

## THIRD DIVISION

[ G.R. No. 226392, July 23, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. NESTOR  
"TONY" CALIAO, ACCUSED-APPELLANT.**

### DECISION

**MARTIRES, J.:**

Before the Court on automatic review is the 20 May 2016 Decision<sup>[1]</sup> rendered by the Court of Appeals (CA) in CA-G.R. CEB-CR.-H.C. No. 02006, which affirmed with modification the 25 September 2014 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 18, Cebu City, in Criminal Case No. CBU-70511, finding accused-appellant Nestor "Tony" Caliao (*accused-appellant*) guilty beyond reasonable doubt of the crime of Murder.

### THE FACTS

An Information filed on 20 August 2004 charged accused-appellant with murder committed as follows:

That on or about the 25th day of April 2004, at about 12:45 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a kitchen knife, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack, assault and stab with said knife one William A. Fuentes, hitting him on the left side of his body and inflicting upon him physical injuries which caused the death of the latter a day after.

CONTRARY TO LAW.<sup>[3]</sup>

The information was filed on 20 August 2004, but the accused was arrested only on 6 September 2010. Upon arraignment, accused-appellant pleaded not guilty, and trial thereafter ensued.

### ***Version of the Prosecution***

The prosecution presented Virginia Fuentes (*Virginia*), wife of the victim William Fuentes (*the victim*); Junnel Fuentes (*Junnel*), son of the victim; and market vendors Maximo Largo (*Maximo*) and Ricardo Tesorio (*Ricardo*).

Virginia and her husband William Fuentes, the victim in this case, owned a stall inside Taboan Market in Cebu City. During trial, Virginia testified that the victim and accused-appellant had an altercation on the night of 24 April 2004 because accused-appellant had placed garbage beside their store. The victim confronted accused-appellant who became angry and tried to strike the victim with a pipe. The victim

secured a piece of wood to get back at accused-appellant, but Virginia stopped her husband from doing so.<sup>[4]</sup>

At three in the morning of the next day, accused-appellant called out to the victim and challenged him to a fistfight, but Virginia did not allow her husband to go out. When the victim went outside at past four that same morning, he found that the tires of their bicycle had been punctured.<sup>[5]</sup>

In the afternoon of 25 April 2004, Virginia was sleeping inside their store while her husband and their son Junnel were outside preparing **pusó**.<sup>[6]</sup> Later on, the victim told his son that he was going to use the comfort room and would afterwards wake up his wife Virginia. As the victim approached their stall, Junnel saw accused-appellant suddenly appear and stab his father. When the victim went inside the store to get away, accused-appellant followed and attempted to stab him again, but the victim got hold of an electric fan that he used to fend off accused-appellant and to push him outside the store. Accused-appellant kept shouting, "I will kill you!"<sup>[7]</sup>

Ricardo, who also had a stall in Taboan Market, was in his store selling **pusó** when he heard his mother-in-law shouting out to Racel Caliao (Racel), wife of accused-appellant, about what was happening. Racel immediately ran towards the victim's store and pulled accused-appellant away. Ricardo, together with Maximo, another stall owner, approached accused-appellant, who was holding a bloodied knife. They took the knife from accused-appellant and brought it along with him to the police station.<sup>[8]</sup>

### ***Version of the Defense***

The defense presented the testimonies of accused-appellant, Roberto Oralde (*Roberto*), and George Cabino (*George*).

Accused-appellant testified that he was at his store preparing **pusó** for delivery when the victim suddenly appeared and poured kerosene on the **pusó**. Thereafter, the victim took out an iron pipe and repeatedly struck accused-appellant with it until the latter was cornered. Accused-appellant picked up the kitchen knife he had used for cutting **pusó** and struck the victim with it. Thereafter, he went home. He also denied that he had quarreled with the victim the night before the incident.<sup>[9]</sup>

Roberto, who was in the market at the time of the incident because he worked for accused-appellant's mother, confirmed accused-appellant's version by testifying that he saw the victim bring a pipe into accused-appellant's store and repeatedly strike accused-appellant with it, prompting the latter to strike back with a knife. George, a bystander who witnessed the incident, corroborated the same. Roberto also testified that he saw the victim bring kerosene into accused-appellant's store.<sup>[10]</sup>

However, the prosecution presented rebuttal evidence to Roberto's testimony through Belinda Ligan (*Belinda*), who had been working at the Taboan Market since she was five (5) years old and whose store was just five (5) meters away from the store of accused-appellant's mother. She testified that she had never seen Roberto work for accused-appellant's mother and that she saw him for the first time only when he testified in court.<sup>[11]</sup>

### ***The RTC Ruling***

The RTC ruled that self-defense could not be appreciated to exculpate accused-appellant for his failure to establish the elements thereof clearly and convincingly. It also found that the aggravating circumstances of treachery and evident premeditation are present in this case. Consequently, the RTC found accused-appellant guilty beyond reasonable doubt of murder, viz:

WHEREFORE, in view of the foregoing consideration, the Court finds the accused Nestor "Tony" Caliao guilty beyond reasonable doubt of the crime of Murder qualified by treachery and evident premeditation and imposes upon him the penalty of reclusion perpetua with all its accessory penalties. He is further ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity, P30,000.00 as moral damages, P25,000.00 as temperate damages and P25,000.00 as exemplary damages.

SO ORDERED.<sup>[12]</sup>

Aggrieved, accused-appellant appealed before the CA.

### ***The CA Ruling***

The CA affirmed the conviction of the accused-appellant. However, it found that while treachery could be appreciated as a circumstance qualifying the crime to murder, evident premeditation could not be appreciated as an aggravating circumstance because it was not shown that accused-appellant had previously determined to kill the victim and that he had clung to said determination. Further, the CA found treachery was present because accused-appellant's attack on the victim was sudden and unexpected, the latter being unaware of the former's presence. The CA ruled, thus:

**WHEREFORE**, the instant appeal is **DENIED**. The 25 September 2014 Decision of Branch 18 of the Regional Trial Court of Cebu City in Criminal Case No. CBU-70511 is **AFFIRMED with MODIFICATION**. The aggravating circumstance of evident premeditation is **DELETED**. In addition, both civil indemnity and moral damages granted to the heirs of the victim are increased to P75,000.00 each. Exemplary damages are likewise **INCREASED** to P30,000.00.

Accused Caliao shall pay interest at the rate of six percent (6%) per annum on the aggregate amount of all the monetary awards from the finality of this decision until fully paid.

**SO ORDERED.**<sup>[13]</sup>

Hence, this appeal.

### ***The Present Appeal***

Accused-appellant contends that the CA erred in affirming his conviction because all the elements of self-defense were sufficiently established. He also contends that the prosecution's account of the incident is not worthy of belief and credence because the prosecution witnesses, being the wife and son of the victim, are expected to be biased against the accused-appellant.