* on appellant.<sup>[21]</sup>

As for the monetary awards, the Court of Appeals affirmed the award of P75,000.00 as civil indemnity, increased moral and exemplary damages from P50,000.00 and P30,000.00, respectively, to P75,000.00 each, deleted the award of actual damages of P30,000.00, and granted temperate damages of P50,000.00. It also imposed six percent (6%) interest *per annum* on the monetary awards from finality of the decision until fully paid.<sup>[22]</sup>

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays for his acquittal. In compliance with Resolution dated December 13, 2017,<sup>[23]</sup> both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.<sup>[24]</sup>

### **Issue**

Did the Court of Appeals err in affirming appellant's conviction for murder?

### **Ruling**

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz*:

Article 248. *Murder*. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

xxxx

2. With evident premeditation;

xxxx

It requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.<sup>[25]</sup>

### **Appellant failed to establish that he acted in self-defense**

Appellant admits the first two (2) elements but justifies the killing as an act of self-defense. According to appellant, he was waiting for his friend Georgie Juan in a nearby waiting shed when Roger arrived. Without warning, Roger boxed him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (*balisong*), he grappled with Roger for the weapon. He was able to take hold of the fan knife and used it to stab Roger. Thus, he was merely protecting himself from Roger's assaults.

We are not convinced.

When an accused invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea through credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he harmed or killed the victim.<sup>[26]</sup> For self-defense to be appreciated, appellant must prove the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. Unlawful aggression is the indispensable element of selfdefense. If no unlawful aggression attributed to the victim is established, selfdefense is unavailing, for there is nothing to repel.<sup>[27]</sup>

As aptly noted by the courts below, appellant relied solely on his self-serving testimony that he acted in self-defense. He did not present any evidence to corroborate his claim. Neither did he offer any explanation why Roger allegedly attacked him. Surely, appellant's lone testimony cannot be considered as clear and convincing proof that he acted in self-defense.<sup>[28]</sup>

More, if at all there was unlawful aggression, it emanated not from the victim but from appellant, thus:<sup>[29]</sup>

Q: Why were you not able to reach home?

A: Because Roger Celestino got into trouble, sir.

Q: With whom?

A: Jomar Doca, sir.

Q: How did it happen?

A: Jomar suddenly stabbed Roger Celestino, sir.

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Q: How did Jomar Doca suddenly stabbed (sic) Roger Celestino?

A: Roger Celestino passed by in front of Jomar Doca.