

THIRD DIVISION

[G.R. No. 198954, February 22, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODRIGO MACASPAC Y ISIP, ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

When the victim was alerted to the impending lethal attack due to the preceding heated argument between him and the accused, with the latter even uttering threats against the former, treachery cannot be appreciated as an attendant circumstance. When the resolve to commit the crime was immediately followed its execution, evident premeditation cannot be appreciated. Hence, the crime is homicide, not murder.

The Case

Rodrigo Macaspac y Isip (Macaspac) hereby seeks to reverse the decision promulgated on April 7, 2011,^[1] whereby the Court of Appeals (CA), in CA-G.R. CR HC No. 03262, affirmed with modification the decision rendered in Criminal Case No. C-31494 by the Regional Trial Court (RTC), Branch 129, in Caloocan City declaring him guilty beyond reasonable doubt of murder for the killing of Robert Jebulan Pelaez (Jebulan).^[2]

Antecedents

The information charging Macaspac with murder filed by the Office of the City Prosecutor of Caloocan City reads as follows:

That on or about the 7th day of July 1988, at Caloocan City, Metro Manila and within the jurisdiction of the Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with kitchen knife on the vital part of his body one ROBERT JEBULAN PELAEZ, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.

Contrary to law.^[3]

The case was archived for more than 15 years because Macaspac had gone into hiding and remained at large until his arrest on July 28, 2004. Upon his arraignment on August 31, 2004, he pleaded *not guilty* to the foregoing information.^[4]

The Prosecution's evidence revealed that at around 8:00 in the evening of July 7,

1988, Macaspac was having drinks with Ricardo Surban, Dionisio Barcomo *alias* Boy, Jimmy Reyes, and Jebulan on Pangako Street, Bagong Barrio, Caloocan City. In the course of their drinking, an argument ensued between Macaspac and Jebulan. It became so heated that, Macaspac uttered to the group: *Hintayin n'yo ako d'yan, wawalisin ko kayo*, and then left.^[5] After around three minutes Macaspac returned wielding kitchen knife. He confronted and taunted Jebulan, saying: *Ano?* Jebulan simply replied: *Tama na*. At that point, Macaspac suddenly stabbed Jebulan on the lower right area of his chest, and ran away. Surban and the others witnessed the stabbing of Jebulan. The badly wounded Jebulan was rushed to the hospital but was pronounced dead on arrival.^[6]

Macaspac initially invoked self-defense, testifying that he and Jebulan had scuffled for the possession of the knife, and that he had then stabbed Jebulan once he seized control of the knife, *viz.*:^[7]

Atty. Sanchez

Q And it was alleged here in the information that on July 7, 1988 at around o'clock in the evening, in the City of Caloocan you stabbed the victim Robert Julian (Jebulan). What can you say about this?

A We scuffled for possession for sharp instrument and when **I was able to grab that sharp instrument**, was able to stab Roberto Jebulan, sir.
^[8]

However, Macaspac later on claimed that Jebulan had been stabbed by accident when he fell on the knife. Macaspac denied being the person with whom Jebulan had the argument, which he insisted had been between Barcomo and one Danny. According to him, he tried to pacify their argument, but his effort angered Jebulan, who drew out the knife and tried to stab him. He fortunately evaded the stab thrust of Jebulan, whom he struck with wooden chair to defend himself. The blow caused Jebulan to fall on the knife, puncturing his chest.^[9]

On February 19, 2008, the RTC found Macaspac guilty beyond reasonable doubt of murder,^[10] disposing:

WHEREFORE, the Court finds that the killing of **Robert Jebulan** is qualified by treachery. In the absence of mitigating and aggravating circumstances, the Court hereby finds the accused **guilty beyond reasonable doubt as charged**, and hereby sentences him to suffer the imprisonment of **reclusion perpetua**.

The accused is ordered to indemnify the victim in the amount of P50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.^[11]

On appeal, the CA affirmed the conviction but modified the civil liability by imposing civil indemnity of P50,000.00, exemplary damages of P25,000.00, and temperate damages of P25,000.00, decreeing:

WHEREFORE, the appealed 19 February 2008 Decision of Branch 129 of the Regional Trial Court of Caloocan City is **AFFIRMED** with the **MODIFICATIONS** that appellant, aside from the moral damages awarded by the trial court in the amount of Fifty Thousand Pesos (P50,000.00), is further **ORDERED** to pay the heirs of the victim, Robert Jebulan, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages and Twenty-Five Thousand Pesos (P25,000.00) as temperate damages.

SO ORDERED.^[12]

Macaspac is now before the Court arguing that the CA erred in affirming his conviction for murder on the ground that the Prosecution did not establish his guilt for murder beyond reasonable doubt.^[13]

Ruling of the Court

It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.^[14]

The Court sees no misreading by the RTC and the CA of the credibility of the witnesses and the evidence of the parties. On the contrary, the CA correctly observed that inconsistencies had rendered Macaspac's testimony doubtful as to shatter his credibility.^[15] In so saying, we do not shift the burden of proof to Macaspac but are only stressing that his initial invocation of self-defense, being in the nature of forthright admission of committing the killing itself, placed on him the entire burden of proving such defense by clear and convincing evidence.

Alas, Macaspac did not discharge his burden. It is noteworthy that the CA rejected his claim of self-defense by highlighting the fact that Jebulan had not engaged in any unlawful aggression against him. Instead, the CA observed that Jebulan was already running away from the scene when Macaspac stabbed him. The CA expressed the following apt impressions of the incident based on Macaspac's own declarations in court, *viz.*:

ACP Azarcon

x x x

Q How could you (appellant) hit him (Jebulan) at his back when you were facing him?

A When picked up the chair, when was about to hit him with the chair, **Obet turned his back to ran (*sic*) from me**, sir.

Q **To ran (*sic*) away from you?**

A **Yes, sir**, because he saw me, was already holding the chair, sir.
(Emphasis supplied)

Self-defense, requires three (3) elements, namely: (a) **unlawful aggression on the part of the victim**; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence.

From the above-quoted testimony of appellant, it is clear that even before he stabbed Jebulan, the latter was already running away from him. Hence, granting that Jebulan was initially the aggressor, appellant's testimony shows that said unlawful aggression already ceased when appellant stabbed him. Clearly, appellant's act of stabbing said victim would no longer be justified as an act of self-defense.^[16]

Macaspac's initial claim that he and Jebulan had scuffled for the possession of the knife, and that he had stabbed Jebulan only after grabbing the knife from the latter became incompatible with his subsequent statement of only striking Jebulan with the wooden chair, causing the latter to fall on the knife. The incompatibility, let alone the implausibility of the recantation, manifested the lack of credibility of Macaspac as witness.

Both the RTC^[17] and the CA^[18] concluded that Macaspac had suddenly attacked the completely unarmed and defenseless Jebulan; and that Macaspac did not thereby give Jebulan the opportunity to retaliate, or to defend himself, or to take flight, or to avoid the deadly assault.

Did the lower courts properly appreciate the attendance of *alevosia*, or treachery?

This is where we differ from the lower courts. We cannot uphold their conclusion on the attendance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.^[19] Two conditions must concur in order for treachery to be appreciated, namely: *one*, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and *two*, said means, methods or forms of execution were deliberately or consciously adopted by the assailant.^[20] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.^[21]

Based on the records, Macaspac and Jebulan were out drinking along with others when they had an argument that soon became heated, causing the former to leave