

SECOND DIVISION

[G.R. No. 236297, October 17, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ARMANDO BAGABAY Y MACARAEG, ACCUSED-APPELLANT.**

D E C I S I O N

CAGUIOA, J:

Before this Court is an appeal^[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision^[2] dated July 28, 2017 (Decision) of the Court of Appeals, Eleventh Division (CA), in CA-G.R. CR-HC No. 07665, which affirmed the Decision^[3] dated January 22, 2015 of the Regional Trial Court, Branch 31, Guimba, Nueva Ecija (RTC), in Criminal Case No. 2819-G, finding herein accused-appellant Armando Bagabay y Macaraeg (Armando) guilty of the crime of Murder under Article 248 of the Revised Penal Code.

The Facts

Armando was charged with the crime of Murder under the following Amended Information:^[4]

That on or about the 7th day of September 2010, at Barangay San Antonio, in the Municipality/City of CUYAPO, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill, while armed with a stainless knife, with treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab one Alfredo M. Guevarra, Jr. with the said knife inflicting upon him multiple stab wounds on different parts of his body which caused his death, to the damage and prejudice of the latter's family and heirs.

SO ORDERED.^[5]

Upon arraignment, Armando pleaded not guilty.^[6]

Version of the Prosecution

The prosecution offered the testimonies of Dr. Nemesio Belmonte, Analiza Guevarra, Romeo Sapin, PO2 Joey Soleman Martinez and eyewitnesses Angelica Guevarra, Virginia Pangalilingan, and Carlo Antonio Pacamana.^[7] They testified as follows:

In the morning of September 7, 2010, at around 7:00 o'clock, victim Alfredo M. Guevarra, Jr. (Guevarra) unloaded his passengers in front of Dr. Ramon De Santos National High School. While Guevarra was giving his passengers their change, Armando alighted from his tricycle armed with a kitchen knife. Without warning, Armando grabbed Guevarra's shoulder and stabbed the latter twice in rapid

successive motions near the heart. Guevarra got off his tricycle and tried to run away, but Armando pursued him. When Guevarra collapsed on the road, Armando took this as an opportunity to stab the former one more time. Armando left thereafter. Guevarra was taken by bystanders to the Guimba District Hospital where he was pronounced dead on arrival.^[8]

Version of the Defense

Armando, on his part, asserted self-defense. He claimed that on the said date, he was plying the tricycle owned by his daughter when he saw Guevarra on the other side of the road pointing and cursing at him. He approached Guevarra and asked the latter why he was uttering such words so early in the morning. Guevarra replied, "[I]f you want, I will cut your throat." Without warning, Guevarra pulled out a knife and pointed it at him. When Guevarra tried to stab him, he held Guevarra's hand and twisted it causing Guevarra to stab himself. Guevarra tried to stab him again, but he quickly thwarted it off and caused Guevarra to stab himself a second time. After stabbing himself twice, Guevarra alighted from his tricycle and tried to run, but fell face down on the ground.^[9]

Armando further narrated that prior to that encounter, he already had a rift with Guevarra. He was elected the President of Butao Guimba Cuyapo Tricycle Operators and Drivers Association (Association). The members of the Association were required to pay a membership fee of P1,000.00. Guevarra was only able to pay half of the said amount and as a consequence, was not allowed to queue along the line of tricycles waiting for passengers.^[10]

Ruling of the RTC

In its assailed Decision^[11] dated January 22, 2015, the RTC found Armando guilty of Murder, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ARMANDO BAGABAY Y MACARAEG GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentencing the accused the penalty of reclusion perpetua without eligibility for parole. The accused is hereby ordered to pay the heirs of the victim ALFREDO GUEVARRA JR., represented by Analiza Guevarra, the following amounts: P41,110.00 as actual damages; P75,000.00 as civil indemnity for the death of Alfredo Guevarra Jr., P350,000.00 as temperate damages in lieu of the loss of earning capacity and unsupported expenses during wake and interment; P50,000.00 as moral damages and P30,000.00 as exemplary damages.

All the amounts of damages awarded shall earn interest at the legal rate of 6% per annum commencing from the date of finality of judgment until fully paid.

Costs of suit to be paid by the accused.

SO ORDERED.^[12]

The RTC ruled that Armando failed to prove that he acted in self-defense. Other than his bare assertions, he did not present any witness to corroborate his claim. His only witness, Rolando Jacobo, who was around 12 to 15 meters away, testified that he

saw Armando and Guevarra grappling for a knife while both were standing near the tricycle of Guevarra. This is diametrically opposed to the testimony of Armando that Guevarra was sitting astride his motorcycle when they were grappling for the knife.
[13]

The RTC also declared that treachery attended the commission of the crime. It considered the fact that Guevarra was stabbed from behind. Further, it ruled that the suddenness and unexpectedness of the attack were deliberately employed so that the victim would be deprived of any means to resist it.^[14]

Aggrieved, Armando appealed to the CA.

Ruling of the CA

In the assailed Decision^[15] dated July 28, 2017, the CA affirmed the conviction by the RTC *in toto*:

WHEREFORE, the appeal is hereby DENIED. The Decision of the Regional Trial Court, Branch 31, Guimba Nueva Ecija in Criminal Case No. 2819-G is **AFFIRMED in toto**.

SO ORDERED.^[16] (Emphasis in the original)

The CA agreed with the RTC that Armando failed to prove self-defense because all the essential elements of self-defense are absent. It likewise sustained the finding of the RTC that treachery attended the killing of the victim.

Hence, this appeal.

Issues

Whether the CA erred in affirming Armando's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.^[17] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.^[18] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[19]

After a careful review and scrutiny of the records, the Court affirms the conviction of Armando, but only for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not proven in the killing of Guevarra.

The accused failed to prove self-defense

In questioning his conviction, Armando argues that he should not be criminally liable for the death of the victim because he only acted in self-defense. He posits that unlawful aggression was present when Guevarra allegedly pointed and cursed at him then drew out a knife.^[20]

This argument deserves scant consideration.

An accused who pleads self-defense admits to the commission of the crime charged.^[21] He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.^[22] Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."^[23] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.^[24]

The Court agrees with the CA that Armando failed to discharge his burden. All the requisites of self-defense are wanting in this case.

First, there is no unlawful aggression on the part of the victim. For unlawful aggression to be present, there must be real danger to life or personal safety.^[25] Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.^[26] None of the elements of unlawful aggression was proven by the defense. Guevarra's act of pointing or cursing at Armando, not followed by other acts, is insufficient to constitute unlawful aggression. Thus, the CA is correct in ruling that there was no evidence proving the gravity of the utterances and the actuations allegedly made by Guevarra that would have indicated his wrongful intent to harm Armando.^[27]

Second, in the absence of unlawful aggression on the part of the victim, the second requisite of self-defense could not have been present. Records show that Guevarra was unarmed and it was Armando who approached the former armed with a knife. Assuming that Guevarra had indeed shouted and cursed at him and drew out a knife, it was still not reasonably necessary for Armando to stab the victim. Furthermore, Armando stabbed the victim three times, the last wound inflicted when Guevarra was already on the ground asking for help. Thus, the CA was correct in ruling that the means employed by Armando in repelling the attack was unreasonable.^[28]

Lastly, the third requisite requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault.^[29] In this case, records show that it was actually Armando who sought out and approached the victim with a knife. It was Armando who initiated the assault.^[30]

Hence, the Court finds that Armando failed to prove that he acted in self-defense.

Treachery was not proved by clear and convincing evidence